JUDGMENT OF THE COURT

18 January 2001 *

In Case C-361/98,

Italian Republic, represented by U. Leanza, acting as Agent, assisted by I.M. Braguglia and P.G. Ferri, avvocati dello Stato, with an address for service in Luxembourg,

applicant,

v

Commission of the European Communities, represented by F. Benyon and L. Pignataro, acting as Agents, with an address for service in Luxembourg,

defendant,

APPLICATION for annulment of Commission Decision 98/710/EC of 16 September 1998 on a procedure relating to the application of Council Regulation (EEC) No 2408/92 (Case VII/AMA/11/98 — Italian traffic distribution rules for the airport system of Milan) (OJ 1998 L 337, p. 42),

* Language of the case: Italian.

THE COURT,

composed of: G.C. Rodríguez Iglesias, President, C. Gulmann, A. La Pergola, M. Wathelet and V. Skouris (Presidents of Chambers), D.A.O. Edward, J.-P. Puissochet, P. Jann, L. Sevón, R. Schintgen and F. Macken (Rapporteur), Judges,

Advocate General: G. Cosmas,

Registrar: H. von Holstein, Deputy Registrar,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 14 March 2000,

after hearing the Opinion of the Advocate General at the sitting on 16 May 2000,

gives the following

Judgment

1 By application lodged at the Court Registry on 8 October 1998, the Italian Republic brought an action under the first paragraph of Article 173 of the EC Treaty (now, after amendment, the first paragraph of Article 230 EC) for annulment of Commission Decision 98/710/EC of 16 September 1998 on a

procedure relating to the application of Council Regulation (EEC) No 2408/92 (Case VII/AMA/11/98 — Italian traffic distribution rules for the airport system of Milan) (OJ 1998 L 337, p. 42; 'the contested decision').

2 By the contested decision, the Commission prohibited the Italian Republic from applying the air traffic distribution rules for the airport system of Milan, Italy, which had been defined by national decrees which provided, in particular, for a partial transfer of air traffic from Linate airport to Malpensa airport.

Legal framework

3 The first paragraph of Article 59 of the EC Treaty (now, after amendment, the first paragraph of Article 49 EC) provides:

'Within the framework of the provisions set out below, restrictions on freedom to provide services within the Community shall be progressively abolished during the transitional period in respect of nationals of Member States who are established in a State of the Community other than that of the person for whom the services are intended.'

4 Article 61(1) of the EC Treaty (now, after amendment, Article 51(1) EC) states:

'Freedom to provide services in the field of transport shall be governed by the provisions of the Title relating to transport.'

5 Under Article 84(2) of the EC Treaty (now, after amendment, Article 80(2) EC):

'The Council may, acting by a qualified majority, decide whether, to what extent and by what procedure appropriate provisions may be laid down for sea and air transport.

The procedural provisions of Article 75(1) and (3) shall apply.'

6 Article 155 of the EC Treaty (now Article 211 EC) states:

'In order to ensure the proper functioning and development of the common market, the Commission shall:

...

— 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.'

7 With a view to the gradual establishment of the internal market for air transport, the Community legislature adopted three sets of measures in 1987, 1990 and 1992 which were known as 'packages' on account of the fact that they consisted of several documents. The third 'package', adopted on 23 July 1992, consists of five regulations which aim to ensure the freedom to provide air transport services and the application of the Community competition rules in that sector.

8 One of those five regulations is Council Regulation (EEC) No 2408/92 of 23 July 1992 on access for Community air carriers to intra-Community air routes (OJ 1992 L 240, p. 8), which entered into force on 1 January 1993 pursuant to Article 16 thereof.

9 The first two recitals in the preamble to Regulation No 2408/92 state:

'Whereas it is important to establish an air transport policy for the internal market over a period expiring on 31 December 1992 as provided for in Article 8a of the Treaty;

Whereas the internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured'.

10 The 13th recital in the preamble to that regulation states:

'... for air transport planning purposes it is necessary to give Member States the right to establish non-discriminatory rules for the distribution of air traffic between airports within the same airport system'.

11 The 19th recital in the preamble thereto is worded as follows:

'Whereas it is appropriate to deal with all matters of market access in the same regulation'.

12 Article 3(1) of Regulation No 2408/92 sets out the principle that, '[s]ubject to this regulation, Community air carriers shall be permitted by the Member State(s) concerned to exercise traffic rights on routes within the Community'.

13 Article 8 of Regulation No 2408/92 states:

'1. This regulation shall not affect a Member State's right to regulate without discrimination on grounds of nationality or identity of the air carrier, the distribution of traffic between the airports within an airport system.

2. The exercise of traffic rights shall be subject to published Community, national, regional or local operational rules relating to safety, the protection of the environment and the allocation of slots.

3. At the request of a Member State or on its own initiative the Commission shall examine the application of paragraphs 1 and 2 and, within one month of receipt of a request and after consulting the Committee referred to in Article 11, decide whether the Member State may continue to apply the measure. The Commission shall communicate its decision to the Council and to the Member States.

...'

14 Under Article 2(m) of Regulation No 2408/92, 'airport system' is to mean two or more airports grouped together as serving the same city or conurbation. It is clear from Annex II to that regulation that the airport systems referred to in Article 8(1) include, as regards the city of Milan, 'Milan-Linate/Malpensa/ Bergamo (Orio al Serio)'.

The contested decision

15 The contested decision is based on Article 8(3) of Regulation No 2408/92.

16 The Commission states, first of all, in recitals 5 to 13 in the preamble to the contested decision, that the Italian authorities decided to reorganise the airport system of Milan (Malpensa, Linate and Orio al Serio airports) and to create a hub at Malpensa. That objective is to be achieved through the extension and upgrading of Malpensa airport, known as the 'Malpensa 2000' project. Malpensa 2000 is one of the 14 priority projects listed in Annex III to Decision No 1692/96/EC of the European Parliament and of the Council of 23 July 1996 on Community guidelines for the development of the trans-European transport network (OJ 1996 L 228, p. 1) and is financially supported by the Community, the European Investment Fund and the European Investment Bank.

17 In order to transfer traffic to Malpensa airport, in July 1996, the Italian authorities adopted Decree No 46-T which provided that, from the date of the entry into service of priority structures at that airport — a date which would be determined by a further decree —, all intra-Community and intercontinental traffic would be transferred to Malpensa airport, with the exception of flights by companies whose annual passenger volume was equal to or more than 2 million, which could remain at Linate airport. In practice, that exception would have concerned only the Milan-Rome route. In October 1997, a further decree, bearing the number 70-T, set at 25 October 1998 the date for the transfer of traffic to Malpensa airport.

18 In recitals 29 to 46 in the preamble to the contested decision, the Commission then carries out an assessment of whether the two decrees mentioned in the preceding paragraph ('the decrees at issue') are compatible with the principle of non-discrimination.

19 In recital 30 in the preamble to the contested decision, the Commission points out in that regard that it had already stated that the principle of non-discrimination set out in Article 8(1) of Regulation No 2408/92 precludes, *inter alia*, any

measure which produces, even indirectly, discriminatory effects in practice. In order to determine whether the decrees at issue produce discriminatory effects, the Commission examines the effects of their application as of 25 October 1998.

20 In the context of that examination, the Commission notes that the operation of hub and spoke networks, which are based on hub airports, has become a common feature among Community air carriers. That system allows them to provide services between any two Community airports served from the hub airport and between any Community airport served from the hub airport and airports located in third countries. In recital 33 in the preamble to the contested decision, the Commission also states that indirect services via hubs are usually substitutable. The Commission explains, furthermore, that competition exists for the provision of air services from Milan to a number of airports between Alitalia, an Italian air carrier, and other Community carriers.

21 In the light of the information available to it, in particular Alitalia's declared intention, expressed in other Community procedures, to continue to divide its operations between two hub airports, the Commission concludes that, as of 25 October 1998, Alitalia will be the only Community carrier able to access its hub at Rome-Fiumicino from Milan using either Linate airport or Malpensa airport.

22 Next, the Commission points out that Linate airport, which is located 10 kilometres south-east of the centre of Milan, benefits both from the transport infrastructure network of the city itself and from the transport infrastructure network linking all major areas of the northern Italy basin. By contrast, Malpensa airport is located 53 kilometres north-west of the centre of Milan and is not directly accessible either by motorway or by rail. The Commission considers that the conditions of access to Malpensa airport will remain unchanged after 25 October 1998 and concludes that, from that date, the level of available access

infrastructures to that airport will not be compatible with the traffic which it will have to handle.

23 It follows from that assessment that, in the Commission's view, Alitalia will be the only company able to continue to serve its Rome-Fiumicino hub from Linate airport while other Community air carriers will not be able to serve their hubs from that Milan airport. Therefore, the Commission considers that the application of the measures set out in Decree No 46-T from 25 October 1998 will in practice produce discriminatory effects in favour of Alitalia, which is not compatible with the principle of non-discrimination on the ground of the identity of the air carrier as provided for in Article 8(1) of Regulation No 2408/92.

24 Finally, in recitals 47 to 52 in the preamble to the contested decision, the Commission examines the decrees at issue in the light of the principle of proportionality. After pointing out that Article 8(1) of Regulation No 2408/92 expressly recognises the legitimacy of an active airport planning policy and that the Italian authorities aimed to create a fully operational and viable hub, the Commission analyses the restrictions imposed by the traffic distribution rules.

25 In recital 50 in the preamble to the contested decision, the Commission considers that the requirement of the transfer, from 25 October 1998, of all traffic from Linate airport to Malpensa airport — except the Rome-Milan route — is not compatible with the principle of proportionality, since the creation of a fully viable and operational hub did not necessitate the transfer of a volume of traffic which was incompatible with the level of airport structures and access infrastructures. In the Commission's opinion, a postponement of such a transfer

or a gradual transfer from 25 October 1998 onwards would be better suited to the objective pursued by the Italian authorities and would reduce the effect on freedom to provide air services to and from Milan.

26 Since the Commission had concluded that the provisions of the decrees at issue were not compatible with Article 8(1) of Regulation No 2408/92, it decided, pursuant to Article 8(3) thereof, that the Italian Republic was not permitted to apply the traffic distribution rules for the airport system of Milan set out in those decrees.

Substance

27 In support of its application for annulment, the Italian Government submits by its first plea that, since Article 8(1) and (3) of Regulation No 2408/92 refers only to the principle of non-discrimination on the ground of the nationality and/or identity of the air carrier, the contested decision has, in so far as it is based on an alleged breach of the principle of proportionality, exceeded the limits of the power conferred on the Commission by that regulation.

28 In the alternative, the Italian Government criticises the legal premisses on which the Commission bases its conclusion that the decrees at issue are in breach of the principle of proportionality. In the further alternative, it pleads misapplication by the Commission of the principle of proportionality and improper exercise by the

Commission of the power to assess the facts on the basis of which it made a finding of indirect discrimination in favour of Alitalia.

The first plea

29 The Italian Government submits, first of all, that, within the framework of traffic distribution between the airports which make up an airport system, Article 8(1) of Regulation No 2408/92, unlike Article 9(4) and (5) thereof which grants to the Commission the power to decide whether a national measure is in any way contrary to Community law, fixes only one limit to the Member State's power, namely observance of the principle of non-discrimination on the ground of the nationality and/or identity of the air carrier. The Government claims that, by adopting the contested decision, which is based on a finding that the national measures set out in the decrees at issue are in breach of the principle of the freedom to provide services from the point of view of proportionality, the Commission has thus exceeded the limits of the power which is granted to it under Article 8(3) of that regulation.

30 The Italian Government adds that a broad interpretation of Article 8(1) of Regulation No 2408/92 is contrary to the principle of the strict legality of the Commission's power of decision for the purpose of the third and fourth indents of Article 155 of the Treaty. Furthermore, by reason of the fact that it derogates from Article 169 of the EC Treaty (now Article 226 EC), Article 8(3) of that regulation should be interpreted strictly, so that it could not be understood as authorising the Commission to use its power of decision to make assessments which are not directly related to the application of Article 8(1).

31 In that regard, as the Court has held in previous decisions, in interpreting a provision of Community law it is necessary to consider not only its wording but

also the context in which it occurs and the objects of the rules of which it forms part (see, in particular, Case 337/82 *St Nikolaus Brennerei* [1984] ECR 1051, paragraph 10).

32 It is clear from the 1st, 2nd and 19th recitals in the preamble to Regulation No 2408/92 that the purpose of that regulation is, *inter alia*, to define the conditions for applying in the air transport sector the principle of the freedom to provide services which is enshrined in, *inter alia*, Articles 59 and 61 of the Treaty, so that all matters of market access are dealt with in the same regulation.

33 It should also be pointed out that it is settled case-law that Article 59 of the Treaty requires not only the elimination of all discrimination on grounds of nationality against providers of services who are established in another Member State but also the abolition of any restriction, even if it applies without distinction to national providers of services and to those of other Member States, which is liable to prohibit, impede or render less advantageous the activities of a provider of services established in another Member State where he lawfully provides similar services (see Case C-76/90 *Säger* [1991] ECR I-4221, paragraph 12; and Joined Cases C-369/96 and C-376/96 *Arblade and Others* [1999] ECR I-8453, paragraph 33).

34 The Court finds that the measures enacted in the decrees at issue for the purpose of governing the distribution of traffic within an airport system, within the meaning of Article 8(1) of Regulation No 2408/92, constitute restrictions on the freedom to provide services.

35 In order that such restrictions may be authorised under Regulation No 2408/92, they must be justified and, in particular, proportionate to the purpose for which they were adopted.

36 It follows that the Commission was fully entitled, within the framework of the power granted to it under Article 8(1) and (3) of Regulation No 2408/92, to examine, first, whether the national measures enacted in the decrees at issue impose restrictions which are applicable without distinction and, second, whether those restrictions are such as to achieve the objective which they envisage, without going beyond what is necessary to achieve it.

37 In those circumstances, the Italian Government's arguments based on Articles 155 and 169 of the Treaty cannot be accepted either.

38 First, as regards Article 155 of the Treaty, since the interpretation of Article 8(1) of Regulation No 2408/92 proposed by the Italian Government cannot be accepted, the criteria identified in the Court's case-law by the Commission, in the context of its examination of the legality of the decrees at issue, cannot be criticised as going beyond both the limits of its power of decision and the limits of the powers which the Council confers on it.

39 Second, as regards Article 169 of the Treaty, it is clear from paragraphs 31 to 36 above that the Commission is empowered under Article 8(1) and (3) of Regulation No 2408/92 to examine whether the national measures adopted impose restrictions which are applicable without distinction and, where appropriate, whether they are justified. The Commission is therefore not required to ensure observance of the principle of the freedom to provide services from the point of view of proportionality solely by means of the infringement proceedings provided for in Article 169 of the Treaty.

40 It follows that the Italian Republic is not justified in claiming that that provision of the Treaty was infringed.

41 The first plea must therefore be rejected.

The second plea

42 By its second plea, the Italian Government claims, in the alternative, that the Commission was wrong to consider that the decrees at issue are in breach of the principle of proportionality.

43 That plea falls into two parts.

44 First, the Italian Government disputes the reasoning on the basis of which the Commission submits that the national traffic distribution rules must observe the principle of proportionality, since that principle does not appear anywhere in Regulation No 2408/92, which is the only source of rules in the field which is the subject of the contested decision.

45 Second, the Italian Government claims that, in recital 49 in the preamble to the contested decision, the Commission erred in law. It states that the Commission there assessed whether the decrees at issue were consistent with Community law by adopting a criterion of economic interest, namely the viability of an airport system. It claims that it follows from the Court's case-law that the principle of proportionality should not be applied where a restriction is not based on an overriding reason in the general interest. According to that case-law, economic requirements cannot constitute overriding reasons in the general interest. However, in the present case, Article 8(1) of Regulation No 2408/92 allows national air traffic distribution rules on the basis of economically valid requirements, subject to observance of the principle of non-discrimination, so that it would be arbitrary to make those national rules subject to a review of proportionality.

46 As regards the first part of the second plea, it is sufficient to state that, for the reasons mentioned in paragraphs 31 to 36 above, the Commission was fully entitled, in the context of its power under Article 8(1) and (3) of Regulation No 2408/92, to examine whether the national measures enacted in the decrees at issue observed the principle of proportionality.

47 The Italian Government's argument can therefore not be accepted.

48 As regards the second part of the second plea, alleging the lack of an overriding reason in the general interest, it is common ground that aims of a purely economic nature cannot justify a barrier to the fundamental principle of freedom to provide services (see Case C-158/96 *Kohll* [1998] ECR I-1931, paragraph 41).

49 However, the mere fact that a Member State pursues an aim in conditions which must, in particular, be economically viable does not thereby exclude the possibility that such an aim may constitute an overriding reason in the general interest capable of justifying a barrier of that kind.

50 It should be recalled in that regard that Malpensa airport is one of the priority projects of the trans-European transport network which are listed in Annex III to Decision No 1692/96 and that, in accordance with Article 129c of the EC Treaty (now, after amendment, Article 155 EC), the Community's activities in the field of the establishment and development of trans-European networks are to take into account the potential economic viability of the projects.

51 Furthermore, as is apparent from the 13th recital in the preamble to Regulation No 2408/92, the distribution of traffic within an airport system makes air transport planning possible.

52 It follows that, whether or not the creation of a fully operational and viable hub is classified as an overriding reason in the general interest, a legitimate objective of that kind may justify an obstacle to the fundamental freedom to provide services only in so far as it is consistent with the principle of proportionality.

53 Accordingly, the second part of the second plea is not well founded either and that plea must therefore be rejected.

The third plea

54 By its third plea, the Italian Government challenges, in the further alternative, the application of the principle of proportionality by the Commission in the present case. In its submission, instead of focusing its examination on the legal criterion of proportionality, the Commission based the contested decision on a discretionary assessment of the merits of the action decided on by the Italian Government on the subject of Malpensa airport, so that it exceeded its powers under Article 8(3) of Regulation No 2408/92. In that regard, it claims that the assertion of a breach of that principle is based on three arguments, each of which is either immaterial or misconceived.

55 The Italian Government claims, first, that the Commission's first argument, that the volume of traffic transferred is not compatible with the current conditions of access infrastructures, is unrelated to the only criterion which is material to

proportionality, that is to say whether the concentration of flights at Malpensa airport is appropriate to the Italian Government's objective. In any event, the national authorities have fully demonstrated the compatibility of the access infrastructures with the volume of traffic which will be transferred.

56 Next, the Government submits that the Commission's second argument, based on the financial structure supporting Malpensa 2000, which does not require any transfer of traffic before 31 December 2000, is manifestly not material to the assessment of the proportionality of the national decision on the transfer of traffic.

57 Finally, the Italian Government considers that the Commission's third argument, that the decision to transfer traffic from Linate airport to Malpensa airport is contrary to the intention, which was expressly stated in Decree No 46-T, of maintaining Linate airport in service in any event, is quite simply fallacious. Linate airport will remain in service anyway, even if its use is limited.

58 First of all, as regards the Italian Government's first two arguments, the Court finds that, as is clear from paragraphs 48 to 52 above, the Commission was entitled to analyse the creation of an operational and economically viable hub in relation to the principle of proportionality.

59 In the context of the examination of the proportionality of the measures enacted in the decrees at issue, the Commission was thus bound to assess whether, at the date prescribed for the transfer of air traffic to Malpensa airport, the level of access infrastructures at that airport would discourage passengers from using it. It

was also bound to assess whether that transfer was necessary in order to ensure the financial viability of an operational hub.

60 It follows that there is no foundation to the Italian Government's complaints to the effect that the criteria used by the Commission, which are based, first, on the relationship between the volume of traffic transferred and the existing conditions of the access infrastructures and, second, on the financial necessity of a transfer of that traffic at a date earlier than that initially prescribed by the Italian authorities in the context of Malpensa 2000, are not material to the assessment of whether the measures adopted in the decrees at issue are proportionate to the objective pursued.

61 Second, as regards the Italian Government's challenge to the merits of the Commission's findings on the state of the infrastructures linking the city of Milan and Malpensa airport at the time of the planned transfer of air traffic, it is clear that the Government has not succeeded in establishing that those findings were incorrect.

62 Lastly, as regards the Commission's third argument in relation to maintaining Linate airport in service, it is sufficient to state that the reasoning in that respect in the contested decision is of a purely ancillary nature and that, even if the Italian Government were justified in challenging it, such a criticism cannot cast doubt on the merits of the Commission's assessment as to whether the measures adopted in the decrees at issue were, or were not, proportionate to the objective pursued by the Italian authorities.

63 In those circumstances, the third plea must be rejected.

The fourth plea

64 By its fourth plea, the Italian Government submits that the Commission's analysis in recitals 29 to 46 in the preamble to the contested decision, which is designed to establish the existence of indirect discrimination, is legally flawed for three reasons.

65 First of all, the Italian Government claims that there is no indirect discrimination in the present case because, contrary to the Commission's assertion, the national measures enacted in the decrees at issue do not produce an advantage for Alitalia and a disadvantage for the Community carriers which operate from hubs other than Rome-Fiumicino. It claims on that basis that the traffic between the cities of Milan and Rome largely consists of business travel, most of it being daily commuting. It asserts that such traffic is thus objectively that which is best placed to be served from an urban airport such as Linate, also enabling the air route to remain competitive in relation to the rail link.

66 Next, the Italian Government submits that the Commission should have assessed the effects of the transfer of traffic to Malpensa airport on the basis of the future situation and not only the existing one. It considers that a provision can be regarded as indirectly discriminatory only if its capacity to advantage or adversely affect a person is fully demonstrated. In the new situation, when that airport will be fully turned over to intercontinental flights, the route from Linate airport to the Rome-Fiumicino hub will not, in practice, result in any competitive advantage for Alitalia.

67 Finally, the Italian Government claims that, if the Commission considered that maintaining a route between Linate airport and Rome-Fiumicino airport might bring a competitive advantage for Alitalia, it should have opted for measures against the Italian Government which were less draconian, but sufficient to

ensure the Community interest in observance of the principle of non-discrimination laid down in Article 8(1) of Regulation No 2408/92.

68 First of all, as regards the first part of the fourth plea, it should be noted that none of the elements relied on by the Italian Government demonstrates that the Commission was wrong in finding that Alitalia was the only carrier in a position to access the Rome-Fiumicino hub from Linate airport, while the other Community carriers could operate their hubs only from Malpensa airport. Although it is true that Alitalia would have reduced the number of its intercontinental flights from its Rome-Fiumicino hub to the Malpensa airport hub, it is none the less true, as the Italian Government itself acknowledges, that, at the date prescribed for the transfer of air traffic from Linate airport, Rome-Fiumicino airport remained the hub for that air carrier.

69 It follows that the Commission was justified in its finding of discrimination between Alitalia and the other Community air carriers, so that the first part of the fourth plea must be rejected.

70 Next, as regards the second part of the fourth plea, concerning the alleged error of assessment which the Commission made in finding that there was indirect discrimination without taking account of the future development of Malpensa airport, it is sufficient to state that, in the present case, the Commission did not base its findings solely on information relating to the period prior to the date of the planned transfer, since it examined, as is clear from recitals 35 and 44 in the recital to the contested decision, the development prospects for Linate and Malpensa airports, and for Alitalia's hubs.

71 In the light of the foregoing, the second part of the fourth plea must be rejected.

72 Finally, as regards the third part of that plea, alleging that the contested decision is in breach of the principle of proportionality, in that it prohibits the implementation of the measures enacted in the decrees at issue, it should be recalled that, under Article 8(3) of Regulation No 2408/92, it is for the Commission merely to examine the national measure adopted by the Member State concerned and to decide, after consulting the committee referred to in Article 11 of that regulation, whether that State may continue to apply that measure.

73 In those circumstances, since the Commission was not empowered to propose an amendment to the measures enacted in the decrees at issue, it cannot be accused of infringing the principle of proportionality by having failed to suggest that the national authorities adopt less restrictive measures.

74 The fourth plea must therefore be rejected.

75 Since none of the pleas put forward by the Italian Government is well founded, the application must be dismissed in its entirety.

Costs

76 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 Italian Republic has been unsuccessful, it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

1. **Dismisses the application;**

2. **Orders the Italian Republic to pay the costs.**

Rodríguez Iglesias Gulmann La Pergola

Wathelet Skouris

Edward Puissochet Jann Sevón

Schintgen Macken

Delivered in open court in Luxembourg on 18 January 2001.

R. Grass G.C. Rodríguez Iglesias

Registrar President