2. **For the rest, dismisses the application;**

3. **Orders the parties to the action and the interveners to bear their own costs.**

	Mertens de Wilmars	Bosco	Touffait
Due	Pescatore	Mackenzie Stuart	O'Keeffe
Koopmans	Everling	Chloros	Grévisse

Delivered in open court in Luxembourg on 18 May 1982.

P. Heim
Registrar

J. Mertens de Wilmars
President

ORDER OF THE COURT
4 FEBRUARY 1981

AM & S Europe Limited
v Commission of the European Communities

Case 155/79

In case 155/79

AM & S EUROPE LIMITED

against

COMMISSION OF THE EUROPEAN COMMUNITIES

Interveners: UNITED KINGDOM

FRANCE

CCBE

By application made on 4 October 1979 under Article 173 of the EEC Treaty, the applicant asks the Court to declare that Article 1 (b) of Commission Decision No 79/670/EEC of 6 July 1979 (OJ L 199, p. 31) is void in so far as it requires the applicant to produce the documents mentioned therein or, at all events to produce the whole of each of them. The applicant contends, in support of its claim, that that provision is illegal under Community law in that it requires production to the Commission of documents the confidential nature of which is protected by a general principle of law similar to that of legal privilege under English law.

Article 1 (b) of Decision No 79/670, adopted by the Commission within the framework of the provisions of Article 14 of Regulation No 17/62 of the Council of 6 February 1962 (OJ, English Special Edition 1959-1962, p. 87) and based in particular on Article 14 (3), requires the applicant to produce for examination "all documents for which legal privilege is claimed, as listed in the appendix of AM & S Europe Limited's letter of 26 March 1979 to the Commission".

The defendant has contended that the application should be dismissed as unfounded, insisting on its right to order production of the documents in question.

The applicant, the defendant and the interveners presented oral argument at the hearing on 19 November 1980. The Advocate General delivered his opinion on 20 and 28 January 1981.

In view of the fact that the description of the documents in question in both Article 1 (b) of the contested decision and in Appendix I to the above-mentioned letter of 26 March 1979 does not mention certain matters, which it may prove necessary for the Court to consider for the purposes of its decision, in particular, the date on which and the place where they were drawn up, the exact occupation or status of the author and of the addressee and sufficient information as to the nature of their contents, the Court considers, without prejudice to its decision as to the solution of the problem at issue, that it is necessary, as a measure of inquiry, to order AM & S Europe Limited to send it the whole of each of those documents.

The Court considers, moreover, in view of the issues of fact and of law which were emphasized at the hearing on 19 November 1980 and the sittings on 20 and 28 January 1981, that it is necessary, for the purposes of giving judgment, to examine more thoroughly the dispute between the parties with regard to certain specific aspects of the matters in question so as to clarify their respective contentions on the problem of the protection of the confidential nature of communications between undertakings and their legal advisers.

On those grounds,

Having regard to Articles 45 (2) (b), 60 and 61 of the Rules of Procedure,

Upon hearing the Advocate General,

THE COURT

composed of: J. Mertens de Wilmars, President, P. Pescatore, Lord Mackenzie Stuart and T. Koopmans, Presidents of Chambers, A. O'Keeffe, G. Bosco, A. Touffait, O. Due and U. Everling, Judges,

Advocate General: J.-P. Warner
Registrar: A. Van Houtte

hereby orders as follows:

1. **The oral procedure in Case 155/79 shall be re-opened; the parties will be notified of the date of the hearing.**

2. **The applicant is to send to the Court, in a sealed envelope, within three weeks after notification of this order, the documents referred to**

in Article 1 (b) of the contested decision and listed in the appendix to AM & S Europe Limited's letter of 26 March 1979 to the Commission.

3. The Court will, before the date of the hearing, draw up a report on those documents in a form which it considers appropriate so as not to prejudice its final decision; this report will be notified to the parties.

4. The applicant, the defendant and the interveners will, at the hearing, be heard on questions which will be particularized at a later date.

Luxembourg, 4 February 1981.

A. Van Houtte
Registrar

J. Mertens de Wilmars
President

OPINION OF MR ADVOCATE GENERAL WARNER DELIVERED ON 20 JANUARY 1981

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