OPINION OF ADVOCATE GENERAL STIX-HACKL
delivered on 13 September 2005 [1]

I — Introduction

1. This appeal concerns a procedural question of material importance for the practice of the Court of First Instance and, specifically, the conditions under which the Court may dismiss an action as manifestly inadmissible. The question is thus how the procedural requirements laid down in Article 111 of the Rules of Procedure of the Court of First Instance (hereinafter 'Rules of Procedure') should be interpreted.

2. The subject of the current proceedings is the review of an order of the Court of First Instance concerning an action for the annulment of a decision of the Commission by which the latter concluded a contract with a research institution.

1 — Original language: German.

II — Legislative background

3. Article 111 of the Rules of Procedure applicable at the time relevant to the proceedings stipulates:

'Where it is clear that the Court of First Instance has no jurisdiction to take cognisance of an action or where the action is manifestly inadmissible or lacking any foundation in law, the Court of First Instance may, by reasoned order, after hearing the Advocate General and without taking further steps in the proceedings, give a decision on the action.'

4. Article 64 of the Rules of Procedure provides inter alia:

'1. The purpose of measures of organisation of procedure shall be to ensure that cases are prepared for hearing,

procedures carried out and disputes resolved under the best possible conditions. They shall be prescribed by the Court of First Instance, after hearing the Advocate General.

2. Measures of organisation of procedure shall, in particular, have as their purpose:

(a) to ensure efficient conduct of the written and oral procedure and to facilitate the taking of evidence;

(b) to determine the points on which the parties must present further argument or which call for measures of inquiry;

(c) to clarify the forms of order sought by the parties, their pleas in law and arguments and the points at issue between them;

(d) to facilitate the amicable settlement of proceedings.

3. Measures of organisation of procedure may, in particular, consist of:

(a) putting questions to the parties;

(b) inviting the parties to make written or oral submissions on certain aspects of the proceedings;

(c) asking the parties or third parties for information or particulars;

(d) asking for documents or any papers relating to the case to be produced;

(e) summoning the parties' agents or the parties in person to meetings.

4. Each party may, at any stage of the procedure, propose the adoption or modification of measures of organisation of procedure. In that case, the other parties shall be heard before those measures are prescribed.

Where the procedural circumstances so require, the Registrar shall inform the parties of the measures envisaged by the Court of First Instance and shall give them an opportunity to submit comments orally or in writing.

...'

III — Facts of the case

5. The Asian Institute of Technology (AIT) is a non-profit-making technological instruction and research agency established in Thailand. Until 2001 the Center for Energy-Environment Research and Development (CEERD) was a division of the AIT without legal personality. Until 31 December 2001 its Director was Mr Thierry Lefèvre.

6. Under the 'Asia-Invest Programme: Building EU–Asia Business Partnerships', the Commission published a call for proposals on 10 April 2001 (EUROPEAID/11244/C/G).

7. On 19 November 2001 CEERD submitted a proposal signed by Mr Thierry Lefèvre as Director.

8. After an appropriate examination of the proposal, the Commission decided to conclude the contract with CEERD. The contract of 27 February 2002 was signed by Mr Lefèvre in his capacity as CEERD's Director. An advance of EUR 27 481.88 was transferred to an account of the Foundation for International Human Resource Development (FIHRD) at the Thai Farmers Bank.

9. On 17 July 2002 the AIT's lawyer sent a letter to the Commission (EuropeAid Division) requesting information on the project known as 'Facilitating the Dissemination of European Clean Technologies in Thailand'. In the letter the AIT's lawyer pointed out that CEERD was only a division of the AIT without a legal personality of its own. Furthermore, Mr Lefèvre had ceased to be the Director on 31 December 2001.

10. In response to this letter Mr E.W. Muller, Director of the Commission's Office for Cooperation (EuropeAid) forwarded the following letter to the AIT's lawyer on 21 July 2002:

'In reply to your request I am able to give you the following information:

— The aforementioned contract was signed on 22 February 2002 by me and

Mr Eich of EuropeAid of the one hand and on 27 February 2002 by Professor Thierry Lefèvre, Director of the Center for Energy-Environment Research and Development, of the other hand;

— the total value of the project is [EUR] 68 704.70, of which the European Commission has contributed [EUR] 34 352.35 to this project;

— 80% of the Community contribution, i.e. [EUR] 27 481.88, was paid as an advance. The remainder, i.e. [EUR] 6 870.47, will be paid when the project has been completed;

— the project implementation period is fifteen months and ends on 28 March 2003;

— the attachment to this letter reveals the whereabouts of the sum contributed;

— the contract was concluded following the publication of a call for proposals for the Asia-Invest Programme in the *Official Journal of the European Communities* of 10 April 2001, with the same designation as the above;

— the approval of the contracts is the outcome of discussions within a review committee, and the contracts must then be awarded by the contracting authority, i.e. the European Commission.'

IV — The proceedings before the Court of First Instance and the contested order

11. On 23 September 2002 the AIT brought an action before the Court of First Instance for the annulment of the Commission's decision of 4 July 2000 concerning the conclusion of the contract with Mr Lefèvre, Director of the CEERD/FIHRD (Case T-287/02). Similarly, the AIT brought an action for the annulment of the Commission's decision of 22 February 2002 concerning the contract with the CEERD (Case T-288/02).

12. On 20 December 2002 the Commission submitted its defence, in which it proposed inter alia that the two actions should be joined. The AIT opposed this proposal.

13. The Commission also pleaded in its defence that the action in Case T-288/02 was inadmissible on the ground that the contract did not concern the AIT directly

and individually and that the Commission's decision was not an act adversely affecting the AIT.

14. During the proceedings in Case T-288/02 the Court called on the Commission to submit certain documents. The Commission complied on 22 July 2003, whereupon the Court invited the AIT to comment on the plea of inadmissibility. The AIT complied within the designated period.

15. By order of 25 June 2003 the Court dismissed the action in Case T-287/02 as inadmissible in accordance with Articles 113 and 114 of its Rules of Procedure.

16. By order of 15 October 2003 the Court dismissed the action in Case T-288/02 as manifestly inadmissible in accordance with Article 111 of its Rules of Procedure.

17. The Court's justification for its approach was that it was sufficiently well informed by the written submissions of the parties and did not therefore open an oral procedure.

18. The Court based this position on settled case-law, according to which natural and legal persons may, under the fourth paragraph of Article 230 EC, contest only acts which produce binding legal effects affecting their interests by bringing about a distinct change in their legal situation.

19. In the Court's view it is evident from the background documents that the Commission took the decision in full knowledge of the fact that the contractual partner was a separate institution from the AIT and that the CEERD and its Director were no longer associated with the AIT.

20. The proposal of 19 November 2001, and especially Part II thereof, refers explicitly to the transformation of the CEERD into the FIHRD and to the fact that Mr Lefèvre was no longer employed by the AIT. The Commission's decision was thus based neither on an error nor on deliberate deception.

21. The decision was therefore addressed to CEERD/FIHRD and not to the AIT. The contract did not impose any obligations on the AIT and did not grant it any rights. The decision did not therefore concern the AIT. The AIT could not therefore maintain that the contested decision was an act which produced binding legal effects affecting its interests by bringing about a distinct change in its legal situation.

22. The Court therefore dismissed the action as manifestly inadmissible.

V — The appeal: forms of order sought and grounds of appeal

23. On 22 December 2003 the AIT appealed against the order of the Court of First Instance of the European Communities (Fifth Chamber) of 15 October 2003 in Case T-288/02 *AIT* v *Commission*.

24. The AIT claims that

— the contested order of the Court of First Instance of the European Communities of 15 October 2003 should be set aside;

— the case should be referred back to the Court for a new ruling;

— the oral procedure should otherwise be opened;

— the Commission's decision of 22 or 27 February 2002 to conclude a research contract with Mr Lefèvre, describing himself as Director of the Center for Energy-Environment Research and Development, should then be annulled.

25. As regards the setting aside of the order, the AIT essentially bases its appeal on three grounds. Firstly, the AIT complains of breaches of procedure, in that the Court of First Instance dismissed the action as manifestly inadmissible. Secondly, the AIT complains of errors of assessment in the review of inadmissibility with respect to the fourth paragraph of Article 230 EC. Thirdly and alternatively, the AIT claims that rights arising from the European Union's Charter of Fundamental Rights have been infringed.

VI — The application for the order to be set aside

A — *The first ground of appeal*

1. Arguments of the parties

(a) AIT

26. The AIT bases its application for the setting aside of the contested order on three grounds.

27. Firstly, the AIT refers to breaches of procedure in support of its appeal. The Court of First Instance had dismissed the AIT's action in Case T-288/02 as manifestly inadmissible under Article 111 of its Rules of Procedure. Manifest inadmissibility could be contended only at the beginning of proceedings and could not on any account be deduced from further measures of inquiry. If, on the other hand, the action was not manifestly inadmissible and if inadmissiblity was determined only as a consequence of the taking of evidence, the action was governed by Article 113 of the Rules of Procedure rather than Article 111. If there were no manifest inadmissibility, it was at the Court's discretion whether a hearing should be held, whereas Article 111 automatically ruled out a hearing. In the present case the Court had made manifest inadmissibility dependent on further measures of inquiry and so deprived the applicant of the right to a hearing.

(b) Commission

28. The Commission does not consider the first ground of appeal to be well founded. It points out in particular that it entered the plea of inadmissibility in its defence. In its reply the AIT had, moreover, commented at length on the documents submitted. Furthermore, the inadmissibility of the action ensued not from the documents submitted by the Commission in July 2003 but from its defence and the documents attached thereto.

2. Analysis

29. In the appraisal of the first ground of appeal, which concerns the question of the correct application of Article 111 of the Rules of Procedure, the first step must be to deduce the meaning of that provision from its wording.

30. Of central importance in this context is the meaning of the word 'manifest'. This further qualification of inadmissibility may have two meanings. On the one hand, a formal understanding might result in its being interpreted to mean that inadmissibility is obvious, perhaps even at first sight. On the other hand, 'manifest' could be taken to mean — and this view is endorsed by some other language versions — 'very strong' or 'serious'. The provision might then conform to a substantive concept in the sense that it covered clear, unquestionable cases.

31. As the wording of Article 111 of the Rules of Procedure can be interpreted as having either meaning, the second step will be to consider the history of this provision.

32. To trace its historical development, it is necessary to go back to the time before the Court of First Instance was established, since

the Court's first Rules of Procedure, adopted in 1991, already contained an essentially identical provision. In content, it corresponded to Article 92(1) of the 1991 Rules of Procedure of the Court of Justice. [2]

33. As the provision which is the subject of the current proceedings was drawn up at the same time as Article 92(1) of the Rules of Procedure of the Court of Justice, the wording of the version previously in force, i.e. the common precursor provision in what are known as the Amendments to the Rules of Procedure of the Court of Justice of the European Communities [3] of 12 September 1979, [4] needs to be quoted:

'Where it is clear that the Court has no jurisdiction to take cognizance of an application lodged with it in pursuance of Article 38(1), the Court may by reasoned order declare the application inadmissible. Such a decision may be adopted even before the application has been served on the party against whom it is made.'

34. It is clear from this provision that the decision on inadmissibility — even if manifest — by means of an order was an authorisation, not an obligation. It can also be deduced from the provision that such a decision could also be taken at a very early stage. There was no obligation in this respect.

35. The later versions of the Rules of Procedure of the Court of Justice and of the Court of First Instance conformed to this basic idea, but opted for a more general wording. They permit a decision without further steps being taken in the proceedings.

36. Neither the original Rules of Procedure nor the here applicable version specify the stage of the proceedings at which such a decision on manifest inadmissibility can be taken.

37. From the wording and the historical background it can, however, be inferred that the possibility of deciding at an early stage of the proceedings, and by order, is meant to accelerate the proceedings. In such cases full proceedings may give way to shortened proceedings. There is no obligation in this respect.

2 — Article 92(1) of the basic, 1991 version (amendments to the Rules of Procedure of the Court of Justice of the European Communities of 15 May 1991), OJ 1991 L 176, p.1, reads: 'Where it is clear that the Court has no jurisdiction to take cognizance of an action or where the action is manifestly inadmissible, the Court may, by reasoned order, after hearing the Advocate-General and without taking further steps in the proceedings, give a decision on the action.'

3 — They thus replaced No 1959 Rules of Procedure of the Court of Justice of the European Communities (OJ English Special Edition 1959–62, p. 3).

4 — OJ 1979 L 238, p. 1.

38. Other conditions under which a decision may be based on Article 111 cannot, however, be inferred from the Rules of Procedure.

39. Although the cases decide by the Court of Justice in the past do not provide any precedents, indications as to the interpretation of Article 111 of the Rules of Procedure can be deduced from them.

40. The judgment of the Court of Justice in the appeal proceedings in *Alexopoulou* (which, however, concerned the manifestly unfounded nature of the action), gives a clear indication that the Court of Justice follows the substantive concept. [5]

41. Manifestness in that case was determined, in the view of the Court of Justice, by the degree of departure from previous case-law. This basic idea, though applied to the unfounded nature of an action, can also be applied to inadmissibility. This would mean that the determining factor in the present case was the degree of departure from the conditions laid down in Community law.

42. The indication of the Court of Justice towards a substantive concept also in respect of inadmissibility is evident from the *Autosalone Ispra dei Fratelli Rossi* case.

43. In that case the Court of Justice did not consider the time at which the Court of First Instance made its order on the basis of Article 111 of the Rules of Procedure, but whether the requirement in that provision that the opinion of the Advocate General be heard had been satisfied. [6]

44. However, as is evident from the proceedings before the Court in this respect, [7] the Court did not decide by order pursuant to Article 111 of the Rules of Procedure until it had called on the parties for clarification.

45. In the proceedings before the Court on which the appeal in the *Infrisa* case [8] was based the Court again put a question to the parties before deciding by order pursuant to Article 111 of the Rules of Procedure. [9]

5 — Case C-155/98 P *Alexopoulou* v *Commission* [1999] ECR I-4069, paragraph 13.

6 — Order in Case C-136/01 P *Autosalone Ispra dei Fratelli Rossi* v *Commission* [2002] ECR I-6565, paragraph 17 et seq.

7 — Order of the Court in Case T-124/99 *Autosalone Ispra dei Fratelli Rossi* v *Commission* [2001] ECR II-53.

8 — Order in Case C-437/98 P *Infrisa* v *Commission* [1999] ECR I-7145.

9 — Order of the Court in Case T-136/95 *Industria del Frio Auxiliar Conservera* v *Commission* [1998] ECR II-3301.

46. Even if the formal concept is followed, i.e. even if the focus is on the procedural situation, the approach adopted by the Court in the proceedings pending here is, none the less, covered by Article 111 of the Rules of Procedure.

47. From the here applicable version of the Rules of Procedure it cannot be inferred, as pointed out above, that only the first written pleading, i.e. only the application, is to be considered in the assessment of the manifestness of inadmissibility.

48. A question which arises in this context is whether taking measures of organisation of procedure within the meaning of Article 64 of the Rules of Procedure precludes the application of Article 111. Such preclusion cannot, however, be inferred from either the conditions relating to such measures or those relating to the decision under Article 111.

49. From the objective laid down in Article 64(1), that measures of organisation of procedure should ensure inter alia the preparation of cases for hearing, and from the fact that no provision is made for restrictions to certain categories of cases, it can be inferred that measures of organisation of procedure may also extend to the preparation of a case for hearing pursuant to Article 111 of the Rules of Procedure.

50. Article 64(2)(c) adds further detail by stating that measures of organisation of procedure have as their purpose the clarification of the forms of order sought by the parties, their pleas in law and arguments and the points at issue between them.

51. As the Court of First Instance may give a decision pursuant to Article 111 of the Rules of Procedure not only before the submission of the defence but also at a later stage, it would be absurd to permit the Court passively to wait and see what further proceedings produce, but not also to take measures of organisation of procedure.

52. In effect, this means that the criterion of manifestness is not only satisfied when it is evident from written pleadings submitted at a very early stage of the proceedings. Thus manifestness may also obtain where it emerges only at a later stage, including the case where it emerges from certain documents submitted only at the request of the Court.

53. In the proceedings to be considered here the Court asked the Commission to present the text of the request for proposals, the legal provisions concerning the granting of

subsidies under the Asia-Invest Programme and the full proposal submitted by CEERD.

54. As parts of these documents were already attached to the application, the aim was, strictly speaking, to complete the documentation relating to the application.

55. The question of what is already evident from the application and whether the Court's request had been necessary in precisely those terms will not be considered further here. It does not, at least, preclude the application of Article 111 of the Rules of Procedure.

56. That request in accordance with Article 64 of the Rules of Procedure conforms to correct action by a decision-making body which, moreover, contains an adversarial element.

57. In response to the AIT's complaint that no oral hearing was held, it should be pointed out that Article 111 of the Rules of Procedure does not provide for an oral hearing to be held. Moreover, the principle of proceedings in which both sides are heard can be upheld even without an oral hearing. This is evident especially from the Court's approach in the proceedings at issue, in which compliance with that principle was achieved in the written procedure. The Court thus called on the AIT to comment on certain aspects and especially on inadmissibility. The AIT took advantage of this request. Thus the AIT was not only given the opportunity to explain its position, it also seized that opportunity.

58. When, however, the AIT argues that the Court should have acted in accordance with Article 113 of the Rules of Procedure, it overlooks the fact that that provision, too, does not guarantee an oral hearing: it is evident from Article 114(3) and (4) of the Rules of Procedure that the Court may refrain from holding an oral hearing.

59. As the Court was able to take its decision already on the basis of the documents submitted to it and as an oral hearing would not have produced any further information, there can be no complaint about the Court's action in taking its decision under Article 111 of the Rules of Procedure.

60. Accordingly, the Court did not commit an error in law when applying its Rules of Procedure.

61. The first ground of appeal is consequently unfounded.

B — *The second ground of appeal*

1. Arguments of the parties

(a) AIT

62. As its second ground of appeal, the AIT complains of errors of assessment in the review of admissibility with regard to the fourth paragraph of Article 230 EC. It claims that the Court was wrong to base its decision on paragraph 9 of the judgment of the Court of Justice in the case of *IBM* v *Commission.*

63. As the AIT had not been the 'recipient' of the decision to conclude the contract, the Court should have applied the test in the *Plaumann* judgment with the relaxations which the Court of Justice had introduced into this case-law in order to interpret Article 173 EC (now the fourth paragraph of Article 230 EC) less restrictively. 'CEERD/FIHRD', with which the Commission had concluded the contract, was a competitor and, moreover, an unfair competitor, of 'CEERD/AIT'. The award of the contract to 'CEERD/FIHRD' by the Commission, which had cost the AIT the enjoyment of its competitive advantages arising from the fact that 'CEERD/AIT' was one of its divisions, had a highly adverse effect on the AIT's competitive position. The contested decision also infringed the AIT's right to use its name and its logo 'CEERD', thus distinguishing its position compared to that of all other economic operators. The contract at issue affected the AIT directly and individually since, even though the AIT was not a trader, that contract had a materially adverse effect on its competitive position. The AIT had not exercised the procedural rights arising from the call for proposals. Moreover, the second contract concluded in 2002 merely perpetuated the contract concluded in 2000.

(b) Commission

64. The Commission contends that the second ground of appeal is inadmissible as a new argument because the AIT did not present it before the Court.

65. In any case, the Commission claims, the second ground of appeal is unfounded. The fact that the conclusion of the contract with CEERD/FIHRD had had an adverse effect on the AIT's competitive position did not distinguish the AIT adequately in the light of the rulings of the Court of Justice. The effects on market position did not stem from the Commission's decision, but from the use of the logo by a former employee.

66. The argument that the contract concluded on 27 February 2002 merely perpetuated the contract concluded with the AIT on 4 July 2000 lacks any foundation, since the two contracts were independent of each other. This was evident from various circumstances, such as the carrying out of separate procedures and the different subject of the second call for proposals.

67. As regards the argument based on the judgment in the *Codorniu* case, the Commission emphasises that the contract concluded with CEERD did not deprive the AIT of the CEERD logo. Moreover, the contract had already expired. Mr Lefèvre's conduct should be clarified by the Thai courts.

2. Analysis

(a) Admissibility

68. As regards the admissibility of the second ground of appeal, it should be pointed out that it criticises the substance of the Court's ruling. The arguments presented by the AIT concern the Court's interpretation of the fourth paragraph of Article 230 EC. Such grounds of appeal, which relate to the legal assessment of the Court's approach, are, however, by their very nature new since there was no way in which they could have been presented before the Court.

69. The second ground of appeal is therefore admissible.

(b) Substance

70. When the AIT complains that the Court was wrong to refer in paragraph 27 of its order to the judgment of the Court of Justice in the *IBM* case, [10] it must be said that, in terms of its legal background, that citation was inappropriate.

71. That judgment concerned measures in procedures involving several stages, the question being which of the measures taken by the Commission was an act open to challenge.

72. The other judgments cited in paragraph 27, which are intended to illustrate settled case-law, are, on the other hand, more

10 — Case 60/81 *IBM* v *Commission* [1981] ECR 2639.

appropriate in so far as they essentially express the following rule of law:

'However, natural or legal persons may, pursuant to the fourth paragraph of Article 173 of the Treaty, challenge only measures which produce binding legal effects, capable of affecting their interests by bringing about a distinct change in their legal situation.'

73. It also needs to be considered whether the legal argument presented by the Court in paragraphs 28 to 30 of the order is correct. There is, however, no need in these appeal proceedings to consider the factual background relating to the various documents.

74. The Court's assessment in paragraph 30, according to which the decision taken by the Commission was addressed to CEERD/FIHRD, is legally correct.

75. What needs to be considered is whether the Court was legally correct in its assessment that, in relation to the AIT, that decision did not satisfy the requirement that it produce binding legal effects, capable of affecting its interests by bringing about a distinct change in its legal situation.

76. In the course of its arguments the AIT refers in this context to a number of judgments of the Court of First Instance and the Court of Justice.

77. The AIT bases its view, on the one hand, on the contention that the Court's judgment in *Metropole télévision and Others* [11] required a different assessment of the present case. In this regard it should be pointed out that those proceedings concerned third parties, who have certain procedural rights in an administrative procedure in the area of competition law. [12] In that case the Commission's decision had affected a competitive position.

78. The AIT also bases its view on the Court's judgment in the *Kruidvat* case. [13] While it is true that the fact that an applicant does not participate in the procedure before the Commission does not per se result in the inadmissibility of the application, [14] the Court also emphasised in its judgment at that time that the fact that the applicant was competing with third parties was not sufficient to give it the right to bring an action. As in the procedure at issue in that case, there was no difference between the AIT and the many other economic operators on the parallel market. [15]

11 — Joined Cases T-528/93, T-542/93, T-543/93 and T-546/93 *Metropole télévision and Others* v *Commission* [1996] ECR II-649.

12 — Paragraph 62.

13 — Case T-87/92 *BVBA Kruidvat* v *Commission* [1996] ECR II-1931.

14 — Paragraph 67.

15 — Paragraph 70.

79. The AIT also attempts to prove the erroneousness of the order in legal terms by relying on the judgment of the Court of Justice in the *Codorniu* case.

80. The only obvious parallel is that those proceedings, too, concerned the protection of a logo. Unlike those proceedings, however, the alleged infringement of the 'right to a name' was committed by a Community institution and not, as here, by a third party. Not even the AIT, however, believes that the Commission's decision has the effect of infringing the 'right to a name'.

81. The *Cook* case [16] cited by the AIT differs from the dispute at issue in that it concerns an aid procedure in which special rules on the legal position of third-party undertakings apply.

82. The last judgment cited by the AIT, that of *Groupement des agences de voyages*, [17] is equally unsupportive of the argument that the Court was legally wrong in its assessment of the right to bring an action. The 'Groupement' was denied the right to bring an action precisely because it had not participated in the invitation to tender. [18] On the other hand, the right of action of the association of agencies which participated in the invitation to tender was recognised. [19]

83. The second ground of appeal is therefore unfounded.

C — *The third ground of appeal*

1. Arguments of the parties

(a) AIT

84. In the alternative, the AIT claims, as its third ground of appeal, that its right to an effective remedy as guaranteed by Article 47 of the European Union's Charter of Fundamental Rights has been infringed. The AIT also maintains that its copyright, guaranteed by Article 17(2) of the Charter, has been infringed. Finally, as third countries were not under an obligation to establish effective

16 — Case C-198/91 *William Cook* v *Commission* [1993] ECR I-2487.

17 — Case C-135/81 *Groupement des agences de voyage* v *Commission* [1982] ECR 3799.

18 — Paragraph 7.

19 — Paragraph 13.

remedies, the fundamental reason for denying of the right to bring an action in the judgment in *Unión de Pequeños Agricultores* [20] did not apply in the present case.

(b) Commission

85. The Commission points out that the AIT has not demonstrated that it has been deprived of an effective remedy, because it could have sought legal protection in Thailand. The AIT has merely contended that national remedies are not effective, without providing any evidence. Moreover, this would result in persons from third countries where there was no effective remedy being placed in a better position than persons within the EU, where such an obligation exists.

2. Analysis

86. The appellant also claims in its appeal that its right to an effective remedy and its copyright have been infringed by the Court.

87. In the present case the infringement of those rights was based on the infringement of the Charter of Fundamental Rights. As the Charter is not, however, legally binding, the Court was not bound by it.

88. The precepts which can be inferred from the European Convention on Human Rights and which are also binding on the Community institutions, including the Court, could, at most, be considered as the legal basis for the requirement of an effective remedy. An argument to this effect was not, however, advanced.

89. The third ground of appeal is therefore unfounded.

VII — The other forms of order sought

A — *Arguments of the parties*

90. The *AIT* argues that CEERD/FIHRD does not have legal personality. The Commission therefore infringed the principle of

20 — Case C-50/00 P *Unión de Pequeños Agricultores* v *Council* [2002] ECR I-6677.

good management, as laid down in section 2.2 of the 'Guidelines for applicants' of the Asia-Invest Programme, according to which contracts might be concluded only with institutions which had legal personality under their own national law and whose statutes had been examined.

91. In the view of the *Commission*, FIHRD is a legal person. The fact that CEERD was a division of FIHRD did not alter the position of the contracting parties in any way. This was a problem for the AIT, FIHRD and Mr Lefèvre to resolve. The Commission also points out that the Community Courts could not put a stop to the use of logos by annulling the contract.

B — *Analysis*

92. As evident from the documents submitted to the Court, the institution with which the Commission concluded a contract, FIHRD, has the necessary legal personality. The legal status of CEERD, viewed separately, is irrelevant in this context.

93. The AIT has not, moreover, demonstrated that the Commission omitted to consider whether the conditions for the correct conclusion of a contract were satisfied.

94. All in all, the AIT has been unable to demonstrate that the Commission has infringed the principle of good management. These further forms of order sought should therefore be dismissed as unfounded.

VIII — Costs

95. According to the first paragraph of Article 122 of the Rules of Procedure of the Court of Justice, the Court of Justice is to rule on the costs when an appeal is dismissed. According to Article 69(2) of the Rules of Procedure of the Court of Justice, which, pursuant to Article 118, is applicable to appeal proceedings, the unsuccessful party is to be ordered to pay the costs if they have been applied for. As the AIT has been unsuccessful in its submissions, it should be ordered to pay the costs of the appeal proceedings in accordance with the Commission's application for costs.

IX — Conclusion

96. In view of the foregoing it is proposed that the Court of Justice should rule as follows:

(1) The appeal is dismissed.

(2) The AIT shall pay the costs of the proceedings.