ORDER OF THE COURT
3 April 2000 *

In Case C-376/98,

Federal Republic of Germany, represented by C.-D. Quassowski, Regierungsdirektor in the Federal Ministry of Finance, acting as Agent, assisted by J. Sedemund, Rechtsanwalt, Berlin, with an address for service at the Federal Ministry of Economic Affairs, Referat EA2, D—53107 Bonn,

applicant,

v

European Parliament, represented by C. Pennera, Head of Division in the Legal Service, and N. Lorenz, of that Service, acting as Agents, with an address for service in Luxembourg at the General Secretariat of the European Parliament, Kirchberg,

and

Council of the European Union, represented by R. Gosalbo Bono, Director of the Legal Service, A. Feeney and S. Marquardt, also of the Legal Service, acting as Agents, with an address for service in Luxembourg at the office of A. Morbilli,

* Language of the case: German.

General Counsel of the Legal Affairs Directorate in the European Investment Bank, 100 Boulevard Konrad Adenauer,

defendants,

supported by

French Republic, represented by J.-F. Dobelle, Assistant Director in the Legal Affairs Directorate of the Ministry of Foreign Affairs, and R. Loosli-Surrans, Chargé de Mission in that Directorate, acting as Agents, with an address for service in Luxembourg at the French Embassy, 8B Boulevard Joseph II,

Republic of Finland, represented by H. Rotkirch and T. Pynnä, Valtionasiamiehet, acting as Agents, with an address for service in Luxembourg at the Finnish Embassy, 2 Rue Heinrich Heine,

United Kingdom of Great Britain and Northern Ireland, represented by M. Ewing, of the Treasury Solicitor's Department, acting as Agent, with an address for service in Luxembourg at the British Embassy, 14 Boulevard Roosevelt,

and by

Commission of the European Communities, represented by I. Martínez del Peral and U. Wölker, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of C. Gómez de la Cruz, also of its Legal Service, Wagner Centre, Kirchberg,

interveners,

APPLICATION for the annulment of Directive 98/43/EC of the European Parliament and of the Council of 6 July 1998 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the advertising and sponsorship of tobacco products (OJ 1998 L 213, p. 9),

THE COURT,

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

Advocate General: N. Fennelly,
Registrar: R. Grass,

after hearing the views of the Advocate General,

makes the following

Order

1 By application lodged with the Court Registry on 19 October 1998, the Federal Republic of Germany brought an action under Article 173, first paragraph, of the EC Treaty (now, after amendment, Article 230, first paragraph, EC) seeking the annulment of Directive 98/43/EC of the European Parliament and of the Council

of 6 July 1998 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the advertising and sponsorship of tobacco products (OJ 1998 L 213, p. 9) ('the directive').

2 In these proceedings, the Council and Parliament, the defendants, requested, in a letter of 30 June 1999 and in their rejoinders respectively, that the documents produced by the German Government as Annexes 2, 4 and 5 to its reply be removed from the case-file.

3 Annexes 2, 4 and 5 to the reply are three applications by which three companies instituted proceedings against the Parliament and Council before the Court of First Instance seeking annulment of the directive.

4 The Council submits that production of those applications infringes the principle of the confidentiality of legal proceedings. Further, by having raised, in each of those cases, an objection of inadmissibility under Article 114(1) of the Rules of Procedure of the Court of First Instance and having called on that Court, pursuant to Article 77(a) of its Rules of Procedure, to stay the proceedings until the Court of Justice has delivered judgment in the present case, the Council takes the view that production of those applications constitutes an infringement or, at the very least, a circumvention of those provisions, given that the German Government is expressly using those applications to shore up its own arguments.

5 The Parliament likewise takes the view that production of those applications by the German Government in support of its arguments on the facts, regarding the economic repercussions of the directive, and, in the case of Annex 5, to support the legal arguments set out in its application infringes the principle that the case-files in legal proceedings are confidential, given that the Federal Republic of

Germany is neither a party to, nor an intervener in, the cases brought before the Court of First Instance. The Parliament is for that reason unable to understand how the German Government could have acquired those applications.

6 The Parliament argues that the attitude displayed by the German Government infringes the autonomy of the Court of First Instance. On the one hand, the Court of First Instance is required to rule on objections of inadmissibility raised in those cases. On the other, since the Parliament has requested the Court of First Instance to stay the proceedings before it pending judgment in the present case, even if the Court of First Instance were not to dismiss those actions as inadmissible it would still have to decide whether the proceedings ought to be stayed before the Court of Justice could take those three applications into account. According to the Parliament, the principles of the proper administration of justice and of respect for the autonomy of the Court of First Instance accordingly require that no account be taken of the three annexes in question.

7 The Parliament considers that, by means of those annexes to the reply of the German Government, whose action is not vitiated by inadmissibility, account will thus be taken of the views of the three applicants before the Court of First Instance. Such a step would, moreover, contribute to having those cases brought before the Court of Justice, as those applicants request in the forms of order which they seek, without even awaiting the decision of the Court of First Instance.

8 In its observations of 31 August 1999 on the Council's request, the German Government first of all argues that all of the companies that have brought actions before the Court of First Instance sent to it copies of their applications for purposes of information and accepted that those applications be annexed to the German Government's reply. It submits that the confidential nature of an application depends exclusively on the decision of the applicant and that there is no general principle of confidentiality of judicial proceedings, with the consequence that there can be no infringement of any such principle. Finally, those applications were annexed in order better to illustrate the outline of the facts, which corresponds to a well-known and widely-applied procedural practice

and differs in no wise from the conduct of the Council, which annexed to its rejoinder documents intended to reinforce its own outline of the facts.

9 The arguments put forward by the Council and the Parliament must be rejected.

10 So far as infringement of the principle of confidentiality is concerned, there is no rule or provision under which parties to proceedings are authorised to or prevented from disclosing their own written submissions to third parties. Apart from exceptional cases where disclosure of a document might adversely affect the proper administration of justice, which is not the case here, the principle is that parties are free to disclose their own written submissions.

11 In the present case, the applicant companies in the cases pending before the Court of First Instance authorised the German Government to produce their applications before the Court of Justice.

12 As for the argument that, were the annexes in question to be held to be admissible and taken into account in the present case, the Court of Justice would be overriding the objections of inadmissibility raised by the Parliament against those applications before the Court of First Instance, suffice it to point out that consideration by the Court of Justice of such annexes does not imply any opinion on the objections raised and that there was nothing to prevent the German Government from including in its reply all material featuring in the annexes concerned.

13 Finally, it is necessary to reject the argument that consideration of the annexes would have the practical effect that the cases pending before the Court of First Instance would be brought before the Court of Justice even before the Court of First Instance has decided whether the proceedings in those cases should be stayed. Consideration of those annexes by the Court does not mean that it will be involved in examining the cases pending before the Court of First Instance. The utility of those annexes will be limited to supporting the pleas set out in the reply itself.

14 In view of the foregoing, the application for removal of Annexes 2, 4 and 5 attached by the German Government to its reply must be dismissed.

On those grounds,

THE COURT

hereby orders:

1. **The application for removal of Annexes 2, 4 and 5 attached by the German Government to its reply is dismissed;**

2. **The costs are reserved.**

Luxembourg, 3 April 2000.

R. Grass

Registrar

G.C. Rodríguez Iglesias

President