JUDGMENT OF THE COURT OF FIRST INSTANCE
(First Chamber, Extended Composition)

17 September 2007 *

In Case T-240/04,

French Republic, represented initially by F. Alabrune, G. de Bergues, C. Lemaire, E. Puisais, and subsequently by G. de Bergues and S. Gasri, acting as Agents,

applicant,

supported by

Federal Republic of Germany, represented by C.-D. Quassowski and A. Tiemann, acting as Agents,

and by

* Language of the case: French.

Kingdom of Belgium, represented by D. Haven, M. Wimmer, and by A. Hubert, acting as Agents, and by J.-F. De Bock, lawyer,

interveners,

v

Commission of the European Communities, represented by M. Patakia, acting as Agent,

defendant,

ACTION for annulment of Commission Regulation (Euratom) No 1352/2003 of 23 July 2003, amending Regulation (EC) No 1209/2000 determining procedures for effecting the communications prescribed under Article 41 of the Treaty establishing the European Atomic Energy Community (OJ 2003 L 192, p. 15),

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

composed of J.D. Cooke, President, R. García-Valdecasas, I. Labucka, M. Prek and V. Ciucă, Judges,

Registrar: K. Pocheć, Administrator,

having regard to the written procedure and further to the hearing on 16 May 2007,

gives the following

Judgment

Legal context

1 Article 41 EA provides:

'Persons and undertakings engaged in the industrial activities listed in Annex II to this Treaty shall communicate to the Commission Investment projects relating to new installations and also to replacements or conversions which fulfil the criteria as to type and size laid down by the Council on a proposal from the Commission.

The list of industrial activities referred to above may be altered by the Council, acting by a qualified majority on a proposal from the Commission, which shall first obtain the opinion of the Economic and Social Committee.'

2 Under Article 42 EA:

'The projects referred to in Article 41 shall be communicated to the Commission and, for information purposes, to the Member State concerned not later than three months before the first contracts are concluded with the suppliers or, if the work is to be carried out by the undertaking with its own resources, three months before the work begins.

The Council may, acting on a proposal from the Commission, alter this time-limit.'

3 Article 43 EA provides:

'The Commission shall discuss with the persons or undertakings all aspects of investment projects which relate to the objectives of this Treaty.

It shall communicate its views to the Member State concerned.'

4 Article 44 EA states:

'The Commission may, with the consent of the Member States, persons and undertakings concerned, publish any investment projects communicated to it.'

5 Under Article 124 EA:

'In order to ensure the development of nuclear energy within the Community, the Commission shall:

— ensure that the provisions of this Treaty and the measures taken by the institutions pursuant thereto are applied;

— formulate recommendations or deliver opinions in the fields covered by this Treaty, if the Treaty expressly so provides or if the Commission considers it necessary;

— have its own power of decision and participate in the shaping of measures taken by the Council and by the European Parliament in the manner provided for in this Treaty;

— exercise the powers conferred on it by the Council for the implementation of the rules laid down by the latter.'

6 Under Article 161 EA:

'In order to carry out their task the Council and the Commission shall, in accordance with the provisions of this Treaty, make regulations, issue Directives, take Decisions, make recommendations or deliver opinions.

A Regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States.

...'

7 Article 203 EA states:

'If action by the Community should prove necessary to attain one of the objectives of the Community and this Treaty has not provided the necessary powers, the Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament, take the appropriate measures.'

8 Commission Regulation (Euratom) No 1352/2003 of 23 July 2003 amending Regulation (EC) No 1209/2000 determining procedures for effecting the communications prescribed under Article 41 of the Treaty establishing the European Atomic Energy Community (OJ 2003 L 192, p. 15) ('the contested regulation') states in the first recital in its preamble that, in order to increase transparency and legal certainty, it is necessary to strengthen existing rules and formalise practices applied by the Commission to conduct the discussions and examine the investment projects which relate to the objectives of the EAEC Treaty. It covers, first, Articles 41 EA to 44 EA, and second, Council Regulation (Euratom) No 2587/1999 of 2 December 1999 defining the investment projects to be communicated to the Commission in accordance with Article 41 EA (OJ 1999 L 315, p. 1).

9 Article 1(3) of the contested regulation introduced into Commission Regulation (EC) No 1209/2000 of 8 June 2000, determining procedures for effecting the

communications prescribed under Article 41 of the Treaty establishing the European Atomic Energy Community (OJ 2000 L 138, p. 12), inter alia, Articles 3a, 3b, 3c, 3d, and 3e which provide:

'Article 3a

'1. The Commission shall examine the communication as soon as it is received. It shall express its views in a recommendation.

2. Where the Commission, after an examination, finds that the communicated investment project raises no doubts regarding the objectives of and compliance with the [EAEC] Treaty, it shall record that finding and express its views by way of a recommendation communicated to the persons, the undertakings and the Member State concerned.

3. Where the Commission, after an examination, finds that the communicated investment project raises doubts regarding the objectives of and compliance with the [EAEC] Treaty, it shall initiate a detailed examination procedure to further discuss in detail all aspects of the investment project which relate to the objectives of the [EAEC] Treaty.

4. A recommendation in accordance with paragraph 2 and the opening of the detailed examination procedure, referred to in paragraph 3, shall be made within two months. That period shall begin on the day following receipt of a complete communication complying with the provisions of this regulation and of Regulation ... No 2587/1999. The communication shall be considered complete if within two months of its receipt, or of receipt of any additional information requested, the Commission does not request any further information.

5. Where the Commission has not issued a recommendation in accordance with paragraph 2 nor acted within the period laid down in paragraph 4, the investment project shall be deemed to be in compliance with the objectives and provisions of the [EAEC] Treaty.

Article 3b

1. Where the Commission considers that information provided by the person or undertaking concerned with regard to an investment project communicated to it, is incomplete, it shall request all necessary information. Where the person or undertaking concerned responds to such a request, the Commission shall inform that person or undertaking of receipt of the response.

2. Where the person or undertaking concerned does not provide the information requested within a prescribed period provided by the Commission or provides incomplete information, the Commission shall send a reminder, allowing an appropriate additional period within which the information shall be provided.

Article 3c

1. When opening the detailed examination procedure, the Commission shall summarise the relevant issues of fact and law and include a preliminary assessment of the investment project in relation to the provisions and objectives of the [EAEC] Treaty and Regulation ... No 2587/1999. The Commission shall call upon the persons or undertakings concerned to submit comments and to further discuss with the Commission within a prescribed period that shall normally not exceed two months.

2. The persons or undertakings concerned are recommended not to put the investment project into effect before the Commission has issued its recommendation on that project or it is deemed to be in compliance with the objectives and provisions of the [EAEC] Treaty as provided for in Article 3a(5).

Article 3d

1. Where the Commission finds, following discussion and/or modification by the person or undertaking concerned, that the investment project is in compliance with the objectives and provisions of the [EAEC] Treaty, it shall record its views by way of a recommendation communicated to the persons, undertakings and Member State concerned.

2. Where the Commission finds, following discussion and/or modification by the person or undertaking concerned, that the communicated investment project is not in compliance with the objectives and provisions of the Euratom Treaty, it shall express its views by way of a recommendation communicated to the persons, undertakings and Member State concerned.

3. The views taken pursuant to paragraphs 1 and 2 shall be taken as soon as the doubts referred to in Article 3a(3) have been removed. The Commission shall as far as possible endeavour to adopt a recommendation within a period of six months from the opening of the detailed examination procedure.

4. Once the period referred to in paragraph 3 has expired, and should the person or undertaking concerned so request, the Commission shall, within two months, issue its recommendation on the basis of the information available to it.

Article 3e

After having issued its recommendation on the investment project in question, the Commission shall monitor, and where appropriate, discuss with the persons or undertakings concerned, the specific measures taken or intended to be taken pursuant to the Commission's recommendation.'

10 Article 1(4) of the contested regulation introduced into Regulation No 1209/2000 Articles 4a and 4b which provide:

'Article 4a

The Commission shall transmit to the persons or undertakings having communicated an investment project possible comments or views from third parties on the project which will influence the Commission's recommendation.

Article 4b

1. The Commission shall, with the consent of the Member States, persons and undertakings concerned, publish any investment projects communicated to it as well as the recommendations issued pursuant to this regulation.

2. The Commission shall publish an annual report recording implementation of the recommendations made as well as specific measures taken by the persons or undertakings concerned in response to the views of the Commission.

This report shall respect, where necessary, the rules on professional secrecy if the consent referred to in Article 44 of the [EAEC] Treaty is finally not given.'

Procedure and forms of order sought

11 By application lodged at the Registry of the Court of Justice on 24 October 2003 the French Republic brought the present action. By Order of 8 June 2004 the Court referred the matter to the Court of First Instance.

12 On 2 January 2004 the Federal Republic of Germany applied for leave to intervene in support of the forms of order sought by the applicant. By Order of 24 March 2004 the President of the Court of Justice granted leave to intervene. On 8 June 2004 the Federal Republic of Germany submitted its statement in intervention.

13 On 9 June 2004 the Kingdom of Belgium applied for leave to intervene in support of the forms of order sought by the applicant. By Order of 8 November 2004 the President of the First Chamber of the Court of First Instance granted leave to intervene and authorised the Kingdom of Belgium to submit its observations during the oral procedure, in accordance with Article 116(6) of the Rules of Procedure of the Court of First Instance.

14 In the context of measures of organisation of procedure the Court invited the Commission to produce certain documents and reply to certain questions. The Commission complied with those requests.

15 Upon hearing the report of the Judge Rapporteur, the Court (First Chamber, Extended Composition) decided to open the oral procedure.

16 The parties presented oral argument and replied to questions put by the Court at the hearing on 16 May 2007.

17 The applicant claims the Court should:

— annul the contested regulation;

— order the Commission to pay the costs.

18 The Federal Republic of Germany, intervening in support of the applicant, claims the Court should:

— annul the contested regulation;

— order the Commission to pay the costs.

19 The Commission contends the Court should;

— dismiss the action for annulment as unfounded;

— order the applicant to pay the costs.

Substance

20 In support of its action the applicant relies on six pleas in law, alleging a lack of competence on the part of the Commission to adopt the contested regulation, infringement of Articles 42 EA to 44 EA and Article 194(1) EA, and finally breach of the principle of legal certainty.

The first plea in law alleging a lack of competence on the part of the Commission to adopt the contested regulation

Arguments of the parties

21 The applicant claims that neither Articles 41 EA to 44 EA nor Regulation No 2587/1999 constitute a legal basis enabling the Commission to adopt the contested regulation, since they confer on it neither the powers of implementation nor the statutory power to adopt regulations. Under the principle of allocation of

powers, the Commission cannot adopt the contested regulation unless such a competence has been expressly provided for.

22 The fact that the contested regulation is not the first regulation which the Commission has adopted to define implementing procedures for communications concerning Article 41 EA is irrelevant, as it is clear from the case-law that adopting regulations as a mere practice cannot override the provisions of the Treaty (Case C-327/91 *France* v *Commission* [1994] ECR I-3641).

23 Moreover, the applicant, while not disputing the Commission's power of internal organisation under the second subparagraph of Article 131 EA, claims that the adoption of a regulation exceeds that power of internal organisation, since, as it has a general scope and is binding in its entirety, the regulation cannot be used as a tool for the internal functioning of an institution. The principle of administrative autonomy allows the Commission to lay down instructions or implementing provisions directed at its employees, to regulate the internal administrative functioning of the institution, but not to be directed at people or undertakings outside of the administrative machinery, which is, however, the case with the contested regulation.

24 The applicant also disputes the Commission's argument that the contested regulation is not a regulation, as provided for by Article 161 EA, but a regulation *sui generis*, in that it imposes obligations only on the Commission, and not on third parties outside that institution, because such a category of regulation, differing from those pursuant to Article 161 EA, is not provided for in any way by the EAEC Treaty. In any case, the applicant considers that the final provisions of the contested regulation, by expressly stating that it is binding in its entirety and directly applicable in all Member States, has the same characteristics as a regulation defined in Article 161 EA.

25 Finally, according to the applicant, the Commission's argument that only a binding legal instrument, such as a regulation, is able to bring the legal certainty and transparency required by third parties with regard to respecting procedural obligations which the Commission imposes on itself, should be rejected. If the Commission had considered that such a regulation was necessary it should have submitted a proposal along those lines to the Council since, even if there was no specific legal basis in the EAEC Treaty, recourse to Article 203 EA was possible. Moreover, the adoption of guidelines would have been sufficient to enable the Commission to achieve its objective of legal certainty, as it cannot, in accordance with case-law, depart from the rules which it has laid down for itself.

26 The Federal Republic of Germany and the Kingdom of Belgium support the applicant's pleas and the Federal Republic of Germany asserts, first, that the contested regulation infringes the principle that the responsibility for security at nuclear installations rests with the Member States and, secondly, that the Commission's competence to adopt the contested regulation cannot be based on the principle of administrative autonomy which does not allow the Commission to lay down implementing provisions directed at people and undertakings outside of its administrative staff.

27 The Commission contends that it has acted within the framework of the tasks and the powers which were assigned to it by the EAEC Treaty. Articles 41 EA to 44 EA cover rules of procedure aimed at ensuring the communication, examination and discussion of investment projects and thus give the Commission competence to deal directly with undertakings. According to the Commission, while the EAEC Treaty does not detail the precise procedures to follow, it nevertheless allows the Commission all necessary latitude to take initiatives in that area. Consequently, by adopting the contested regulation, the Commission did not exceed the powers which were granted to it by the EAEC Treaty. It is within its duty of internal organisation to take measures to organise the examination procedure for investment projects contained in the contested regulation. By giving strong legal force to the obligations which the Commission lays down for itself, the regulation adopted ensures a high degree of legal certainty for third parties.

28 As the contested regulation imposes obligations only on the Commission and not on third parties, it is not a regulation within the meaning of Article 161 EA, but a regulation *sui generis*. In accordance with Case C-322/88 *Grimaldi* [1989] ECR 4407, it is not the title or the form of the contested regulation which defines its nature, but the content of its provisions. While the contested regulation takes the form of a regulation to reinforce the obligations which the Commission imposes on itself, by establishing procedures allowing for the more efficient implementation of Articles 41 EA to 44 EA and Regulation No 2587/1999, it does not impose obligations on third parties and is therefore not a regulation within the meaning of Article 161 EA. Consequently, the Commission considers that the fact that the provisions, which appear in the legal basis cited for the contested regulation, do not provide for the adoption of regulations by the Commission within the meaning of Article 161 EA, is irrelevant as regards its competence to adopt the contested regulation.

29 Moreover, the choice of a regulatory format to adopt the provisions contained in the contested regulation is necessary in order to respect the principle of parallelism of forms, since the contested regulation amends an earlier regulation, Regulation No 1209/2000.

Findings of the Court

30 As a preliminary point, it should be borne in mind that, pursuant to Article 146 EA, the Community judicature reviews the legality of acts of the Council and the Commission, except for recommendations and opinions. That article is similar to Article 230 EC and must be interpreted in an analogous way (Opinion of Advocate General Jacobs, Case C-29/99 *Commission* v *Council* [2002] ECR I-11221, at I-11225; see also, to that effect, order of the President of the Court of First Instance of 22 December 1995 in Case T-219/95 R *Danielsson and Others* v *Commission* [1995] ECR II-3051, paragraphs 61 to 76, and, by analogy, Joined Cases T-149/94

and T-181/94 *Kernkraftwerke Lippe-Ems* v *Commission* [1997] ECR II-161, paragraphs 46 and 47). The case-law developed in the context of the EC Treaty should therefore be applied in relation to the review of the legality of a regulation in the context of the EAEC Treaty, unless there are special provisions in that area or the scheme of which proves different from the overall scheme and the spirit of the EC Treaty.

31 Pursuant to Article 3 EA, in accordance with the principle of allocation of powers, each institution is to act within the limits of the powers conferred upon it by the EAEC Treaty. Respect for the principle of legal certainty requires that the binding nature of any act intended to have legal effects must be derived from a provision of Community law which prescribes the legal form to be taken by that act and which must be expressly indicated therein as its legal basis (see, as regards the scope of application of the EC Treaty, Case C-325/91 *France* v *Commission* [1993] ECR I-3283, paragraph 26). Determining the conditions under which such a measure may be adopted requires that the division of powers and the institutional balance established by the Treaties be duly taken into account (see, to that effect, Case C-233/02 *France* v *Commission* [2004] ECR I-2759, paragraph 40).

32 It must be noted that it follows neither from the provisions of Articles 41 EA to 44 EA nor from those of Regulation No 2587/1999, which are the legal bases referred to by the contested regulation, that the Commission has the explicit power to adopt such a regulation.

33 Articles 41 EA to 44 EA do not provide the Commission with regulatory powers relating to the procedure for the examination of investment projects. Similarly, Regulation No 2587/1999, termed by the Commission as the 'base regulation' of the contested regulation, contains no provision expressly empowering it to adopt regulations for the purposes of its implementation. Indeed, the Commission itself does not dispute that none of the legal bases mentioned in the contested regulation expressly empowers it to adopt such a regulation.

34 As the applicant rightly points out, in the absence of a specific provision empowering the Commission to adopt a regulation, if such an act proved necessary, it should have followed the procedure laid down in Article 203 EA, that is, to submit a proposal to the Council, which could have adopted such a regulation by unanimity, after consultation with the European Parliament.

35 The Commission, by arguing that it has not exceeded the powers conferred on it by Articles 41 EA to 44 EA in adopting the contested regulation, claims that those articles give it, in reality, power to adopt the disputed measures. In that regard, since it is not apparent from any of the legal bases mentioned in the contested regulation that the Commission was expressly empowered to adopt such a regulation, it must be examined whether the Commission had implied powers to adopt that regulation and therefore whether those implied powers were actually necessary to give practical effect to Articles 41 EA to 44 EA and to Regulation No 2587/1999.

36 The Court has accepted that powers, which have not been expressly provided for in the provisions of the Treaties, can be used if they are necessary to achieve objectives set by those treaties (see, to that effect, Case 22/70 *Commission* v *Council* [1971] ECR 263, paragraph 28). When an article of the EAEC Treaty gives the Commission a specific and precise task, it must be accepted, if that provision of the EAEC Treaty is not to be rendered wholly ineffective, that it implicitly confers on the Commission necessarily and per se the powers which are indispensable in order to carry out that task (see, by analogy, Joined Cases 281/85, 283/85 to 285/85 and 287/85 *Germany and Others* v *Commission* [1987] ECR 3203, paragraph 28). It must therefore be recognised that the provisions laid down by a treaty imply that rules, without which those provisions could not be usefully or reasonably applied, may be adopted. Therefore, the provisions of the EAEC Treaty relating to normative powers of the institutions must be interpreted in light of the overall scheme of that Treaty (see, as regards the scope of the EAEC Treaty, Case 25/59 *Netherlands* v *High Authority* [1960] ECR 723, 757 to 760).

37 Nevertheless, the existence of an implicit regulatory power, which constitutes a derogation from the principle of allocation of powers set down in Article 3(1) EA, must be strictly interpreted. It is only exceptionally that such powers are recognised by case-law and in order to be so recognised, they must be necessary to ensure the practical effect of the provisions of the Treaty or the base regulation at issue (see, to that effect, *Commission* v *Council*, paragraph 28; *Germany and Others* v *Commission*, paragraph 28; and Case C-478/93 *The Netherlands* v *Commission* [1995] ECR I-3081, paragraph 32).

38 Not only the substantial provisions, but also the form and binding nature of the regulation, must fulfil that condition of necessity.

39 To consider that the Commission was implicitly empowered to adopt the contested regulation, it is necessary, not only that the Commission could adopt measures organising details of procedure for the examination of investment projects that are communicated to it, such as those provided for by the contested regulation, for the proper implementation of Articles 41 EA to 44 EA and Regulation No 2587/1999, but also that it requires the adoption of those measures in the form of a regulation, binding in its entirety and directly applicable in all Member States.

40 The arguments put forward by the Commission as regards the necessity of taking the measures adopted, concerning both their form and their substance, are not convincing.

41 As regards their substance, Regulation No 2587/1999 is limited to defining those investment projects to be communicated to the Commission in accordance with Article 41 EA and does not, in any way, concern the process of discussions with the Commission on those projects. The Commission is therefore not given the implicit

competence to adopt the contested regulation. Similarly, the provisions of the contested regulation cannot be considered as necessary to give practical effect to the provisions of Articles 41 EA to 44 EA. It is true that the Commission must, as it claims, organise the communication, examination and discussion procedure for investment projects provided for in Articles 41 EA to 44 EA. However, the Court considers that it was not necessary, in order to give practical effect to those articles of the EAEC Treaty, to confer on the Commission the power to recommend the suspension of investment projects before finishing the examination of them, as Article 3c(2) of Regulation No 1209/2000 — as introduced by the contested regulation — provides, since such a suspension was not in any way envisaged in the EAEC Treaty. Similarly, the fact that the Commission, in accordance with Article 4b of Regulation No 1209/2000, as provided for by the contested regulation, insists on publishing the investment projects which are communicated to it cannot be considered as necessary for the proper implementation of Article 44 EA, which already provides for such a possibility itself, without making it obligatory.

42 Moreover and above all, it must be held that the adoption of measures providing details of the Commission's examination procedure of investment projects, such as those in the contested regulation, does not need to be carried out in the form of a regulation. Simple internal rules of organisation would suffice to achieve the goals that the Commission, in its own words, meant to achieve. The Commission's argument that the form of a regulation guarantees greater transparency and greater legal certainty for third parties, as regards respect for rules which it lays down for itself, must thus be rejected. As the Commission itself admits, it is bound to comply with the rules that it has imposed on itself (Case T-224/00 *Archer Daniels Midland and Archer Daniels Midland Ingredients* v *Commission* [2003] ECR II-2597, paragraph 182). Thus, simple guidelines or a simple communication — the Commission's compliance with which can be reviewed by the Community judicature — would have sufficed to guarantee the necessary transparency and legal certainty relating to the Commission's compliance with the obligations which it intended to impose on itself.

43 The contested regulation cannot be considered as a type of internal regulation or regulation *sui generis*, affecting only the internal organisation of the Commission's

work. Such acts cannot have legal effect with regard to third parties. That class of measures includes measures of the Commission which either do not have legal effects or have legal effects only within the Commission as regards the organisation of its work and are subject to review procedures laid down in its internal rules of procedure (see, to that effect, order of the President of the Court of First Instance in Case T-236/00 R *Stauner and Others* v *Parliament and Commission* [2001] ECR II-15, paragraph 43).

44 However it must be stated, in any event, that the contested regulation introduces provisions which concern not only the internal organisation of the Commission but also have a legal effect on third parties (see, inter alia, Article 3c(2) or Article 4b of Regulation No 1209/2000 introduced by the contested regulation). As the Commission itself recognises, those provisions are not intended to create obligations for third parties. Further, in submitting that the contested regulation is not a regulation within the meaning of Article 161 EA, but a regulation *sui generis*, which seeks to create obligations only as regards itself, the Commission admits that the form of a regulation, such as that provided for in Article 161 EA, was not necessary to adopt the provisions of the contested regulation. Therefore, the adoption of those provisions in the form of a regulation cannot be held to be necessary for the proper implementation of the provisions of Articles 41 EA to 44 EA and of Regulation No 2587/1999.

45 Finally, the Court considers that it must reject the Commission's argument that, under the principle of parallelism of forms, the choice of a regulation is required to amend an existing regulation in the same sphere. According to settled case-law, a mere practice cannot override the provisions of the Treaty and cannot alter the division of powers between the institutions (Case 68/86 *United Kingdom* v *Council* [1988] ECR 855, paragraph 24, and Case C-233/02 *France* v *Commission*, paragraph 36).

46 Thus it does not follow from the content of the provisions of the contested regulation that their adoption in the form of a regulation, within the meaning of Article 161 EA, was necessary to guarantee the proper implementation of Articles 41 EA to 44 EA and of Regulation No 2587/1999.

47 Rules relating to the allocation of powers must be interpreted strictly (see, to that effect, Case C-295/90 *Parliament* v *Council* [1992] ECR I-4193, paragraphs 11 to 20, v *Commission* paragraphs 34 to 42). By choosing a regulation — when no provision of Community law expressly gave it competence to do so — to adopt organising measures for the examination procedure of nuclear investment projects, which did not require the use of a legislative provision which is binding in its entirety and directly applicable in all Member States, the Commission infringed the rules on competence in the EAEC Treaty, creating a risk of confusion damaging to legal certainty as regards the legal scope of that act for third parties.

48 Moreover, the principle of legal certainty is a fundamental principle of Community law which requires, in particular, that rules should be clear and precise, so that individuals may be able to ascertain unequivocally what their rights and obligations are and may take steps accordingly (Case 169/80 *Gondrand Frères and Garancini* [1981] ECR 1931, and Case C-143/93 *Van es Douane Agenten* [1996] ECR I-431, paragraph 27).

49 Thus, where a degree of uncertainty regarding the meaning and scope of a rule of law is inherent in that rule, it is necessary to examine whether the legal measure at issue displays such ambiguity as to make it difficult for the applicant Member State or investors to resolve with sufficient certainty any doubts as to the scope or meaning of that contested rule (see, to that effect, Case C-110/03 *Belgium* v *Commission* [2005] ECR I-2801, paragraph 31).

50 In the present case, although the Commission states that the form of a regulation is not designed to impose obligations on third parties, it creates a certain ambiguity with regard to the scope of the provisions at issue. The principle of legal certainty requires that the scope of a Community act can be evaluated with sufficient certainty and, as the Court has repeatedly held, Community legislation must be clear and its

application foreseeable for all interested parties (Case C-325/91 *France* v *Commission,* paragraph 26). In the present case, the form of a regulation suggests the presence of legal effects for third parties and it would be contrary to the principle of legal certainty if operators had to carry out a detailed analysis of the wording of the provisions at issue to be able to determine their actual scope.

51 A Community act, in so far as it is intended to have legal effects, must comply not only with the necessary procedures laid down for its adoption, but also with essential procedural requirements (see, to that effect, Advocate General Tesauro's Opinion in Case C-57/95 *France* v *Commission* [1997] ECR I-1627, at I-1629, paragraphs 15 and 22).

52 In the light of all the foregoing, it must be held that the Commission did not have the explicit or implicit competence to adopt the contested regulation.

53 Therefore the first plea in law, relating to the Commission's lack of competence to adopt the contested decision, must be upheld.

54 Consequently, without needing to examine the other pleas in law relied on by the applicant, the contested regulation must be annulled.

Costs

55 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the Commission has been unsuccessful, it must be ordered to pay the costs, as applied for by the applicant.

56 Pursuant to Article 87(4) of the Rules of Procedure, the Federal Republic of Germany and the Kingdom of Belgium, which intervened in support of the applicant, shall bear their own costs.

On those grounds,

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

hereby rules:

1. **Commission Regulation (Euratom) No 1352/2003 of 23 July 2003, amending Regulation (EC) No 1209/2000 determining procedures for effecting the communications prescribed under Article 41 of the Treaty establishing the European Atomic Energy Community, is annulled;**

2. **The Commission is ordered to pay the costs of the French Republic;**

3. **The Federal Republic of Germany and the Kingdom of Belgium shall bear their own costs.**

Cooke García-Valdecasas Labucka

Prek Ciucă

Delivered in open court in Luxembourg on 17 September 2007.

E. Coulon J.D. Cooke

Registrar President