ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE
25 November 1999 *

In Case T-222/99 R,

Jean-Claude Martinez, Member of the European Parliament, residing in Montpellier (France),

Charles de Gaulle, Member of the European Parliament, residing in Paris,

represented by François Wagner, of the Nice Bar, 2 Rue de la Poissonnerie, Nice (France),

applicants,

v

European Parliament, represented by Gregorio Garzón Clariana, Jurisconsult, Johann Schoo, Director of the Legal Service, and Hans Krück, Head of Division within the Legal Service, acting as Agents, with an address for service in Luxembourg at the Secretariat of the European Parliament, Kirchberg,

defendants,

* Language of the case: French.

APPLICATION for an order suspending the operation of the decision of the European Parliament of 14 September 1999 concerning the interpretation of Rule 29(1) of the Rules of Procedure of the European Parliament (OJ 1999 L 202, p. 1),

THE PRESIDENT OF THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES

makes the following

Order

Relevant provisions

1 Rule 29 of the Rules of Procedure of the European Parliament (OJ 1999 L 202, p. 1, hereinafter 'the Rules of Procedure'), headed 'Formation of political groups', reads:

'1. Members may form themselves into groups according to their political affinities.

2. A political group must comprise Members from more than one Member State. The minimum number of Members required to form a political group shall be

twenty-three if they come from two Member States, eighteen if they come from three Member States and fourteen if they come from four or more Member States.

3. A Member may not belong to more than one group.

4. The President shall be notified in a statement when a political group is set up. This statement shall specify the name of the group, its members and its bureau.

5. The statement shall be published in the *Official Journal of the European Communities*.'

2 By way of parliamentary rights, the Rules of Procedure (Rule 23) confer on the President of the Parliament and the chairmen of the political groups the right to attend and cast votes at the Conference of Presidents. In addition, any political group may table a motion for a resolution at the end of the debate on the election of the Commission (Rule 33), be a member of the Parliament's delegation to the Conciliation Committee (Rule 82) and give an explanation of vote lasting not more than two minutes (Rule 137).

3 The Rules of Procedure also provide that a number of initiatives may only be taken by 'a political group or by at least 32 Members', in particular as regards,

— nominations for the positions of President, Vice-Presidents and Quaestors (Rule 13);

— questions to the Council or the Commission for an oral answer (Rule 42);

— tabling a proposal for a recommendation to the Council concerning subjects under Titles V and VI of the Treaty on European Union (Rule 49);

— debates on topical and urgent subjects of major importance (Rule 50);

— renewed referral to Parliament (Rule 71);

— rejection of the Council's common position (Rule 79);

— tabling amendments to the Council's common position (Rule 80);

— a proposal to request the Commission and the Council to take part in a debate before negotiations with an applicant State commence (Rule 96);

— a proposal to request the Council not to authorise the opening of negotiations on the conclusion, renewal or amendment of an international agreement until Parliament has stated its position on the proposed negotiating mandate on the basis of a report from the committee responsible (Rule 97);

— tabling of amendments and recommendations drafted by the committee responsible within the framework of the common foreign and security policy (Rule 104);

— proposals to amend the draft agenda of Parliament (Rule 111);

— proposals for urgent debate (Rule 112);

— requests for a split vote (Rule 131);

— requests for voting by roll call (Rule 134);

— tabling amendments for consideration in plenary session (Rule 139);

— requests for referral back to committee (Rule 144);

— requests for closure of a debate (Rule 145);

— requests for adjournment of a debate (Rule 146);

— requests for suspension or closure of the sitting (Rule 147);

— contesting an interpretation of the Rules of Procedure by the committee responsible (Rule 180).

4 Rule 30 of the Rules of Procedure concerning Non-attached Members reads:

'1. Members who do not belong to a political group shall be provided with a secretariat. The detailed arrangements shall be laid down by the Bureau on a proposal from the Secretary-General.

2. The Bureau shall also determine the status and parliamentary rights of such Members.'

Factual background to the dispute and the proceedings

5 By letter of 19 July 1999, the President of the Parliament was notified of the formation of the 'Groupe Technique des Députés Indépendants (Groupe TDI) —

Groupe mixte' (Technical Group of Independent Members — Mixed Group) (hereinafter 'the TDI Group'), the declared purpose of which was to 'ensure that all Members are able to exercise their parliamentary mandates in full'.

6 The 'rules of constitution' of the TDI Group state that:

'The individual signatory members affirm their total political independence of one another. And hence:

— their freedom to vote independently both in committee and in plenary session,

— each member shall refrain from speaking on behalf of the Members of the [TDI Group] as a whole,

— the purpose of meetings of the [TDI Group] shall be to allocate speaking time and to settle any administrative and financial matters concerning the [TDI Group],

— the Bureau of the [TDI Group] shall be made up of representatives of the individual members.'

7 The President of the European Parliament announced the formation of the TDI Group at the plenary session on 20 July 1999. The presidents of the other

political groups represented in the Parliament, considering that the conditions laid down in the Rules of Procedure for the formation of political groups were not met, requested that the Committee on Constitutional Affairs should be asked to provide an interpretation. Under paragraph XV.8 of Annex VI to the Rules of Procedure, which deals with the powers of parliamentary standing committees, that committee is responsible for matters relating to the interpretation of the Rules of Procedure, in pursuance of Rules 142 and 180.

8 The Committee on Constitutional Affairs considered that the statement notifying the President of the formation of the TDI Group was not in compliance with Rule 29(1) since it 'excludes any political affinities', and proposed the following interpretation:

'It is not possible under that rule to accept the formation of a group which openly denies that it has any political character and that there are any political affinities between its members.'

9 The Parliament was informed of the interpretation given by the Committee on Constitutional Affairs under Rule 180(3) of the Rules of Procedure on 13 September 1999.

10 The TDI Group contested that proposed interpretation under Rule 180(4) of the Rules of Procedure.

11 On 14 September 1999 the Parliament adopted the interpretation of Rule 29 proposed by the Committee on Constitutional Affairs (hereinafter 'the contested decision' or 'the decision of 14 September 1999').

12 By application lodged at the Registry of the Court of First Instance on 5 October 1999, the applicants brought an action for the annulment of the decision of 14 September 1999 under Article 230 EC.

13 By a separate document lodged at the Registry of the Court of First Instance on the same day they also made the present application for interim measures, under Article 242 EC, by which they are seeking suspension of the operation of the decision of 14 September 1999.

14 The Parliament submitted its observations on that application on 14 October 1999.

15 The parties presented oral argument on 18 October 1999. At the hearing the representative of the Parliament put forward two proposed amendments to the Rules of Procedure that were submitted by some of the Members under Rule 181; the object of those proposals was to enable Members who do not belong to a political group to sit as of right in a single group known as a 'mixed group'.

16 At the end of the hearing the representative of the Parliament was asked to inform the President of the Court of First Instance within one month of 18 October 1999 on progress made in considering the proposals to amend the Rules of Procedure, and the representative of the applicants was asked about the applicants' views on the possible adoption of those proposals.

17 On 21 October 1999 the representative of the applicants stated that the latter would withdraw their application for interim measures if the proposed amendments to the Rules of Procedure were adopted.

18 On 12 November 1999 the Parliament indicated that the Committee on Constitutional Affairs was planning an initial exchange of views at its meeting on 22 and 23 November 1999 on the basis of a report from the rapporteur, and that it was not aware either of the date of the adoption of the report in that committee or of the approach contemplated by the rapporteur.

19 On 17 November 1999 the Parliament was called upon to submit a record of the proceedings of that meeting to the President of the Court of First Instance by 24 November 1999.

20 On 24 November 1999 the Parliament stated that at that meeting the members of the Committee on Constitutional Affairs had had an initial exchange of views on the proposals to amend the Rules of Procedure and the status of Non-attached Members. It noted that since not all speakers had had the opportunity to address that meeting the discussion that had been initiated would be continued at the next meeting.

Law

21 Under the provisions of Article 242 EC in conjunction with Article 243 EC and Article 4 of Council Decision 88/591/ECSC, EEC, Euratom of 24 October 1988 establishing a Court of First Instance of the European Communities (OJ 1988 L 319, p. 1), as amended by Council Decision 93/350/Euratom, ECSC, EEC of 8 June 1993 (OJ 1993 L 144, p. 21), the Court of First Instance may, if it considers that circumstances so require, order that application of a contested decision be suspended or prescribe other necessary interim measures.

22 Article 104(2) of the Rules of Procedure of the Court of First Instance provides that an application for interim measures must state the circumstances giving rise to urgency and the pleas of fact and law establishing a prima facie case for the interim measures applied for. Those conditions are cumulative, so that an application for suspension of operation must be dismissed if either of those conditions is not met (order of the President of the Court of First Instance in Case T-70/99 R *Alpharma* v *Council* [1999] ECR II-2027, paragraph 42). The President of the Court of First Instance will also, where appropriate, weigh up the interests at stake (order of the President of the Court of Justice in Case C-107/99 R *Italy* v *Commission* [1999] ECR I-4011, paragraph 59).

Arguments of the parties

Admissibility

23 The Parliament claims that the main application is inadmissible and that therefore the application for suspension which derives from it must be dismissed as inadmissible.

24 First, the contested decision is an internal matter for the Parliament. Such a decision cannot be challenged under the first paragraph of Article 230 EC, which provides that the Court shall review the legality of acts of the Parliament 'intended to produce legal effects vis-à-vis third parties', that is to say only acts adopted under its decision-making powers in the sphere of the Treaty. On the other hand, acts arising from the Parliament's power to determine its own internal organisation cannot be challenged (judgment of the Court of Justice in Case 230/81 *Luxembourg* v *Parliament* [1983] ECR 255).

25 In this connection, the reference made by the applicants to the judgment of the Court of Justice in Case 208/80 *Lord Bruce of Donington* [1981] ECR 2205 is not relevant, in particular because the Court of Justice affirmed in that judgment the Parliament's independence for the purpose of adopting provisions concerning its internal functioning, an independence which it enjoys under the first paragraph of Article 199 EC, which provides that 'the European Parliament shall adopt its Rules of Procedure, acting by a majority of its Members'. That judgment moreover concerned the individual rights of Members vis-à-vis the powers of the Member States in fiscal matters.

26 The disputes that gave rise to the judgments of the Court of Justice in Cases 68/86 *United Kingdom* v *Council* [1988] ECR 855 and C-137/92 P *Commission* v *BASF and Others* [1994] ECR I-2555, on which the applicants rely in their action in the main proceedings as a basis for their claim that infringement of a provision of the Rules of Procedure in the adoption of a substantive act may affect the legality of that act where the rule that is infringed constitutes an essential procedural requirement within the meaning of Article 230 EC, related to the Rules of Procedure of the Council and of the Commission and concerned the Community legislative process and competition policy respectively.

27 Furthermore, the contested decision is only a general interpretation, under Rule 180 of the Rules of Procedure, of an act of general application. Moreover, in the present case that interpretation is only of declaratory value.

28 The admissibility of an action by a natural or legal person against an act of general application is conditional upon that act being in reality a decision which is of direct and individual concern to the applicant (order of the Court of First Instance in Case T-39/98 *Sadam Zuccherifici and Others* v *Council* [1998] ECR II-4207, paragraph 17).

29 In this connection, the applicants claim that they cannot properly exercise their mandates and are directly concerned by the contested act since that act reduces

them to 'second class' Members. However, that statement fails to take account of the rules of operation introduced by the Rules of Procedure, which rely on a distinction between Members as individuals and the political groups. In this particular case, only the benefits accorded to political groups are in issue and not the individual rights of the Members (in particular the right to vote and the parliamentary allowances).

30 Moreover, the rules for Non-attached Members were drafted in the light of the requirements of the Parliament's internal functioning. The present situation is therefore not comparable with the situation which gave rise to the judgment of the Court of Justice in Case C-314/91 *Weber* v *Parliament* [1993] ECR I-1093, paragraph 8 et seq.

31 Similarly, the argument that the decision of 14 September 1999 is of direct concern to the applicants on the ground that it is enforceable is unfounded. Nor do the applicants take account of the possibility open to Members of the Parliament to propose amendments to the Rules of Procedure under Rule 181(1) of those Rules.

32 Lastly, the Parliament states that the application for interim measures was lodged by two Members on their own behalf and not on behalf of the TDI Group. Since the decision of 14 September 1999 does not affect their parliamentary rights that decision is not of direct and individual concern to them.

33 The applicants claim, in essence, that the contested decision has legal effects with regard to third parties by restricting the prerogatives of some Members of the Parliament and considerably reducing democracy within the European Union.

34 They cannot properly exercise their mandates and are directly affected by the decision of 14 September 1999 since that decision reduces their status to that of

'second class' Members. The applicants refer to the judgments of the Court of Justice in Case 294/83 *Les Verts* v *Parliament* [1986] ECR 1339, and in Joined Cases C-213/88 and C-39/89 *Luxembourg* v *Parliament* [1991] ECR I-5643.

Prima facie case

35 The applicants state, first, that the contested decision amounts to discrimination against Members who do not belong to a political group.

36 Membership of a political group does indeed entail advantages with regard to the extent of parliamentary and administrative prerogatives.

37 So far as parliamentary prerogatives are concerned, they point out that under the Rules of Procedure only political groups are entitled to attend the Conference of Presidents with a right to vote (Rule 23) and they also refer to certain initiatives, referred to above (paragraph 3), that can only be taken by a political group or by at least 32 Members.

38 In addition, positions as members of committees and delegations are not allocated until after the demands of the political groups have been met, and Non-attached Members must content themselves with those positions which remain vacant. This exclusion of Non-attached Members is even more evident within a group of bodies, in particular, the ad hoc delegations set up by the Conference of Presidents.

39 As regards administrative prerogatives, the applicants state that unlike the political groups Non-attached Members cannot hold regular meetings with

interpreters outside the Parliament's places of work and they receive on average a budget for administrative expenses which is three times lower than that of Members belonging to a political group. Furthermore, the staff of the secretariat of the Non-attached Members are directly accountable to the administration of the Parliament and hence do not enjoy autonomy comparable to that of the staff of the political groups.

40 The contested decision merely confirms the various types of discrimination against Non-attached Members already mentioned and makes their position weaker.

41 Second, the applicants claim that the contested decision conflicts with the Community legal order and the state of substantive law. In particular, the Rules of Procedure should not be interpreted so restrictively when mixed groups are implicitly accepted by the Parliament.

42 The exclusive determination by the Parliament of 'political affinities' within the TDI Group prevents Members from enjoying equal rights and distorts the Rules of Procedure, thereby transforming organisation of Members on the basis of political groups into an instrument of discrimination.

43 Thus, on the one hand, legal certainty is prejudiced, and in particular the principle of the protection of legitimate expectations, which Community authorities are required to observe where the attitude of the institutions may have given rise to justified expectations on the part of the applicant. In this case the contested decision conflicts with the custom of approving mixed groups. Thus, the Group for the Technical Coordination of Independent Groups and Members was approved in 1979, the Group for the Technical Coordination and Defence of Independent Groups and Members was approved in 1987, and so at the present time has been the Group for a Europe of Democracies and Diversities.

44 The decision of 14 September 1999 also infringes the fundamental right of freedom of association guaranteed under Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, and the principle of equal treatment. As regards this last aspect, the applicants claim that the Parliament is setting itself up as a judge of Members' 'political affinities' and that the political decision it has taken must be regarded as arbitrary.

45 The Parliament contends that the pleas put forward by the applicants are manifestly unfounded.

46 It points out, first, that the TDI Group does not meet one of the essential conditions required in order to be held to constitute a political group, a condition which is laid down in the rules of procedure of most of the parliaments of the Member States, namely the existence of political affinity between its members, intended to permit the implementation of common political ideas through traditional parliamentary procedures. The TDI Group has clearly indicated that it does not wish to avail itself of the rights conferred on political groups and that it pursues the sole objective of being able to secure for its members the administrative and financial advantages granted to those belonging to such groups. Acceptance of the formation of the TDI Group would deprive Rule 29(1) of all practical effect and deprive political groups of their essential and characteristic purpose, namely the joint defence of the political ideas shared by their members.

47 The Parliament goes on to say that advantages are conferred on political groups by reason of the role they are called upon to play in parliamentary life, a role which Non-attached Members cannot play.

48 According to the Parliament, the reason for which the funds made available to Non-attached Members are less than those allocated to political groups is that the former have a single secretariat whereas each of the political groups has its own secretariat. The absence of a common political structure also means that Non-

attached Members cannot be given the task of an appointing authority within the meaning of Article 2 of the Staff Regulations of Officials of the European Communities, or of an authority empowered to conclude contracts of employment within the meaning of Article 6 of the Conditions of Employment of Other Employees.

49 The Parliament also denies that it failed to comply with the principle of legal certainty. It maintains that interpretation of the criteria of Rule 29 is an aspect for political assessment by the competent authorities, and so that the Community judicature can substitute its assessment for that of those authorities only where there is a manifest error, which is not the case here.

50 As regards the so-called mixed groups that had existed during previous legislatures, it points out that, under the provisions of Article 199 EC in conjunction with Rule 180, each Parliament is master of its own rules of procedure, subject to possible review by the Community judicature, and the Parliament has never been faced with such a manifest case of lack of any political affinities. Thus, according to the Parliament, the 1979 Technical Group was made up of members who at the time were somewhat opposed to European integration. The Technical Group formed for a period of two months in 1987 did not have the same disparity between its members as that which exists between the members of the TDI Group. So far as the present-day Group for a Europe of Democracies and Diversities is concerned, no political divergencies have so far been identified justifying denial of a political affinity between its members.

51 Lastly, the Parliament denies that it has failed to respect fundamental rights. In particular, the European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 11 of which is cited by the applicants, does not apply in this case since it is designed only to protect the rights of an individual vis-à-vis the State.

Urgency

52 The applicants contend that the urgency requirement is satisfied since, due to the time-limit imposed on their mandates, it is necessary for them to be allowed to take part in the work of the Parliament immediately, with the same rights and advantages as other parliamentarians who are members of political groups.

53 According to the Parliament, this argument by no means meets the criteria laid down in the case-law (see in particular the order of the President of the Court of First Instance in Case T-155/96 R *Ville de Mayence* v *Commission* [1996] ECR II-1655, paragraph 19). The applicants have not stated in what way implementation of the contested decision is likely to lead to serious and irreparable damage.

54 Moreover, the facilities granted to political groups for greater participation in the work of the Parliament can only be profitably exercised where the members of those groups hold common political convictions. This is not the case as regards the TDI Group, which is claiming rights to participate in policy-making, something which is prohibited under its own rules of procedure. Its sole common objective is therefore to be able to benefit from the same speaking time as is allocated to other political groups, even though those groups do not have any privileges in this respect, as is apparent from Rule 120 of the Rules of Procedure. Thus, the TDI Group cannot profitably benefit from the parliamentary rights reserved to the political groups.

55 Since there are no rights to be exercised, refusal to grant such non-existent rights cannot give rise to serious and irreparable damage such as to justify suspension of the contested decision.

56 Moreover, no need has been established for the suspension applied for as regards administrative and financial advantages. Such advantages would only be 'ancillary' opportunities, which only the real political groups could enjoy.

57 In addition, it is settled case-law that financial damage cannot, except in exceptional circumstances, be regarded as irreparable, or even reparable with difficulty, when it can be the subject of financial compensation in the future.

58 Since the applicants have not given any indication either of the imminence of financial damage or of the existence of exceptional circumstances their application for suspension of the contested decision is not justified and hence the Court of First Instance cannot grant it.

Findings of the President of the Court of First Instance

Admissibility

59 Under the second subparagraph of Article 104(1) of the Rules of Procedure, an application for interim measures is admissible only if it is made by a party to a case before the Court of First Instance. That rule is not a mere formality but means that the main application from which the application for interim measures is derived must be one that can in fact be examined by the Court of First Instance.

60 It is settled case-law that in principle the issue of the admissibility of the main application should not be examined in proceedings relating to an application for interim measures so as not to prejudge the substance of that case. However that may be, where, as in this case, it is contended that the main application from

which the application for interim measures is derived is manifestly inadmissible, it may prove to be necessary to establish the existence of certain factors which would justify the prima facie conclusion that the main application is admissible (see in particular orders of the President of the Court of Justice in Case 221/86 R *Group of the European Right and National Front Party* v *Parliament* [1986] ECR 2969, paragraph 19 and in Case 376/87 R *Distrivet* v *Council* [1988] ECR 209, paragraph 21; orders of the President of the Court of First Instance in Case T-6/95 R *Cantine dei colli Berici* v *Commission* [1995] II-647, paragraph 26 and *Alpharma* v *Council*, cited above, paragraph 114).

61 The first paragraph of Article 230 EC provides that the Court of Justice is to review, in particular, the legality of acts adopted by the European Parliament which are intended to produce legal effects *vis-à-vis* third parties. That provision is designed in particular to submit for review by the Community judicature measures adopted by the Parliament in the context of the EC Treaty which might encroach on the powers of the Member States or of the other institutions, or exceed the limits which have been set to the Parliament's powers (judgment in *Les Verts* v *Parliament*, cited above, paragraph 25). On the other hand, measures which relate only to the internal organisation of the work of the Parliament cannot be challenged in an action for annulment (orders of the Court of Justice in Case 78/85 *Group of the European Right* v *Parliament* [1986] ECR 1753, paragraph 11, in Case C-68/90 *Blot and National Front* v *Parliament* [1990] ECR I-2101, paragraph 11, and judgment in *Weber* v *Parliament*, cited above, paragraph 9). This category also includes acts of the European Parliament which either do not have legal effects or have legal effects only within the Parliament as regards the organisation of its work and are subject to review procedures laid down in its Rules of Procedure (judgment in *Weber* v *Parliament*, cited above, paragraph 10).

62 In the present case, the main application challenges the legality of the decision of 14 September 1999 adopting the interpretation of Rule 29 proposed by the Committee on Constitutional Affairs after a procedure initiated following the statement made to the President of the Parliament regarding the formation of the TDI Group.

63 It must first be observed that the contested decision was adopted by a majority of the Members of the Parliament and must therefore be regarded as a measure

adopted by the Parliament itself (see, by analogy, judgment in *Les Verts* v *Parliament*, cited above, paragraph 20).

64 It should next be considered whether or not it is liable to have legal effects only within the Parliament itself as regards the organisation of its work.

65 In this connection, the interpretation of Rule 29 approved by the contested decision means that it is impossible for certain Members to constitute a political group within the meaning of that Rule, so that the Members concerned, who include the applicants, do not enjoy the same parliamentary and administrative prerogatives as are granted to Members belonging to a political group and cannot therefore perform their parliamentary duties under the same conditions as those under which the latter perform theirs. The contested decision therefore has legal effects as regards the applicants in particular.

66 Moreover, it should be pointed out that the Court of Justice has ruled that the purpose of the rules of procedure of a Community institution is to organise the internal functioning of its services in the interests of good administration. The rules laid down, particularly with regard to the organisation of deliberations and the adoption of decisions, have therefore as their essential purpose to ensure the smooth conduct of the procedure while fully respecting the prerogatives of each of the members of the institution (judgment of the Court of Justice in Case C-69/89 *Nakajima* v *Council* [1991] ECR I-2069, paragraph 49).

67 Even in the light of that case-law, and although Rule 29 is, admittedly, designed essentially to organise the work of Members of the Parliament, it cannot be ruled out that the decision of 14 September 1999 may be regarded as a measure having

legal effects going beyond the internal organisation of the work of the Parliament, since it deprives certain Members of that institution of the opportunity of exercising their parliamentary mandates under the same conditions as Members belonging to a political group and thus prevents them from participating in the process leading to the adoption of Community acts as fully as the latter.

68 As for the question whether the contested decision is of individual and direct concern to the applicants under the conditions laid down in the fourth paragraph of Article 230 EC, it is sufficient to point out, on the one hand, that the interpretation contained in the decision of 14 September 1999 was applied for after an objection was lodged by the presidents of the political groups represented within the Parliament following the statement that the TDI Group, to which the applicants belonged, had been set up. Moreover, that interpretation directly prevents the applicants from belonging to the TDI Group, since the latter had ceased to exist as a political group within the meaning of Rule 29 following the adoption of that decision.

69 There is therefore a strong case for considering that the main application may be admissible. In that connection, it is necessary to take into account the case-law of the Court of Justice to the effect that the European Community is a community based on the rule of law, in that neither its Member States nor its institutions can avoid a review of the question whether the measures adopted by them are in conformity with the basic constitutional charter, the Treaty, and that the Treaty established a complete system of legal remedies and procedures designed to permit the Court of Justice to review the legality of measures adopted by the institutions (judgments in *Les Verts* v *Parliament*, cited above, paragraph 23 and *Weber* v *Parliament*, cited above, paragraph 8; judgment of the Court of Justice in Case C-314/85 *Foto-Frost* [1987] ECR 4199, paragraph 16 and order of the Court of Justice in Case C-2/88 IMM *Zwartveld and Others* [1990] ECR I-3365, paragraph 16).

70 The present application for interim measures should therefore be declared admissible.

Prima facie case

71 It must first be observed that, in response to a question raised by the President of the Court of First Instance at the hearing, the applicants confirmed that they were not lodging an objection of illegality under Rule 29. Their argument was, in essence, that the interpretation of Rule 29 approved by the Parliament on 14 September 1999 is contrary to the established interpretation of that provision, which is that there has never been any prohibition on setting up mixed groups. Thus, by making it impossible for the TDI Group to be set up the interpretation of Rule 29 adopted by the Parliament on 14 September 1999 infringes, in particular, the general principle of equal treatment.

72 In that connection, Rule 29(1), by stating that Members may form themselves into groups according to their political affinities, does not in itself preclude the Parliament from taking different views, on the basis of all the relevant facts, of the various statements made to the President of the Parliament regarding the formation of political groups. Different treatment of that nature can be regarded as constituting prohibited discrimination only if it appears to be arbitrary.

73 In this case, as the Parliament claims, the rules under which the TDI Group was set up indicate that 'the various signatory members affirm their total political independence of one another', a statement which is capable of justifying objectively the different treatment accorded to the TDI Group.

74 However, it must be observed that the Parliament, as constituted following the last election, did not oppose the formation of the Group for a Europe of Democracies and Diversities, which the applicants claim is a mixed group. The Parliament states in this connection that it has so far been unable to identify any political differences between the members of that group which would justify denying they have political affinities, and merely states that 'it is apparent from its draft rules that there is a certain political affinity between the group's members', without however producing any documentary evidence in support or offering to provide such evidence.

75 The possibility remains therefore that the Parliament has discriminated arbitrarily against the applicants by preventing them from forming the TDI Group, a group in which they intended to combine with other Members. It should be added in this connection that it is clear from the applicants' statements — and the defendant has not adduced any evidence to the contrary — that political groups of a technical nature have been allowed since 1979.

76 Moreover, it should be pointed out that although the significance of the political parties is expressly acknowledged in Article 191 EC, according to which: 'political parties at European level are important as a factor for integration within the Union' and 'contribute to forming a European awareness and to expressing the political will of the citizens of the Union', that article does not require the Parliament to interpret Rule 29 as meaning that it prohibits Members with differing political views from combining in order to enjoy the prerogatives granted to political groups.

77 It follows that the applicants' plea of infringement of the principle of equal treatment cannot prima facie be regarded as being wholly groundless and justifies the President of the Court of First Instance considering the other conditions for granting suspension of operation of the contested decision.

Urgency and the balance of interests

78 The objective of the application for interim measures lodged by the applicants is to enable them to exercise their mandates with the rights and advantages pertaining to membership of a political group pending the judgment of the Court of First Instance on the application for the annulment of the decision of 14 September 1999 which prevents recognition of the TDI Group as a political group.

79 It is common ground that the purpose of proceedings for interim relief is to ensure that the judgment on the substance has full effect. In order to attain that objective the measures sought must be urgent in the sense that it is necessary, in order to avoid serious and irreparable damage to the interests of the applicant, that the measures should be ordered and should take effect before the judgment in the main proceedings (order of the President of the Court of Justice in Case C-65/99 P(R) *Willeme* v *Commission* [1999] ECR I-1857, paragraph 62; order of the President of the Court of First Instance in Case T-167/99 R *Giulietti* v *Commission* [1999] ECR-SC I-A-139, II-751, paragraph 29).

80 If the decision of 14 September 1999 is not suspended, serious damage will be caused to the applicants since they are unable to enjoy the rights and advantages conferred on political groups and are therefore unable to speak as representatives of the citizens of the Member States of the Community under the same conditions as Members who belong to a political group. The damage is all the more serious because the time taken to investigate and dispose of the case in the main proceedings, time during which it cannot be ruled out that the applicants might suffer discrimination, may represent a not insignificant portion of their limited term of office.

81 Such damage is also irreparable in that even if the decision of 14 September 1999 is annulled at the end of the main proceedings this will not remedy the situation.

82 Moreover, suspension of the operation of the decision of 14 September 1999 until the Court of First Instance has given judgment on the main application, since it would have the effect of enabling the TDI Group to receive the same treatment as the Group for a Europe of Democracies and Diversities and the political groups formed since 1979 mentioned above (paragraph 43), cannot adversely affect the organisation of the work of the defendant. In this connection, it should be pointed out that the treatment accorded to those various political groups is a factor weighing in favour of the applicants' application, which can be taken into account when balancing the interests involved, since the Parliament has not established the existence of political affinities between the members of those groups, although they have been allowed to be set up, or even produced copies of their rules.

83 The necessary conditions are therefore satisfied for ordering the suspension applied for.

On those grounds,

THE PRESIDENT OF THE COURT OF FIRST INSTANCE

hereby orders:

1. **The decision of the European Parliament of 14 September 1999 by which the Parliament adopted the interpretation of Rule 29 of its Rules of Procedure proposed by the Committee on Constitutional Affairs is suspended.**

2. The costs are reserved.

Luxembourg, 25 November 1999.

H. Jung

Registrar

B. Vesterdorf

President