JUDGMENT OF THE COURT (Fifth Chamber)

11 September 2003 *

In Case C-211/01,

Commission of the European Communities, represented initially by M. Wolfcarius and, subsequently, by W. Wils, acting as Agents, with an address for service in Luxembourg,

applicant,

v

Council of the European Union, represented by A. Lopes Sabino and E. Karlsson, acting as Agents,

defendant,

* Language of the case: French.

supported by

Federal Republic of Germany, represented by W.-D. Plessing and M. Lumma, acting as Agents,

and by

Grand Duchy of Luxembourg, represented by J. Faltz and N. Mackel, acting as Agents,

interveners,

APPLICATION for the annulment of Council Decisions 2001/265/EC of 19 March 2001 concerning the conclusion of the agreement between the European Community and the Republic of Bulgaria establishing certain conditions for the carriage of goods by road and the promotion of combined transport (OJ 2001 L 108, p. 4), and 2001/266/EC of 19 March 2001 concerning the conclusion of the agreement between the European Community and the Republic of Hungary establishing certain conditions for the carriage of goods by road and the promotion of combined transport (OJ 2001 L 108, p. 27), but only in so far as they are based on Article 93 EC and without altering their effects, which should be maintained,

THE COURT (Fifth Chamber),

composed of: M. Wathelet (Rapporteur), President of the Chamber, C.W.A. Timmermans, D.A.O. Edward, A. La Pergola and S. von Bahr, Judges,

Advocate General: S. Alber,

Registrar: H.A. Rühl, Principal Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 5 February 2003, at which the Commission was represented by W. Wils and the Council by A. Lopes Sabino,

after hearing the Opinion of the Advocate General at the sitting on 13 March 2003,

gives the following

Judgment

1 By application lodged at the Court Registry on 23 May 2001, the Commission of the European Communities brought an action under the first subparagraph of

Article 230 EC for the annulment of Council Decisions 2001/265/EC of 19 March 2001 concerning the conclusion of the agreement between the European Community and the Republic of Bulgaria establishing certain conditions for the carriage of goods by road and the promotion of combined transport (OJ 2001 L 108, p. 4) and 2001/266/EC of 19 March 2001 concerning the conclusion of the agreement between the European Community and the Republic of Hungary establishing certain conditions for the carriage of goods by road and the promotion of combined transport (OJ 2001 L 108, p. 27, 'the contested decisions'), but only in so far as they are based on Article 93 EC and without altering their effects, which should be maintained.

Subject-matter of the proceedings

2 In December 1995, the Council authorised the Commission to negotiate agreements with the Republic of Bulgaria, the Republic of Hungary and Romania for the purpose of establishing certain conditions for the carriage of goods by road and the promotion of combined transport and to facilitate the transit of road vehicles through the territory of the contracting parties.

3 The agreements thus concluded were initialled with the Republic of Bulgaria in December 1998 and with the Republic of Hungary in April 1999 respectively. At the time the application was made, negotiations with Romania were still under way.

4 The Commission forwarded to the Council two proposals for a decision, based on Article 71 EC, concerning the signature of those agreements (hereinafter 'the agreements') and accompanied by proposals for their subsequent conclusion and for the allocation between Member States of transit authorisations (OJ 2000 C 89 E, p. 36 and p. 52).

5 In the light of Article 8 of each of the agreements, entitled 'Fiscal provisions', the Council authorised their signing by a decision of 28 March 2000 which added as a legal basis, in addition to Article 71 EC, Article 93 EC on the harmonisation of legislation concerning turnover taxes, excise duties and other forms of indirect taxation. By contrast with Article 71 EC, which refers to the procedure in Article 251 EC and provides for consultation with the Economic and Social Committee and the Committee of the Regions, Article 93 EC provides that the Council is to act unanimously on a proposal from the Commission and after consulting the European Parliament and the Economic and Social Committee.

6 On 19 March 2001 the Council unanimously adopted the contested decisions on the legal basis of Articles 71 EC and 93 EC in conjunction with the second subparagraph of Article 300(3) EC.

7 Since it was of the opinion that the Council was wrong to take Article 93 EC as the legal basis, the Commission brought the present action, claiming that the Court should annul the contested decisions in so far as they are based on that article and should maintain the effects of the agreements until the Council has adopted new concluding acts.

8 By orders of 2 and 5 October 2001, the President of the Court gave the Federal Republic of Germany and the Grand Duchy of Luxembourg leave to intervene in support of the form of order sought by the Council.

Content of the agreements

9 The agreements are almost identical in content. According to their respective preambles, they contribute to the 'completion of the internal market' and the

'implementation of the common transport policy' by ensuring that Community goods in transit through Bulgaria and Hungary can 'flow as quickly and efficiently as possible without hindrance or discrimination' (second recital in the preamble) while ensuring the coordinated development of transport flows respecting the environment and the 'principle of sustainable mobility' (fourth recital).

10 Article 1 of each of the agreements provides that its aim is to promote cooperation between the Contracting Parties on the transport of goods and, in particular, transit traffic by road, and to ensure for this purpose that transport between and through the territories of the Contracting Parties is developed in a coordinated manner.

11 Under their Article 2:

'1. Cooperation shall cover transport of goods by road and combined transport.

2. In this connection, the scope of this Agreement shall cover in particular:

— market access for transit traffic in the field of transport of goods by road,

— legal and administrative supporting measures including commercial, taxation, social and technical measures,

— cooperation in developing a transport system which, *inter alia*, meets environmental needs,

— a regular exchange of information on the development of the transport policies of the Contracting Parties.'

12 Title II of each of the agreements is devoted to 'Combined transport', and Title III to 'Road transport'. The latter title, in the agreement concluded with the Republic of Hungary, includes Article 8, entitled 'Fiscal provisions', which provides that:

'In the case of transport operations in accordance with this Agreement:

1. the Contracting Parties shall ensure that the principle of non-discrimination in terms of nationality or place of establishment is applied to road vehicle taxation, fiscal burdens, tolls and any other form of user charges made for the use of road transport infrastructure;

2. road vehicles registered in one Contracting Party shall be exempted from all vehicle taxes and charges levied on the circulation or possession of vehicles as

well as from all special taxes or charges levied on transport operations in the territory of the other Contracting Party.

Road vehicles shall not be exempted from payment of taxes and charges on motor fuel, without prejudice to paragraph 4, and of road tolls and user charges levied for the use of infrastructure;

3. the Contracting Parties shall ensure that tolls and any other form of user charges may not be imposed at the same time for the use of a single road section. However, Contracting Parties may also impose tolls on networks where user charges are levied, for the use of bridges, tunnels and mountain passes;

4. the following items shall be exempt from custom duty and from all taxes and charges at the time of importation into the territory of the other Contracting Party:

   (a) fuel contained in the tanks of road vehicles at the time of importation into the territory of the other Contracting Party, where the tanks are those designed by the manufacturer for the type of road vehicle in question;

   (b) fuel held in the tanks of trailers and semi-trailers used for the cooling systems of refrigerators;

(c) lubricants in quantities required for use during the journey;

(d) spare parts and tools required for the repair of a vehicle which has broken down while performing an international road transport operation. The spare parts that are replaced should be re-exported or destroyed under the control of the competent customs authority of the other Contracting Party;

5. without prejudice to the second subparagraph of paragraph 2, if the weights, dimensions or axle load of a vehicle exceed the maximum limits in force in the territory of Hungary while the vehicle conforms to the provisions as laid down in Directive 96/53/EC on weights and dimensions, the vehicle shall not be subjected to any special charges provided it keeps to the main transit routes concerned in Hungary as specified in Annex 5.'

13 Article 8 of the agreement concluded with the Republic of Bulgaria is worded in identical terms, with the exception of the second subparagraph of paragraph 2, drafted as follows:

'Road vehicles shall not be exempted from payment of taxes and charges on motor fuel, road tolls and user charges levied for the use of infrastructure',

and the beginning of paragraph 4 and paragraph 4(b), which reads:

'the following items shall be exempt from customs duty and from all taxes and charges:

...

(b) fuel held in the tanks of trailers and semi-trailers used for the cooling systems of refrigerators'.

14 Title IV of the agreements is devoted to the simplification of formalities, and Title V contains final provisions concerning the widening of the scope of the agreements, the creation of a joint committee, infringements, the duration, denunciation, languages and entry into force of the agreements, and the status of the annexes.

Substance

Arguments of the parties

15 The Commission claims that the contested decisions should have been based solely on Article 71 EC.

16 First, it points out the wide scope acknowledged to apply to the common transport policy in the light of Articles 3(f) EC, 70 EC and 71 EC and the case-law of the Court (Case 22/70 *Commission* v *Council* [1971] ECR 263, paragraphs 20 to 26, and Opinion 1/76 [1977] ECR 741; Opinion 1/94 [1994] ECR I-5267, paragraph 76 and Opinion 2/92 [1995] ECR I-521).

17 The wording of Article 70 EC, under which '[t]he objectives of this Treaty shall... be pursued by Member States within the framework of a common transport policy', and of Article 71 EC, which allows the Community to adopt any 'other appropriate provisions', argues however to that effect.

18 In support of that interpretation, the Commission refers to a number of internal Community measures in the field of transport which have a single legal basis although they include related provisions concerning vocational training, environmental protection or noise control (see Council Directive 94/58/EC of 22 November 1994 on the minimum level of training of seafarers, OJ 1994 L 319, p. 28; Directive 2000/59/EC of the European Parliament and of the Council of 27 November 2000 on port reception facilities for ship-generated waste and cargo residues, OJ 2000 L 332, p. 81; and Council Directive 92/14/EEC of 2 March 1992 on the limitation of the operation of aeroplanes covered by Part II, Chapter 2, Volume 1 of Annex 16 to the Convention on International Civil Aviation, second edition (1988), OJ 1992 L 76, p. 21). The Commission also makes reference to two international agreements concluded on the basis of Article 75 of the Treaty (now, after amendment, Article 71 EC) although they contain fiscal provisions (Council Decision 93/409/EEC concerning the conclusion of the Agreement between the European Economic Community and the Republic of Slovenia in the field of transport (OJ 1993 L 189, p. 160) and Council Decision 97/832/EC of 27 November 1997 concerning the conclusion of an Agreement between the European Community and the former Yugoslav Republic of Macedonia in the field of transport (OJ 1997 L 348, p. 169)).

19 As regards Article 8 of the agreements, the Commission takes the view that, contrary to what its title might suggest, it contains few provisions of a fiscal nature. Those provisions are limited to recalling the principle of non-discrimination in terms of nationality as far as concerns road vehicle taxation and any other form of user charge levied on the use of road transport infrastructure (paragraph 1); as regards road vehicles registered in one Contracting Party, an exemption is provided for taxes levied on circulation and transport operations in the territory of the other Contracting Party, except as regards taxes on motor fuel, road tolls and charges levied for the use of infrastructure (paragraph 2); finally, an exemption is provided for fuel contained in tanks, lubricants required for use during the journey and the spare parts required for the repair of a vehicle which has broken down while performing an international road transport operation (paragraph 4).

20 The other paragraphs do not relate to taxes or relate only to co-contracting third country parties. First, since the provisions relating to tolls and custom duties are not of a fiscal nature, they do not come under Article 93 EC; nor do customs duties (and taxes with equivalent effect) come under Community fiscal law, but rather under legislation relating to the customs union; tolls are not taxes but rather constitute consideration for a service supplied to the user of road infrastructure (see to that effect Case C-276/97 *Commission* v *France* [2000] ECR I-6251, *inter alia* paragraphs 32, 35 and 36, and Case C-83/99 *Commission* v *Spain* [2001] ECR I-445, paragraph 11). Secondly, Article 8(5) of the agreements contains a commitment by the co-contracting third country parties not to subject to any special charges Member State lorries in transit the weight and dimensions of which do not exceed the limits in force in Hungary and Bulgaria and which conform to the provisions laid down in Council Directive 96/53/EC of 25 July 1996 laying down for certain road vehicles circulating within the Community the maximum authorised dimensions in national and international traffic and the maximum authorised weights in international traffic (OJ 1996 L 235, p. 59).

21 The Commission infers from the foregoing that Article 8 of the agreements contains secondary accompanying measures which contribute to achieving the

objective linked to transport policy, namely to simplify the carriage of goods by road and the promotion of combined transport between Greece and the other Member States, which is also in accordance with the negotiating directives which the Council sent to the Commission.

22 Since it is limited to prohibiting discrimination on grounds of nationality and preventing double taxation, Article 8 of the agreements does not contain any harmonisation measure and cannot in any circumstances be detached from the agreements. The Commission adds that the fiscal aspects referred to in Article 8 of those agreements have already been subject to harmonisation measures at Community level (see Directive 1999/62/EC of the European Parliament and of the Council of 17 June 1999 on the charging of heavy goods vehicles for the use of certain infrastructures (OJ 1999 L 187, p. 42) and Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products (OJ 1992 L 76, p. 1), Council Directive 92/81/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on mineral oils (OJ 1992 L 316, p. 12) and Council Directive 92/82/EEC of 19 October 1992 on the approximation of the rates of excise duties on mineral oils (OJ 1992 L 316, p. 19)).

23 Finally, the Commission points out that it is settled case-law that the choice of the legal basis for a Community measure must rest on objective factors amenable to judicial review, which include in particular the aim and the content of the measure (Case C-42/97 *Parliament* v *Council* [1999] ECR I-869, paragraph 36, and Case C-269/97 *Commission* v *Council* [2000] ECR I-2257, paragraph 43). However, measures or actions provided for in Community legislation sometimes pursue different aims, to which distinct legal bases are applicable. In such circumstances it is necessary, in order to determine the appropriate legal basis, to consider whether the measures in question relate largely or principally to a particular field of action, having only incidental effects on other policies, or whether both aspects are equally essential. If the first hypothesis is correct, recourse to a single legal basis is sufficient (Case C-70/88 *Parliament* v *Council* [1991] ECR I-4529, paragraph 17, and Case C-271/94 *Parliament* v *Council* [1996] ECR I-1689, paragraphs 32 and 33); if the second is correct, the institution is required to adopt the measure on the basis of both of the provisions

from which its competence derives. However, no such dual basis is possible where the procedures laid down for each legal basis are incompatible with one another (see, *inter alia*, Case C-300/89 *Commission* v *Council* [1991] ECR I-2867, paragraphs 17 and 21, '*Titanium dioxide*', and Joined Cases C-164/97 and C-165/97 *Parliament* v *Council* [1999] ECR I-1139, paragraph 14).

24 In this case, the Commission considers that transport undoubtedly constitutes the main component of the agreements. Moreover, the legal bases of Articles 71 EC and 93 EC are incompatible in terms of the rule in *Titanium dioxide*, inasmuch as Article 93 EC requires unanimity in the Council and mere consultation of the Parliament. According to the Commission, it is true that the question of the Parliament's rights and powers has not arisen in the present case in view of the use of the procedure in Article 300(3) EC, which governs the conclusion of international agreements. Nevertheless, the requirement for unanimity in the Council would radically alter the procedure for concluding transit agreements, which are subject to qualified majority voting as a matter of course.

25 The Council contends that, in the light of Article 8 of the agreements, it was necessary to conclude them on the dual legal basis of Articles 71 EC and 93 EC.

26 The Council maintains that the phrase 'any other appropriate provisions' in Article 71(1)(d) EC does not authorise the Community legislature to reject specific legal bases where distinct and autonomous objectives are being pursued. In the present case, the dual legal basis chosen by the Council is warranted inasmuch as the aim and content of the agreements negotiated seek, distinctly, autonomously and separately, to achieve a transport-related objective and a fiscal objective and it is not possible to consider one as the principal and the other as a subsidiary objective.

27 Article 8 of each of the agreements, which leads to harmonisation of the laws of the Member States in the areas of road vehicle taxation and fiscal burdens (paragraph 1), vehicle taxes and charges or special taxes or charges levied on transport operations (paragraph 2) and taxes on fuel contained in tanks (paragraph 4(a) and (b)), lubricants (paragraph 4(c)) and spare parts (paragraph 4(d)), could have been subject to a separate agreement concluded by means of an autonomous decision. Procedural economy cannot disregard the conferred powers and internal procedures of the Community.

28 In support of its argument, the Council cites a large number of measures which come under the common transport policy and which, because they contain fiscal provisions that can be detached from the measure in question, take Article 99 of the EC Treaty (now Article 93 EC) or Article 93 EC as their legal basis.

29 It also refers to the judgment in Case C-21/94 *Parliament* v *Council* [1995] ECR I-1827, by which the Court annulled Council Directive 93/89/EEC of 25 October 1993 on the application by Member States of taxes on certain vehicles used for the carriage of goods by road and tolls and charges for the use of certain infrastructures (OJ 1994 L 279, p. 32) without calling in question its dual legal basis, namely, Articles 75 and 99 of the Treaty.

30 To the same effect, the Council states that in Case C-268/94 *Portugal* v *Council* [1996] ECR I-6177, paragraph 39, the Court held that the fact that a development cooperation agreement contains clauses concerning various specific matters cannot alter the characterisation of an agreement, which must be determined having regard to its essential object and not in terms of individual clauses, provided that those clauses do not impose such extensive obligations concerning the specific matters referred to that those obligations in fact constitute objectives distinct from those of development cooperation. However, such is precisely the effect of Article 8 in each of the agreements.

31 The two international agreements with the Republic of Slovenia and with the former Yugoslav Republic of Macedonia referred to by the Commission cannot support its position inasmuch as the provisions of those agreements which are at issue do not contain binding measures with effective consequences for the tax systems of the contracting parties, involving harmonisation of the laws of the Member States on the legal basis of Article 99 of the Treaty. The Council maintains that Article 75 of the Treaty is therefore the sole legal basis necessary for the conclusion of those agreements.

32 As regards the argument relying on *Titanium dioxide*, cited above, relating to the allegedly irreconcilable nature of the procedures laid down in Articles 71 EC and 93 EC, the Council points out that the Treaty has been amended since that judgment was given in order to allow the Council to act by unanimity under the procedure laid down in Article 251 EC, for example in the field of cultural policy (see Article 151 EC). The case-law in *Titanium dioxide* is therefore outdated, since nothing now prevents the adoption of a measure which brings together unanimity within the Council and the co-decision procedure.

33 The Council adds that in any event, as regards the contested decisions, Article 300(3) EC does not require that the Parliament be consulted even in the case where agreements are concluded on the sole legal basis of Article 71 EC.

34 The German and Luxembourg Governments support the Council's arguments. They take the view that Article 8, paragraphs 1, 2 and 4 of which would result in a harmonisation of indirect taxes in the Member States, is autonomous and separable from the rest of the agreements.

35 The German Government adds that under the Treaty fiscal policy is horizontal in nature. Therefore, measures of fiscal policy frequently relate to other fields, such

as energy. However, horizontal authorisation rules always take precedence over sectoral legal bases such as Article 71 EC. For that reason, where there is a conflict between the two horizontal authorisation rules contained in Article 95 EC concerning the approximation of national laws in order to achieve the internal market and Article 93 EC, the authors of the Treaty explicitly provided in Article 95(1) EC that that article applies save where otherwise provided in the Treaty.

36 The German and Luxembourg Governments maintain that the Commission's argument, based on a broad interpretation of Article 71(1)(d) EC, undermines the specific authorisation rule contained in Article 93 EC.

37 Finally, like the Council, the German and Luxembourg Governments consider that the *Titanium dioxide* case-law is outdated in the light of the inclusion in the Treaty of legal bases which provide for the use of both the co-decision procedure and unanimity in the Council.

Findings of the Court

38 It is settled case-law that the choice of the legal basis for a Community measure must rest on objective factors amenable to judicial review, which include in particular the aim and the content of the measure (see, *inter alia*, Case C-300/89 *Commission* v *Council*, cited above, paragraph 10, and Case C-269/97 *Commission* v *Council*, cited above, paragraph 43).

39 If examination of a Community measure reveals that it pursues a twofold purpose or that it has a twofold component and if one of these is identifiable as the main

or predominant purpose or component whereas the other is merely incidental, the act must be based on a single legal basis, namely that required by the main or predominant purpose or component (see, to that effect, *inter alia* Case C-155/91 *Commission* v *Council* [1993] ECR I-939, paragraphs 19 and 21, and Case C-36/98 *Spain* v *Council* [2001] ECR I-779, paragraph 59).

40 By way of exception, if it is established that the measure simultaneously pursues several objectives which are inseparably linked without one being secondary and indirect in relation to the other, the measure must be founded on the corresponding legal bases (see, *inter alia*, Case C-336/00 *Huber* [2002] ECR I-7699, paragraph 31; Case C-281/01 *Commission* v *Council* [2002] ECR I-2049, paragraph 35, and Opinion 2/00 [2001] ECR 1-9713, paragraph 23).

41 In the present case, it is not in dispute that the agreements pursue a transport policy objective and that their content relates to that policy. Nor do the parties disagree as to the fact that the agreements contain provisions of a fiscal nature. Thus, the Commission does not deny that certain provisions of Article 8 of the agreements, namely paragraphs 1, 2 and 4, on which the Council relies to maintain its position, are of such a nature.

42 On the other hand, the parties disagree as to the extent to which the aim and the content of Article 8 of the agreements justify, for the purpose of their conclusion, recourse to Article 93 EC as a legal basis in addition to Article 71 EC.

43 It is therefore appropriate, having identified the fiscal provisions in the agreements, to determine their purpose and to ascertain whether it is different from that which relates to transport policy, without being secondary and indirect as compared to the latter, so as to justify taking Article 93 EC in addition to Article 71 EC as the basis for the adoption of the contested decisions.

44 In that regard, it should be pointed out that the second indent of Article 2(2) of the agreements, which defines their scope, refers to 'legal and administrative supporting measures, including... taxation... measures'.

45 Those measures are specified in Article 8 of the agreements.

46 It is apparent from examination of that article that only paragraphs (1), (2) and (4) have a fiscal content in that they concern, first, the application of the principle of equal treatment in terms of road vehicle taxation and other fiscal charges and, secondly, the granting of exemptions from taxes levied on the circulation or possession of vehicles and from taxes levied on transport operations, fuel contained in tanks, lubricants, spare parts and tools required in case of a breakdown.

47 Such provisions, in particular those relating to fiscal exemptions, serve to harmonise the laws of the Member States concerning indirect taxes for the purpose of implementing the agreements.

48 Even accepting that the harmonisation of the laws of the Member States achieved through Article 8 of the agreements is necessary in order to ensure the establishment and the functioning of the internal market, as required under Article 93 EC if that article is to be taken as the legal basis for a Community measure, it must be stated that in any event the aspect of the agreements which concerns the harmonisation of fiscal laws is, in the light of their aim and their content, only secondary and indirect in nature compared with the transport policy objective which they pursue.

49 The principle of equal treatment in the area of road vehicle taxation and other fiscal charges set out in Article 8(1) and the various fiscal exemptions laid down in Article 8(2) and (4) are closely linked to the simplification of transit through Bulgaria and Hungary for the purpose of facilitating the carriage of goods between Greece and other Member States. Moreover, Article 2 of the agreements, on their scope, characterises fiscal measures as 'supporting measures', as is apparent from paragraph 44 of the present judgment.

50 It follows from the foregoing considerations that the Council should have used Article 71 EC alone, in conjunction with Article 300(3) EC, as the legal basis for the contested decisions.

51 In those circumstances, there is no need to examine the Commission's other arguments concerning the scope of Articles 70 EC and 71 EC in relation to other objectives of the Treaty, or arguments relating to *Titanium dioxide*, cited above.

52 In principle, the incorrect use of a Treaty article as a legal basis which results in the substitution of unanimity for qualified majority voting in the Council cannot be considered a purely formal defect since a change in voting method may affect the content of the act adopted.

53 In conclusion, since Article 93 EC is referred to as the legal basis for the contested decisions, those decisions must be annulled.

Limitation of the effects of the judgment

54 The Commission and the Council have asked, if the application were to be allowed, that the effects of the judgment be limited so that the effects of the agreements may be maintained until the Council has adopted new concluding measures.

55 It is common ground that the content of international agreements cannot be amended unilaterally, without new negotiations being undertaken by the contracting parties.

56 Moreover, the parties agree that the material content of the agreements has in no way been affected by the dispute between them and make it known that they have no intention of re-opening negotiations with the other contracting parties.

57 In those circumstances, in order to avoid any legal uncertainty as regards the applicability of the international commitments entered into by the Community within the Community's legal order, the effects of the contested decisions must be maintained until the measures necessary to implement the present judgment have been adopted.

Costs

58 Under Article 69(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 Commission has applied for costs and the Council has been unsuccessful, the latter must be ordered to pay the costs.

59 Under the second subparagraph of Article 69(4) of the Rules of Procedure, the Federal Republic of Germany and the Grand Duchy of Luxembourg, which have intervened in the proceedings, are to bear their own costs.

On those grounds,

THE COURT (Fifth Chamber)

hereby:

1. **Annuls Council Decision 2001/265/EC of 19 March 2001 concerning the conclusion of the agreement between the European Community and the Republic of Bulgaria establishing certain conditions for the carriage of goods**

by road and the promotion of combined transport and 2001/266/EC of 19 March 2001 concerning the conclusion of the agreement between the European Community and the Republic of Hungary establishing certain conditions for the carriage of goods by road and the promotion of combined transport;

2. Declares that the effects of the decisions are to be maintained until the measures necessary to implement the present judgment have been adopted;

3. Orders the Council of the European Union to pay the costs;

4. Orders the Federal Republic of Germany and the Grand Duchy of Luxembourg to bear their own costs.

Wathelet Timmermans Edward

La Pergola von Bahr

Delivered in open court in Luxembourg on 11 September 2003.

R. Grass M. Wathelet

Registrar President of the Fifth Chamber