OPINION OF ADVOCATE GENERAL JACOBS

delivered on 15 June 1995 *

1. In these proceedings Germany seeks the annulment of Council Regulation (EEC) No 2186/93 of 22 July 1993 on Community coordination in drawing up business registers for statistical purposes. [1] The regulation was adopted on the basis of Article 213 of the Treaty, with Germany voting against. Article 213 provides as follows:

'The Commission may, within the limits and under conditions laid down by the Council in accordance with the provisions of this Treaty, collect any information and carry out any checks required for the performance of the tasks entrusted to it.'

The terms of Regulation No 2186/93

2. Council Regulation No 2186/93 obliges Member States to set up for statistical purposes one or more harmonized registers (Article 1). Article 3(1) defines the scope of the registers as including all enterprises [2] carrying on economic activities contributing to gross domestic product at market prices (GDP), the legal units responsible for those enterprises and the local units dependent upon them. For the definition of the terms 'enterprise', 'legal unit' and 'local unit' Article 2 refers to an annex to Council Regulation (EEC) No 696/93 [3] on the statistical units for the observation and analysis of the production system in the Community. Although the definitions are complex, the position may be summarized as follows. A *legal unit* is a legal person or a natural person who is engaged in an economic activity in his own right. An *enterprise* is a combination of legal units (or a single legal unit) which is an organizational unit producing goods or services and which benefits from a degree of autonomy in decision-making. A *local unit* is an enterprise or part of an enterprise (e. g. a workshop, factory, warehouse, office, mine or depot) situated in a geographically identified place.

3. Certain activities are expressly excluded from the scope of the regulation, notably the production of goods by households for their own consumption, while the inclusion of enterprises involved in the fields of agriculture, hunting, forestry, fishing, public admin-

* Original language: English.

1 — OJ 1993 L 196, p. 1.

2 — The word 'enterprise' in the English version of the regulation appears to correspond to 'undertaking', which is normally used in the English version of Community provisions, including Article 85 et seq. of the Treaty.

3 — OJ 1993 L 76, p. 1.

istration, defence and compulsory social security is left to the discretion of the Member States (Article 3(1), second and third subparagraphs, in conjunction with Council Regulation (EEC) No 3037/90 on the statistical classification of economic activities in the European Community). [4]

4. Article 4 states that the units listed in a register are to be characterized by an identity number and the descriptive details specified in Annex II. According to Annex II, the register entry of a legal unit must contain *inter alia* an identity number, the name and address of the unit, the date of incorporation for legal persons or date of official recognition as an economic operator for natural persons, and the legal form of the unit. The record of a local unit must contain *inter alia* an identity number, the name and address of the unit, a code identifying the activity of the unit and the size of the labour force. The record of an enterprise must contain *inter alia* an identity number, the identity number(s) of the legal unit(s) legally responsible for the enterprise, a code identifying the activity, the size of the enterprise measured by the number of persons occupied, net turnover from the sale of goods and services and net assets.

4 — OJ 1990 L 293, p. 1.

5. When the Commission so requests, after obtaining the opinion of the Statistical Programme Committee, the Member States must carry out statistical analyses of the registers and transmit the results to the Statistical Office of the European Communities (Article 6).

6. Article 7 empowers national statistical institutes to collect for statistical purposes information which is contained in the administrative or legal files on its national territory, in accordance with the provisions of national law.

7. Finally, Articles 8 to 10 contain provisions concerning the implementation of the regulation.

8. There are three main grounds of challenge: first, that Article 213 of the Treaty is not an autonomous legal basis for the adoption of legislative measures; second, in the alternative, that Article 213 does not constitute the appropriate legal basis for the contested regulation; third, that in any event, the provisions of the regulation offend against the principle of proportionality.

9. The Commission has intervened in support of the Council.

The first ground of challenge: Article 213 is not an autonomous legal basis

10. The German Government contends that Article 213 of the Treaty does not provide an autonomous legal basis for legislation. This submission is based on four elements: (a) the wording of Article 213, (b) the function of the article, (c) a comparison with other provisions of the Treaty on which legislation may be based and (d) the position of the Article 213 in the scheme of the Treaty. I will briefly summarize the German Government's arguments under those headings.

(a) The wording of Article 213

11. The applicant submits that it is clear from this wording that Article 213 does not constitute an autonomous legal basis but rather a norm which must be applied in association with other provisions. The right given to the Commission to collect information is 'for the performance of the tasks entrusted to it'. Accordingly, the German Government maintains that this right is subordinate to a task entrusted to the Commission by another provision. For the German Government, the decisive point is the absence in Article 213 of any procedural rules to be followed by the Council when it lays down the limits and conditions of the Commission's right to collect information. All that is said in Article 213 is that the Council must act 'in conformity with the provisions of this Treaty'. The absence of procedural rules, says the applicant, confirms the dependence of this article upon other Treaty provisions; the reason why there is no mention of the procedure to be followed under Article 213 is that the appropriate procedure to be applied is that contained in the task-conferring provision for which the information is required.

(b) The function of Article 213

12. The applicant submits that the function of Article 213 is purely complementary. That article makes it clear that the Commission is entitled to collect information which it needs for the performance of the tasks conferred upon it. Under Article 4 of the Treaty, the Community institutions must act within the limits of the powers conferred upon them by the Treaty. If the Commission requires information in order to perform a task conferred on it by a specific provision of the Treaty, that provision offers the legal basis for a Council measure regulating the Commission's right to collect information.

13. The applicant cites as an example the Commission's requirement for information

in the field of environmental policy. Such information may be necessary in order that the Commission can understand, for example, the consequences of pollution in the different parts of the Community. The Council may empower the Commission, on the basis of Article 130 S of the Treaty, to obtain the necessary information. The function of Article 213 of the Treaty is therefore to make it clear that a provision such as Article 130 S of the Treaty also authorizes the adoption of measures governing the collection of information.

14. According to the applicant, the Council has in the past taken the same view, as is confirmed by Council Decision 85/338/EEC of 27 June 1985 [5] on the adoption of the Commission work programme concerning an experimental project for gathering, coordinating and ensuring the consistency of information on the state of the environment and natural resources in the Community, amended by Council Decision 90/150/EEC of 22 March 1990. [6] The former decision was founded on Article 235 of the Treaty. [7] The amending decision, made after the coming into force of the Single European Act, was founded on Article 130 S of the Treaty. According to the applicant, the Council did not rely on Article 213 because it did not consider that Article 213 provided a legal basis.

5 — OJ 1985 L 176, p. 14.

6 — OJ 1990 L 81, p. 38.

7 — Article 235 provides as follows:
'If action by the Community should prove necessary to attain, in the course of the operation of the common market, one of the objectives of the Community and this Treaty has not provided the necessary powers, the Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament, take the appropriate measures.'

(c) Comparison with other provisions of the Treaty

15. The applicant contrasts Article 213 with other Treaty provisions which provide legal bases, in particular Articles 49, 57, 63(2), 69, 75, 87 and 100A of the EEC Treaty.

16. Under those provisions the Council acts on a proposal of the Commission, generally after consulting the Economic and Social Committee and the European Parliament or in cooperation with the latter.

17. The structure of Article 213 is completely different from the above, according to the applicant. It simply states that the Council may lay down, in conformity with the Treaty, the limits and conditions governing the Commission's power to collect information. The Commission does not have a right of proposal. The article does not involve the consultation or cooperation of the European Parliament, nor does the Economic and Social Committee have any role to play.

(d) The position of Article 213 in the scheme of the Treaty

18. Finally, the position of Article 213 in the scheme of the Treaty confirms, according to the applicant, that that article does not empower the Council to adopt binding legal acts. That provision is found in the part of the Treaty entitled 'General and Final Provisions' which, apart from Article 235, contains rules intended to complement the other provisions of the Treaty. By contrast, the provisions of the Treaty which authorize legislative action always relate directly to a specific objective, for example, the freedom to provide services or harmonization of laws.

19. I do not find any of the above arguments convincing.

20. As regards first of all the wording of Article 213, that provision expressly authorizes the Council to circumscribe the limits of the Commission's power to collect information and to define the conditions under which that power is to be exercised. Those limits and conditions are to be laid down by the Council 'in accordance with the provisions of [the] Treaty'. That must be taken as a reference, first and foremost, to Article 189 of the Treaty, which defines the various instruments (including regulations) which the Council and Commission may use in order to carry out the tasks entrusted to them under the Treaty. Article 213 implies therefore that the Council may adopt legal measures such as regulations.

21. The absence of any specific procedural rules in Article 213 cannot prevent that article from functioning as an autonomous legal basis. That lacuna is closed by Article 148(1) of the Treaty, which states that:

'Save as otherwise provided in this Treaty, the Council shall act by a majority of its members.'

22. The applicant has not adduced any convincing argument to show why Article 148(1) should not be applicable when the Council legislates for the purpose of defining the limits within which, and the conditions under which, the Commission may collect information under Article 213. On the contrary, Article 148(1) would be otiose if the view were taken that the absence of specific procedural rules prevented a Treaty provision from functioning as an autonomous legal basis.

23. As regards the argument that the function of Article 213 is purely complementary, it is of course true that the Commission's right to collect information does not exist in a vacuum; it cannot be divorced from the Commission's powers to act under the various Treaty provisions which entrust specific tasks to the Commission in areas such as agriculture, transport, competition policy, protection of the environment, the internal market and so forth. The right to collect information is subordinate and ancillary in the sense that the Commission is likely to perform its tasks in all those areas more effectively if it has access to accurate information.

24. The defect in the applicant's argument is that information gathering is an over-arching function or — to use the language employed by the Council and Commission in these proceedings — it is of a horizontal nature. Information of a particular kind may be relevant to more than one sector of activity. Information about the structure of industry may, for example, be relevant to competition policy, the internal market and the protection of the environment. If the view were taken that Article 213 cannot constitute an autonomous legal basis, the Council would be unable to adopt a single measure regulating the Commission's right to gather information relevant to more than one area of activity. It would often not be practical to base a measure on several different provisions of the Treaty, since the procedural rules prescribed by the different legal bases are not the same. Thus, if Article 213 cannot be used, the only alternative (apart from Article 235, which can only be used if no other Treaty provision offers a legal basis [8]) would be a series of separate measures based on the various Treaty provisions which deal with specific policy areas. It would surely be illogical to compel the Council to adopt a series of measures on the basis of different provisions of the Treaty when for practical purposes what is required is a single measure regulating as coherently as possible the Commission's general power to gather the information which it needs in order to perform its multifarious tasks under the Treaty.

25. For the same reason it cannot be inferred from the position of Article 213 in the scheme of the Treaty that the article does not constitute an autonomous legal basis. On the contrary, the inclusion of Article 213 among the 'General and Final Provisions' is a logical consequence of the horizontal nature of information gathering, in so far as the possession of accurate information is vital if the Commission is to perform properly the tasks assigned to it by the specific parts of the Treaty. Moreover, several other provisions contained in that part of the Treaty provide a basis for legislation: namely, Articles 217, 223(2) and (3) and 235.

8 — Joined Cases C-51/89, C-90/89 and C-94/89 *United Kingdom* v *Council* [1991] ECR I-2757, at paragraph 6 of the judgment.

26. As regards the contrast between Article 213 and other provisions of the Treaty which serve as a basis for legislation, that is not in my view significant. That the procedural rules laid down in the various Treaty provisions differ considerably is an obvious statement of fact. The scope of the rule-making power conferred by those provisions depends on their wording and purpose, not on the greater or lesser involvement of the European Parliament or the Economic and Social Committee. In so far as the absence of any role for the European Parliament were considered anomalous, that would be a matter to be addressed in the context of an intergovernmental conference under Article N of the Treaty on European Union. It is interesting to note that neither the Single European Act nor the Treaty on European Union made any change to the wording of Article 213. It may also be noted that the European Parliament has not intervened in these proceedings to argue that its prerogatives have been undermined by the Council's recourse to a legal basis which denies the Parliament any role.

27. As regards finally the applicant's argument based on the previous practice of the Council, the fact that Council Decision 85/338 was based on Article 235 and that the decision amending it was based on Article 130 S does not in any way imply that Article 213 cannot constitute an autonomous legal basis. On the contrary, the practice of the institutions suggests overwhelmingly that legislative measures may be based on Article 213 alone. The Council has pointed out that between 1960 and 1993 around 50 measures were adopted on the basis of Article 213 alone and that none have been challenged on the ground that that article does not constitute an autonomous legal basis. The Commission stated at the hearing that the operations of its Statistical Office are founded on measures adopted under Article 213. Although, as the Council concedes, the practice of the institutions cannot change the terms of the Treaty, an established and uncontested practice lasting over 30 years can hardly be disregarded. The practice in question is persuasive evidence for the view that legislation may be based on Article 213.

28. For all the above reasons I am of the opinion that the contested regulation cannot be declared invalid on the ground that Article 213 does not constitute an autonomous legal basis.

The second ground of challenge: Article 213 is not the appropriate legal basis

29. The applicant contends that, even if Article 213 may in principle constitute an autonomous legal basis, it was not the appropriate legal basis for the contested regulation. According to the applicant, the regulation would have had to confine itself, if it was to be properly based on Article 213, to autho-

rizing the Commission to collect data from existing business registers. The applicant maintains that the regulation goes further and that its primary aim is to create an instrument for the harmonization of business registers in the Member States. The applicant cites the first recital in the preamble, which states that 'the Single Market increases the need to improve statistical comparability in order to meet Community requirements'. The applicant also points out that the regulation contains 11 articles, of which only one (namely, Article 6) is directly concerned with the transmission of information from the Member States to the Commission; the greater part of the regulation's text is concerned with the creation and updating of harmonized registers in the Member States. The appropriate legal basis was, according to the applicant, Article 100A of the Treaty, since the primary object of the regulation was to assist the establishment and functioning of the internal market. The applicant sees confirmation of its view in the previous practice of the Council; Council Decision 81/971/EEC of 3 December 1981 establishing a Community information system for the control and reduction of pollution caused by hydrocarbons discharged at sea [9] was based on Articles 213 and 235 of the Treaty; and Council Regulation (EEC) No 3330/91 of 7 November 1991 on the statistics relating to the trading of goods between Member States [10] was based on Article 100A of the Treaty. The applicant states that the contested regulation could not be based on both Article 100A and Article 213 on account of the procedural differences between the two provisions. Citing *Commission* v *Council* ('titanium dioxide'), [11] the applicant contends that, given the impossibility of a dual legal basis, the regulation should have been based solely on Article 100A in order to avoid undermining the rights of other institutions (namely, the European Parliament and the Economic and Social Committee).

30. My views on those issues are as follows.

31. In the first place, I do not accept the applicant's argument that Article 213 (assuming that it can be used as a legal basis) may only serve as a basis for measures authorizing the Commission to obtain data already available to the Member States, in particular data contained in existing registers. At some risk of stating the obvious, I note that before information can be transmitted to the Commission by Member States it must first exist. The contested regulation recognizes that, if the Commission is to have usable statistics, the necessary information must first be gathered together in the Member States in accordance with uniform criteria. If Article 213 is read in conjunction with Article 5 of the Treaty, which requires the Member States to facilitate the achievement of the Community's tasks, it does not seem unreasonable to expect the national authorities to assist the Commission in the task of

9 — OJ 1981 L 355, p. 52.
10 — OJ 1991 L 316, p. 1.
11 — Case C-300/89 [1991] ECR I-2867.

gathering information in accordance with uniform criteria. While the extent of the burden that may be placed on Member States raises an issue of proportionality (which is the subject-matter of the third ground of challenge), I will merely observe at this point that it would surely be too narrow a view to suggest that the Member States cannot, under Article 213, be asked to do anything beyond extracting information from existing registers and posting it to Brussels.

32. It is well established that the choice of the appropriate legal basis for a legal measure must rest on objective criteria amenable to judicial review. The relevant criteria are the purpose and content of the measure. [12]

33. It cannot be denied that the preamble to the contested regulation is somewhat vague about the purpose of the regulation. The first recital states that 'the Single Market increases the need to improve statistical comparability in order to meet Community requirements' and that 'in order to achieve that improvement, common definitions and descriptions have to be adopted for enterprises and other relevant statistical units to be covered'. According to the third recital, 'there is a growing need for information on the structure of enterprises, a need which current Community statistics are not able to meet'. According to the fourth recital, 'business registers for statistical purposes are a necessary tool in keeping track of the structural changes in the economy brought about by such operations as joint ventures, partnerships, buy-outs, mergers and takeovers'.

34. The preamble does not specify the areas of activity for which the Community requires improved statistics and it does not state what tasks of the Commission will be facilitated by the creation of business registers for statistical purposes. The Council and Commission point out in their written observations that the general tasks of the Commission are defined in Article 155 of the Treaty, which states:

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

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

— formulate recommendations or deliver opinions on matters dealt with in this Treaty, if it expressly so provides or if the Commission considers it necessary;

12 — *Commission* v *Council*, cited at note, paragraph 10 of the judgment.

— 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.'

The Council argues that the contested regulation will help the Commission to fulfil those general tasks; in particular, the Commission will be in a better position to monitor the functioning of the internal market, which entails monitoring the structure of industry (as regards, for example, merger control) and the competitive situation of undertakings. The Council stresses the 'horizontal' nature of the regulation and maintains that the registers of undertakings will enable the Commission to follow developments in all sectors of economic activity and propose measures in the context of each specific area of policy for which the Community is responsible.

35. At the hearing counsel for the Commission emphasized the importance of statistics to the Commission, describing information as the Commission's vital artery and the core of its being; indeed, so important is statistical information to the Commission that its Statistical Office (Eurostat) is a separate division independent from the departments that administer the various sectoral policies and with a staff of 800.

36. In my view, it is regrettable that the preamble to the regulation does not state clearly what specific tasks of the Commission will be facilitated by the creation of business registers. Information gathering is not an end in itself; it is simply a means to an end. A measure enabling the Commission to collect information can only be based on Article 213 if the information is 'required for the performance of tasks entrusted to [the Commission]'.

37. In spite of the inadequacy of the preamble (which has not, it may be noted, led to a challenge on grounds of insufficient reasoning) it is possible, in my view, to infer from the nature of the information to be entered on the registers, under the terms of Annex II to the regulation, which tasks of the Commission will be facilitated by the availability of accurate statistics compiled in accordance with uniform criteria. The registers envisaged by the regulation will constitute a photograph, so to speak, of the structure of industry throughout the Community. It will, for example, be possible to glean from the registers how many undertakings are active in a particular sector of the economy, what their legal structure is, what role is played by public undertakings or by small and medium-

sized enterprises (SMEs), what degree of concentration there is, what share of the market is held by particular undertakings, how many persons are employed in a particular sector of the economy, how many are employed in a particular location and so forth.

38. It is self-evident that the possession of such information, gathered in accordance with uniform criteria, will assist the Commission in the performance of many of the specific tasks entrusted to it. Surveillance of the single market is one such task but it is by no means the only one. Without in any way attempting to be exhaustive, I will mention for example competition policy (Title V of Part Three of the Treaty), social policy, education, vocational training and youth (Title VIII), industry (Title XIII) and economic and social cohesion (Title XIV). In all of these areas the Commission will perform its tasks more effectively if it has access to usable statistics (i. e. statistics compiled in accordance with uniform criteria) which reflect the structure of industry throughout the Community. Since therefore the relevance of the system of registers established by the regulation extends well beyond the confines of the single market and touches, directly or indirectly, many of the policy areas in which the Commission has a role to play under the Treaty, it is questionable whether Article 100A of the Treaty could have provided an appropriate legal basis for the regulation.

39. In my view, Article 100A could have provided an appropriate legal basis only if the principal object of the regulation was to harmonize the national laws and practices regarding the compilation of statistical information, in particular for the purpose of ensuring that the internal market functions properly. If, on the other hand, the element of harmonization provided for in the regulation was ancillary and the fundamental concern of the regulation was to ensure that the Commission receives statistical information in order to enable it to perform its multifarious functions under the Treaty, then Article 213 must be the appropriate legal basis.

40. The applicant contends that harmonization is the principal object of the regulation because most of its eleven articles define the steps that must be taken by the national authorities in order to establish harmonized business registers, and only one provision (Article 6) deals with the obligation of the Member States to carry out statistical analyses of the registers at the request of the Commission and to transmit the results to the Commission's Statistical Office.

41. I am not persuaded by that argument. As already mentioned, before statistical data can be transmitted to the Commission, the data must first be brought into existence. In order

for information to be useful for statistical purposes, it must obviously be gathered together in accordance with uniform criteria. It is hardly surprising therefore that many of the regulation's substantive provisions are devoted to the task of laying down common rules for assembling the information in question. That does not alter the fact that the *raison d'être* of the regulation is to enable the Commission to obtain usable data about the structure of business throughout the Community. Indeed it is difficult to see what useful purpose could be achieved by requiring the Member States to compile harmonized business registers if the information contained in the registers were not made available to the Commission or to some other Community institution. Harmonization is only necessary because it provides the Commission with usable information about the situation in the Member States and thus means that the Commission is better informed when it exercise the powers conferred on it by the Treaty.

42. There is a significant difference between the harmonization pursued by the contested regulation and the type of harmonization envisaged by Article 100A of the Treaty. The concern of Article 100A, as of Article 100, is to eliminate obstacles to trade caused by disparities in national law, such as different rules about the production of goods or about advertising. The adoption of uniform rules removes such obstacles automatically and thus contributes directly to the establishment of the internal market. The harmonization of business registers does not have the same intimate link with the internal market. It will not by itself remove barriers to trade. It will simply enable the Commission to perform its many tasks with the benefit of the enlightenment that comes only from the possession of accurate, comprehensive information. That confirms that Article 213 is a more appropriate legal basis for the contested regulation than Article 100A.

43. As to the previous practice of the Council, there are in my view material differences between the contested regulation and the two Council measures referred to by the applicant. As regards the first of them (Decision 81/971), it is clear from its terms that the principal object was to bring about, not a flow of information from Member Sates to the Commission, but an exchange of information between Member States via the Commission. Thus, Article 1 establishes an information system '*to make available to the competent authorities in the Member States* the data required for the control and reduction of pollution caused by hydrocarbons discharged at sea' (emphasis added). Article 213 alone does not seem an adequate legal basis for such a measure. A further reason for basing the decision on Article 235 as well as Article 213 is that there was at that time some doubt, as the Council has pointed out, about the competence of the Community in relation to the protection of the environ-

ment, prior to the adoption of the Single European Act.

44. As regards the second measure referred to by the applicant (Regulation No 3330/91), it is clear from the preamble and the terms of that regulation that it is much more intimately linked with the internal market than the contested regulation is. Thus, Article 1 requires the Community and the Member States to compile statistics relating to the trading of goods between Member States. The first recital in the preamble shows that the need for a new system of compiling statistics arose directly out of the completion of the internal market: following the abolition of physical barriers between Member States information on the trading of goods between Member States could no longer be obtained by checks at internal frontiers. Article 100A therefore constituted an appropriate legal basis for a fully harmonized system of collecting statistics on trade in goods. It should, moreover, be noted that Article 14 of the regulation requires the Member States to lay down penalties for persons who fail to provide statistical information as required by the regulation. It is difficult to see how a measure based on Article 213 of the Treaty could have imposed on individuals obligations enforceable by penalties.

45. I conclude that the contested regulation cannot be declared invalid on the ground that Article 213 of the Treaty was not the appropriate legal basis.

The third ground of challenge: the regulation is contrary to the principle of proportionality

46. The applicant observes that the principle of proportionality is a general principle of Community law which has been codified in the third paragraph of Article 3B of the EC Treaty, as amended by the Treaty on European Union. That provision states that:

'Any action by the Community shall not go beyond what is necessary to achieve the objectives of this Treaty.'

The applicant submits that, by virtue of the principle of proportionality, a Community measure must be a suitable means of attaining the aim pursued and must not impose on the Member States any burden that is unnecessary or out of proportion to the aim pursued.

47. According to the applicant, the contested regulation breaches the principle of proportionality in two respects. In the first place, it requires the inclusion in the business registers of unnecessary information, namely (a) data relating to 'legal units', which are alleg-

edly irrelevant for statistical purposes and (b) the turnover of enterprises as well as the number of employees. Secondly, the cost of establishing the registers is, according to the applicant, excessive.

48. The applicant bases its view that legal units are irrelevant for statistical purposes on the fact that they are not included in Council Regulation No 696/93 on the statistical units for the observation and analysis of the production system in the Community. [13] The applicant assumes therefore that the inclusion of data about legal units in the business registers can only serve some purpose other than statistical purposes. It finds confirmation of that in the eighth recital in the preamble to the contested regulation, according to which the business registers will provide a means of monitoring the accuracy of information supplied by undertakings pursuant to the Fourth and Seventh Council Directives on Company Law.

49. The applicant considers that it is unnecessary to record the turnover of undertakings in the business registers because from a statistical point of view the number of employees gives a sufficient indication of the size and importance of an undertaking; moreover, in certain sectors (e. g. banking and insurance) turnover is an unrealistic criterion.

50. The applicant considers that the cost of establishing business registers is out of proportion to the benefits to be derived from the existence of harmonized Community statistics. That view is based on a study carried out by the German Statistical Office on the feasibility of establishing and maintaining harmonized business registers. According to that study, which was based on 1977 prices, the average cost per undertaking would be DM 23 to establish the register and DM 11 to maintain the register. The total cost of the register would be DM 43.7 million without allowing for inflation or for the increase in the territory of the Federal Republic as a result of German reunification. The applicant estimates that it would take between five and seven years to establish the register.

51. My views on these issues are as follows.

52. The principle of proportionality certainly applies and is embodied in Article 213 itself, which allows the Commission to collect information and carry out checks *required* for the performance of the tasks

13 — Cited above in note 3.

entrusted to it. However, I do not believe that the regulation can be struck down on grounds of proportionality because it requires information about 'legal units' to be included on the business registers. In my view, it cannot be inferred from Regulation No 696/93 that legal units are irrelevant for statistical purposes. Section I of the annex to that regulation lists eight 'statistical units of the production system' including the enterprise and the local unit but not the legal unit. Those statistical units are defined on the basis of criteria set out in Section II of the annex. One of the criteria is the legal unit. Section III. A defines the enterprise as 'the smallest combination of legal units that is an organizational unit producing goods or services, which benefits from a certain degree of autonomy in decision-making, especially for the allocation of its current resources'. Thus the legal unit is a crucial element in the definition of the enterprise, which is one of the key concepts in both the contested regulation and Regulation No 696/93. To say that legal units are irrelevant to a statistical survey of businesses is rather like saying that electrons and protons are irrelevant to a description of the universe because everything is made of atoms.

53. Quite apart from the technical arguments based on an analysis of Regulation No 696/93, it is in my view self-evident that legal units — which are simply bodies corporate and natural persons engaged in an economic activity in their own right — are relevant for the purpose of compiling a business register designed to reflect *inter alia* 'the structure of enterprises' [14] and 'structural changes in the economy brought about by such operations as joint ventures, partnerships, buy-outs, mergers and takeovers'. [15]

54. Equally unfounded, in my view, is the applicant's argument that it should not be necessary to record the turnover of enterprises as well as the number of employees. It is sufficient to note that turnover and number of employees are universally recognized as the two key criteria for measuring the size of an undertaking. While the applicant is right to point out that turnover can be a misleading criteria in some sectors, it is equally true that the size of an undertaking's workforce can be just as misleading in some other sectors. Moreover, as the Council has pointed out, the size of the workforce may not remain such a reliable indication of an undertaking's relative importance as a result of structural changes in the economy. A final point, to which the Commission draws attention, is that the inclusion of turnover is optional for enterprises with a turnover not

14 — See the third recital in the preamble to the contested regulation.

15 — See the fourth recital.

exceeding ECU 2 million. That may be regarded as a sufficient concession to the requirements of proportionality.

55. As regards the financial burden imposed by the contested regulation, it is not easy, on the basis of the information and arguments adduced by the parties, to arrive at any firm conclusions about the cost of establishing comprehensive business registers. It is even more difficult to quantify in financial terms the benefits that such registers may be expected to produce. Such benefits certainly exist. As the Commission and Council point out, some of those benefits are described in the feasibility study referred to by the applicant. They include the fact that a comprehensive register may make certain surveys, in particular surveys related to specific sectors, otiose.

56. I am by no means convinced that the applicant is correct in its assumption that the cost of establishing a comprehensive business register can be accurately estimated simply by extrapolating the results of the feasibility study carried out by the German Statistical Office. That study related to certain sectors of the economy only. The applicant's approach disregards the possibility that some economies of scale could be achieved in the preparation of a comprehensive register and that some information could be drawn from existing registers, something which is expressly authorized by Article 7 of the contested regulation. Although the applicant claims that no comparable registers exist in Germany, it is difficult to believe that in a country with such a long tradition of sound administration the authorities are not already in possession of some of the necessary information. Most significantly, perhaps, the applicant fails to take account of the advances in data processing that have taken place since 1977. Since 75% of the estimated cost of establishing the registers is attributed to personnel costs, it is reasonable to assume that considerable savings will result from the use of advanced data processing techniques. The feasibility study itself recognizes (at p. 129) that the cost of maintaining the register will be greatly reduced by developments in the field of electronic data processing. Finally, it must be remembered that the inclusion of certain types of enterprise is optional and that a decision to exclude small enterprises may be taken under the committee procedure laid down in Article 9 of the regulation (see Article 3(1), final subparagraph).

57. In view of the above considerations I am of the opinion that the applicant has failed to show that the cost of establishing the business registers required by the contested regulation is disproportionate in relation to the benefits which the Community and the Member States are likely to derive from the

availability of accurate statistical information about the structure of the economy throughout the Community.

58. Thus the contested regulation cannot in my view be annulled on grounds of proportionality.

Conclusion

59. Accordingly, I am of the opinion that the Court should:

(1) dismiss the application;

(2) order the applicant to pay the costs, other than the costs of the Commission as intervener;

(3) order the Commission as intervener to bear its own costs.