ORDER OF THE COURT
29 June 1994 *

In Case C-120/94 R,

Commission of the European Communities, represented by C. Timmermans, Assistant Director-General of the Legal Service, S. Van Raepenbusch and E. Buissart, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of G. Kremlis, of the Legal Service, Wagner Centre, Kirchberg,

applicant,

v

Hellenic Republic, represented by G. Kranidiotis, Secretary-General for Community Affairs at the Ministry of Foreign Affairs, K. Ioannou, V. Skouris and S. Perrakis, University professors, acting as Agents, with an address for service in Luxembourg at the Greek Embassy, 117 Val Sainte-Croix,

defendant,

APPLICATION for interim measures ordering the Hellenic Republic to suspend, pending judgment in the main action, the measures adopted on 16 February 1994 with regard to the former Yugoslav Republic of Macedonia,

* Language of the case: Greek.

THE COURT,

composed of: O. Due, President, G. F. Mancini, J. C. Moitinho de Almeida, M. Diez de Velasco, D. A. O. Edward (Presidents of Chambers), C. N. Kakouris, R. Joliet, F. A. Schockweiler, G. C. Rodríguez Iglesias (Rapporteur), F. Grévisse, M. Zuleeg, P. J. G. Kapteyn and J. L. Murray, Judges,

Advocate General: F. G. Jacobs,
Registrar: D. Louterman-Hubeau, Principal Administrator,

after hearing the Advocate General,

makes the following

Order

1 By application lodged at the Court Registry on 22 April 1994, the Commission of the European Communities brought an action under the second paragraph of Article 225 of the EC Treaty for a declaration that the Hellenic Republic had made improper use of the powers provided for in Article 224 of the EC Treaty in order to justify the unilateral measures adopted on 16 February 1994 prohibiting trade, in particular via the port of Thessaloniki, of products originating in, coming from or destined for the former Yugoslav Republic of Macedonia and imports into Greece of products originating in or coming from that Republic, and that by so doing it had failed to fulfil its obligations under Article 113 of the EC Treaty and under the common export rules laid down in Council Regulation (EEC) No 2603/69 of 20 December 1969 (OJ, English Special Edition 1969 (II), p. 590), the common import rules laid down in Council Regulation (EEC) No 288/82 of 5 February 1982 (OJ 1982 L 35, p. 1), the arrangements applicable to imports into the Community of products originating in the Republic of Bosnia-Herzegovina, the Republic of Croatia, the Republic of Slovenia and the former Yugoslav Republic of Macedonia, laid down in Council Regulation (EC) No 3698/93 of 22 December 1993 (OJ 1993 L 344, p. 1) and the Community transit rules laid down in

Council Regulation (EEC) No 2726/90 of 17 September 1990 (OJ 1990 L 262, p. 1).

2 On the same day the Commission lodged an application at the Court Registry under Article 186 of the Treaty and Article 83 of the Rules of Procedure for an order requiring the Hellenic Republic to suspend, pending judgment in the main action, the measures adopted on 16 February 1994 with regard to the former Yugoslav Republic of Macedonia.

3 The Greek Government submitted its written observations on the application for interim measures on 24 May 1994.

4 By decision of 1 June 1994 the President of the Court referred the application for interim measures to the Court in accordance with the first paragraph of Article 85 of the Rules of Procedure.

5 The oral observations of the parties were heard *in camera* on 14 June 1994.

I — Background

6 The former Yugoslav Republic of Macedonia ('FYROM') declared its independence on 17 September 1991 following a referendum held on 8 September 1991.

7 Articles 3 and 49 of the Constitution of the FYROM and Amendments I and II thereto are as follows:

'Article 3

The territory of the Republic of Macedonia is indivisible and inalienable.

The existing borders of the Republic of Macedonia are inviolable.

They may only be altered in accordance with the Constitution.'

'Article 49

The Republic shall safeguard the status and rights of citizens of neighbouring countries who are of Macedonian origin and of Macedonian expatriots, shall assist their cultural development and shall promote relations with them.

The Republic shall safeguard the cultural, economic and social rights of citizens of the Republic abroad.'

'Amendment I

1. The Republic of Macedonia has no territorial ambitions with regard to neighbouring countries.

2. The borders of the Republic of Macedonia may only be altered in accordance with the Constitution, and with the principle of goodwill and generally recognized international norms.

3. Point 1 of this amendment complements Article 3; point 2 replaces the third paragraph of Article 3 of the Constitution of the Republic of Macedonia.'

'*Amendment II*

1. In so doing the Republic shall not interfere with the sovereign rights of other States nor in their internal affairs.

2. This amendment complements the first paragraph of Article 49 of the Constitution of the Republic of Macedonia.'

8 The Hellenic Republic maintains that the FYROM has systematically endeavoured to promote the idea of a unified Macedonia. The Greek Government cites the circulation of maps, calendars and car stickers showing not only the territories of the FYROM but a larger area reaching to the Aegean sea and embracing the town of Thessaloniki and Mount Olympus with the names of places in Greek Macedonia appearing under the name they bore at the time of the Ottoman era. It also states that new school history books were published between 1992 and 1993 by the Minister of Education of the FYROM which treat Greek Macedonian territory, and the Bulgarian Pirin district, as forming an integral part of a single national and geographical entity, including the FYROM.

9 The Greek Government adds that in August 1992 the parliament of the FYROM adopted as the emblem on the national flag the 'Sun of Vergina', an emblem which was discovered in the course of excavations at Vergina, in Greek Macedonia, in 1977.

10 The FYROM's conduct led to tension between it and the Hellenic Republic, which, together with the Greek people, interpreted it as hostile and provocative conduct damaging not only to relations between the two States, but also to the history and traditions of all the Balkans.

11 Accordingly, the Hellenic Republic requested the FYROM not to use the name Macedonia, to remove the Greek symbol (the Star of Vergina) from its flag, to renounce territorial claims against the Hellenic Republic and to cease all propaganda hostile to the Hellenic Republic.

12 On 16 December 1991 the Council of the European Communities laid down the following conditions for recognition (Declaration on Yugoslavia issued by the Extraordinary Ministerial Meeting in Brussels on European Political Cooperation):

'The Community and its Member States also require a Yugoslav Republic to commit itself, prior to recognition, to adopt constitutional and political guarantees ensuring that it has no territorial claims towards a neighbouring Community State and that it will conduct no hostile propaganda activities versus a neighbouring Community State, including the use of a denomination which implies territorial claims.'

13 The Arbitration Commission of the Conference on Peace in Yugoslavia, created in September 1991 in the context of the Conference on Yugoslavia, composed of five judges who are presidents of the constitutional courts of Member States and presided over by Mr R. Badinter, issued on 11 January 1992 Opinion No 6 'on the recognition of the Socialist Republic of Macedonia by the European Community and its Member States'.

14 The Opinion contained the following conclusions:

'— that the Republic of Macedonia satisfies the tests in the Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union and the Declaration on Yugoslavia adopted by the Council of the European Communities on 16 December 1991;

— ... the Republic of Madeconia has, moreover, renounced all territorial claims of any kind in unambiguous statements binding in international law;

— ... the use of the name "Macedonia" cannot therefore imply any territorial claim against another State; and

— ... the Republic of Macedonia has given a formal undertaking in accordance with international law to refrain, both in general and pursuant to Article 49 of its Constitution in particular, from any hostile propaganda against any other State: this follows from a statement which the Minister for Foreign Affairs of the Republic made to the Arbitration Commission on 11 January 1992 in response to the Commission's request for clarification of Constitutional Amendment II of 6 January 1992.'

15 On 15 January 1992 the Council Presidency announced that Slovenia and Croatia were to be recognized and made the following official declaration:

'as regards the two other Republics which have expressed a wish to become independent (Bosnia-Herzegovina and the FYROM), a number of important problems remain to be resolved before the Community and its Member States may reach a similar decision'.

16 On 2 May 1992 the Council of the European Communities (General Affairs) made public the decision according to which the Community and its Member States were 'prepared to recognize that State as a sovereign and independent State, within its present borders, under a name which is acceptable to all the parties concerned'.

17 At the European Council at Lisbon on 27 June 1992 the Community declared that it was prepared to recognize that Republic within its present borders under a title which did not include the term 'Macedonia'.

18 The Council presidency, held at that time by the United Kingdom, then despatched a 'Special Representative of the Presidency' to Skopje and Athens in order to seek to establish the bases for an agreement between the two capitals which could serve to found recognition of the FYROM by the Community Member States and which would comply with the Lisbon Declaration of 27 June 1992.

19 The report established by the Special Representative, which was submitted to the European Council meeting in Edinburgh on 11 and 12 December 1992, stated that

the FYROM Government was prepared to take the following steps if the Member States agreed to recognize the Republic:

— to adopt the denomination 'Republic of Macedonia (Skopje)' for all international requirements;

— to conclude a treaty with the Hellenic Republic confirming the inviolability of their common frontiers;

— to alter Article 49 of its Constitution in order to remove the reference to the protection by the Republic of the 'status' and the 'rights of citizens of neighbouring countries who are of Macedonian origin';

— to conclude with the Hellenic Republic a treaty of good relations and to exchange letters on important issues.

20 That offer was not sufficient, however, to achieve agreement at the European Council in Edinburgh, although the Council recalled 'the need to prevent the Republic (FYROM) from bearing the unintended consequences of UN sanctions' and emphasized 'the importance of providing access to funding from the international financial institutions and of the regular and properly monitored supply of oil'. It agreed 'that the Community should make available to the former Yugoslav Republic of Macedonia a substantial package of economic assistance' and 'welcomed' the Commission's decision to set aside ECU 50 million for humanitarian and technical assistance.

21 The Greek Government points out that at the same summit in Edinburgh the Council also declared that the Community policy regarding recognition of the FYROM was examined 'in the context of the Lisbon Declaration'.

22 The United Nations Security Council, in Resolution 817 (1993) of 7 April 1993, recommended to the General Assembly that the FYROM should be admitted to the United Nations Organization under the name of 'the Former Yugoslav Republic of Macedonia', 'pending settlement of the difference which has arisen regarding its denomination'.

23 The Co-Chairmen of the Steering Committee of the International Conference on the Former Yugoslavia, Mr Vance and Mr Owen, endeavoured to resolve the difference regarding the name and to promote confidence-building measures. Their mediation resulted in a draft treaty 'Confirming the Existing Frontier and Establishing Measures for Confidence-Building, Friendship and Neighbourly Cooperation'.

24 The parties, however, were unable to sign it.

25 In December 1993 six Member States of the European Union recognized the FYROM and established diplomatic relations with it.

26 On 8 February 1994 the United States of America recognized the FYROM under the name of 'Former Yugoslav Republic of Macedonia'.

27 On 16 February 1994 the Greek Government, adopting a proposal by the Prime Minister, decided to close the Greek Consulate in Skopje, the capital of the FYROM, and 'to block movement of goods from or to Skopje transiting through the port of Thessaloniki, with the exception of goods vital for humanitarian reasons, such as food and pharmaceutical products'.

28 After the Council had been informed of that measure orally, the Member States were formally advised by COREU telex from the Presidency of 21 February 1994 of the adoption of those measures and the reasons given in support of them. The content of the measures was further explained in a letter of 23 February 1994 from the Permanent Representative of the Hellenic Republic to the Secretary-General of the Commission.

29 By letter of 22 February 1994 the Commission invited the Greek Government to justify those measures having regard to the Treaties, pointing out that it had serious doubts as to their compatibility with Community law, in particular in the sphere of the internal market (Community transit) and the common commercial policy (import and export regime).

30 The Greek Prime Minister replied by letter of 25 February 1994, in which he described the background to the matter and explained that the adoption of the measures had become inevitable owing to the risks posed for the Hellenic Republic by the intransigence of the FYROM.

31 On 26 February 1994 the Greek Government addressed a memorandum to the Commission concerning the measures adopted vis-à-vis the FYROM on 16 February 1994. The document set out the justification for those measures in international and Community law. It recalls that the manner in which sanctions were imposed on Southern Rhodesia, South Africa and Argentina indicated that competence in the matter lay with the Member States and not with the Community. It relies on the judgment in Case 45/86 *Commission* v *Council* [1987] ECR 1493, in support of the conclusion *a contrario*, that if there is no link with commercial policy, the matter does not fall within the scope of Article 113 of the Treaty even if the measures have repercussions on trade. The Greek Government relies, lastly, on Article 224 of the Treaty which, in its view, constitutes a general safeguard clause empowering Member States to take unilateral measures. It argues that the condi-

tion applicable in this case is 'serious international tension constituting a threat of war'. It also argues that that article is the only provision to enable the problems created as regards the functioning of the common market to be resolved by means of the consultation it provides for, which relates, however, exclusively to resolving such problems — where they are found to exist — and not to any consequences such measures may have for non-Member countries.

32 By letter of 3 March 1994 addressed to the Greek Minister of Foreign Affairs the Commission reiterated its reservations, arguing that the measures at issue violated the common rules applicable to imports into the Community of products from non-Member countries, the rules on export to non-Member countries and the common transit rules. The Commission also alluded to the harm done to the legitimate interests of numerous exporters established in the Member States, whose trucks and the goods they contained were being held up in Greece, and to the systematic verification of several containers of Community food aid sent by non-government organizations in application of decisions adopted by the European Council.

33 By letter of 15 March 1994 addressed to the Commission, the Greek Secretary-General for Community Affairs reiterated the position of the Greek Government. He added:

'If the Commission can show that the measures which have been adopted by the Greek authorities have the effect of distorting competition in the common market the Greek Government is prepared to examine how those measures can be adjusted to the rules laid down in the Treaty, as provided for in the first paragraph of Article 225.'

34 On 21 March 1994 the Commission wrote to the Prime Minister of the Hellenic Republic in the following terms:

'Since Greece relies on political arguments in order to justify these measures, the Commission is of the opinion that it is a matter of urgency for the ministers to comment on those arguments in the context of foreign policy and common security.

This will enable the Commission, in its capacity as guardian of the Treaties and having regard to its responsibilities for ensuring coherence in the external activities of the Union as a whole, to have at its disposal all the elements necessary to assess the way in which the Greek Government has made use in this instance of Article 224 of the EC Treaty and its repercussions on the functioning of the common market.

For those reasons I suggest that the Presidency request from the Council as soon as possible the opinion of ministers on the political arguments put forward by the Greek Government in support of the restrictions applied to the FYROM.'

35 The Council (General Affairs), meeting informally at Ioannina on 27 March 1994, discussed the issue. The Greek Government maintains that it failed to reach agreement, however, and took no decision. The Commission, by contrast, claims that the discussions indicated that the threat of war or serious internal disturbance affecting the maintenance of law and order relied on by the Greek authorities to justify the measures had not been established.

II — Forms of order sought

36 The Commission claims that the Court should:

(i) order the Hellenic Republic to suspend, pending judgment in the main action, the measures adopted on 16 February 1994 against the former Yugoslav Republic of Macedonia;

(ii) reserve the costs.

37 The Greek Government claims that the Court should:

(i) dismiss the application for interim measures;

(ii) order the Commission to pay the costs.

III — Law

On the adoption of interim measures in the context of the procedure laid down in the second paragraph of Article 225 of the Treaty

38 The Greek Government claims that applications for interim measures are excluded if the main action is based on Article 225 of the Treaty.

39 It claims that the procedure based on Article 225, unlike the ordinary procedure for failure to fulfil obligations under Article 169, does not entail a prelitigation procedure and is therefore more rapid. Since every effort is made to expedite consideration of the main action it follows that the protection afforded by interim measures cannot be granted under the conditions applicable to the ordinary procedure under Article 169.

40 It also maintains that Articles 224 and 225 require difficult and detailed assessments and explanations which preclude either a summary consideration or an analysis of the facts in the context of proceedings for interim measures.

41 Those arguments cannot be upheld.

42 Article 186 of the Treaty empowers the Court to prescribe any necessary interim measures in cases before it. It makes no exceptions or distinctions according to the nature of the case.

43 However, the points made by the Greek Government regarding the speedier nature of the procedure until Article 225 and the difficult assessments and explanations the examination of which is called for under Articles 224 and 225 are arguments which may be taken into consideration when considering the actual circumstances which may make it necessary to prescribe interim measures.

44 Pursuant to Article 83(2) of the Rules of Procedure an order prescribing interim measures may only be made in the presence of circumstances giving rise to urgency and on the basis of pleas of fact and law establishing a *prima facie* case for the interim measures applied for.

45 According to Article 86(4) of the Rules of Procedure and the third paragraph of Article 36 of the EEC Statute of the Court of Justice such an order may in no way prejudice the decision of the Court on the substance of the case.

The existence of a prima facie case

The Commission's argument

46 The Commission claims that the requirements for the application of Article 224 of the Treaty are not met in this case.

47 It concedes that the measures referred to in that article are measures which lie at the discretion of the Member State concerned. It claims, however, that if the measures envisaged are incompatible with Community law:

(i) the Member State must establish that it is in fact in one of the three situations referred to in Article 224, which are exceptional, clearly defined and do not lend themselves to wide interpretation (Case 13/68 *Salgoil* [1968] ECR 453 at p. 463);

(ii) the measures which have been adopted must not exceed what is strictly necessary to remedy the situation, in accordance with the principle of proportionality;

(iii) the Member State must engage in the consultations provided for in Article 224 and the first paragraph of Article 225 in order to minimize the effects of the national measures on the functioning of the common market, in accordance with the duty of cooperation and genuine assistance imposed on Member States with regard to the Community, the principle enshrined in Article 5 of the Treaty.

48 The Commission claims that the essential requirements for the application of Article 224 of the Treaty are not met in this case because the Greek Government has not established the existence of either 'serious internal disturbances affecting the maintenance of law and order' in Greece or 'serious international tension constituting a threat of war' at the time of the adoption of the measures. For that reason the Commission had not considered it useful to initiate consultations under the first paragraph of Article 225 of the Treaty when they were proposed by the Greek authorities.

49 As regards internal security, the Commission refers to the case-law of the Court of Justice on the scope of Article 36 of the Treaty, according to which the threat to law and order must consist in prejudice to the fundamental interests of the State (Case 7/78 *Regina* v *Thompson* [1978] ECR 2247, paragraph 34) with which it cannot deal using the means at its disposal (Case 231/83 *Cullet* v *Leclerc* [1985] ECR 315, paragraph 33). According to the Commission the situation envisaged in Article 224 of the Treaty, which exists only where there are serious disturbances affecting the maintenance of law and order, is even more restricted. It cites the judgment in Case 222/84 *Johnston* [1986] ECR 1651 in which the Court emphasized (paragraph 27) that Article 224 was concerned with a wholly exceptional situation.

50 The Commission goes on to argue that the Greek Government has failed to establish in this case, by reference to objective circumstances relating to the requirements of public security, that it was impossible for the authorities to take effective action against the alleged serious internal disturbances jeopardizing the very existence of the State or its fundamental interests and that, without the economic sanctions applied to the FYROM, they would no longer have been able to control the situation.

51 As regards the existence of serious international tension constituting a threat of war, the Commission considers that that, too, has not been established. While it does not deny that there is a war in the Balkans which may spread, it does not accept that the conduct of the FYROM complained of by the Hellenic Republic, taken as a whole, can reasonably be regarded as a threat of war. There is a political conflict between the Hellenic Republic and the FYROM of which the Commission denies neither the existence nor even the gravity. The Commission also notes that that conflict arouses deep emotions in Greece, the strength of which can be explained by the history of the Hellenic nation. It was in the context of that political conflict that the Hellenic Republic had recourse to economic sanctions as a means of imposing its views and obtaining the concessions it wished from the FYROM. That, the Commission maintains, is quite a different matter to responding to a threat of war. It also notes in that context that the FYROM is a small country with no reserves, in deep economic crisis, with extremely small military resources compared with those of the Hellenic Republic, a country which, moreover, enjoys the guarantee of security afforded by its membership of NATO. Whilst it recognizes the seriousness of the conflict the Commission does not consider that the FYROM's opposition to the Hellenic claims can be regarded as embodying a threat of war.

52 Consequently, the Commission is of the opinion that the action based on Article 224 is ill-founded and, moreover, that the Hellenic Republic made improper use of the powers conferred on it by that provision. By relying on that article in order to justify the economic sanctions applied to obtain concessions in its conflict with the FYROM the Hellenic Republic used the exceptional powers allowed for by that article for purposes other than those envisaged by the Treaty and as a result has misused those powers.

Argument of the Greek Government

53 The Greek Government takes issue with the Commission's adoption as the basis for its application for interim measures the Hellenic Republic's failure to meet the requirements for the application of Article 224. It points out that the onus of proof in that regard lies with the applicant for the interim measures.

54 It also takes issue with the general reliance, as regards establishing a *prima facie* case, on the arguments put forward in the main action. Confounding the two in that way obliges the Court to consider during the procedure for interim measures the well-foundedness of the main action. The Greek Government considers that it has the right (and the duty) to reject the Commission's fundamental legal argument in the main action, which will be conducted under different procedural rules offering better guarantees, and not in the context of the expedited procedure for obtaining interim measures.

55 The Greek Government also argues that the Commission's approach breaches the rule that interim measures cannot prejudice the decision on the substance (Article 86(4) of the Rules of Procedure and the third paragraph of the EEC Statute of the Court of Justice). It emphasizes that precisely because of the nature of the questions raised in the main action and by the application for interim measures, and by reason of the significant coincidence between political justification and legal elements, the probability of establishing a *prima facie* case risks, by definition, prejudicing the outcome of the main action. That risk is greater in proceedings under the second paragraph of Article 225 of the Treaty, according to which the purpose of the procedure is to determine whether or not the defendant Member State has made improper use of Article 224 of the Treaty.

56 The Greek Government draws the attention of the Court to the numerous arguments of a political nature to be found throughout the application for interim measures. The Commission considers, for example, that the conduct of the FYROM is not to be regarded as a threat of war. The Greek Government considers that questions regarding the external security of a Member State are not matters open to consideration by the Court. The question is a major political issue which the Commission is seeking to submit to the purview of the Court — in proceedings for interim measures, moreover — in opposition to the generally accepted rules regarding legal settlement of international conflicts.

57 In this particular case, the existence of a threat of war is demonstrated by the UN Secretary-General's report to the Security Council of 1 April 1994 (document S/1994/376), in which he confirms the view of the mediator, Mr Vance, that 'if a

mutually agreeable settlement could not be reached by the parties, peace in the region might be put at risk'. It is also demonstrated by the presence in the FYROM of UN soldiers from the United Nations Protection Force for Yugoslavia.

58 The Greek Government considers that the Commission's failure to distinguish between Article 36 and Article 224 of the Treaty is unacceptable.

59 It points out that Article 225 of the Treaty restricts judicial review to cases of improper use, contrary to other procedures. It considers that Article 36 and Article 224 differ with regard to the procedure for exercising judicial review, with regard to the burden of proof that the requisite conditions have been met and with regard to their mode of application.

60 In the alternative, the Greek Government argues that apart from the measures at issue the Hellenic Republic has no other peaceful means of preserving its cultural identity and historical heritage and of protecting itself against the hostile propaganda emanating from the FYROM. The only other means at its disposal was the withholding of recognition by the other Member States, which now no longer applies as a result of the recognition given by a number of countries in December 1993.

61 As regards the link between Article 224 of the Treaty and the common policy on foreign affairs and security, the Greek Government argues that if, as the Commission maintains, there is such a link this case would not be subject to review by the courts because it would fall under Title V of the Treaty on European Union.

62 The Greek Government concludes that the Commission's arguments based on Title V of the Treaty on Union cannot, in any event, be considered in the context of an application for the adoption of interim measures.

63 The Greek Government considers that there can only be a question of improper use of powers within the meaning of the second paragraph of Article 225 of the Treaty where Article 224 has manifestly been relied upon not in order to achieve the political aims of that provision but in order to protect economic interests.

64 It argues that there might also be an improper use of powers if a Member State were to derogate generally from all of its Community obligations, but not where selective and moderate retaliatory measures such as those in this case are adopted.

65 The Greek Government maintains that the common commercial policy allows the Member States a certain latitude for adopting economic sanctions, since foreign policy does not yet appear to have been integrated into the Community and the European Union.

66 In those circumstances the interaction of commercial policy and foreign policy transforms the first into an instrument of the second. It concludes that in the case of economic retaliatory measures the scope of Article 224 is sufficient to exclude the application of Article 113.

Appraisal by the Court

67 The measures adopted unilaterally by the Hellenic Republic with regard to the FYROM are undoubtedly contrary to the fundamental Community rules regarding the free movement of goods and the common commercial policy.

68 However, the Hellenic Republic relies on Article 224 of the Treaty, a provision which, at first sight, permits a Member State in certain exceptional circumstances to derogate even from fundamental Community rules.

69 In order to ascertain whether, as the Commission submits, the essential requirements for the application of Article 224 are not met in this case and whether, as the Commission also claims, the Greek Government has made improper use of the powers referred to in that article, it would be necessary to consider complex legal questions, including the determination of the scope of the judicial review to be exercised in the context of the procedure laid down in the second paragraph of Article 225 of the Treaty.

70 Those questions require thorough consideration of argument from both sides. At the stage of the application for interim measures, it is sufficient to note that the arguments put forward by the Commission appear, at first sight, to be sufficiently pertinent and serious to establish a *prima facie* case justifying the interim measures.

71 It is therefore necessary to consider whether the condition of urgency is satisfied.

The urgency of the matter

The Commission's argument

72 The Commission maintains that the condition of urgency is met since the economic sanctions applied to the FYROM constitute a manifest and particularly serious threat to the Community legal order for the following two reasons.

73 In the first case, the measures at issue manifestly obstruct the common commercial policy (and thus the principle of Community management of the external economic frontiers of the Community), the general principle of freedom of transit for goods within the Community, as a consequence of the customs union, and the operation of the internal market. Such unilateral conduct on the part of a Member State is a breach of solidarity between Member States and may, if it continues, affect the fundamental operation of the Community.

74 Secondly, the Commission maintains, the economic sanctions adopted unilaterally against the FYROM are a fundamental departure from the general political guidelines laid down by the European Council and the concrete measures adopted in order to follow them. The Commission recalls that during its meeting in Lisbon on 26 and 27 June 1992 the European Council confirmed the desire of the Community and its Member States to 'establish with the authorities in Skopje a fruitful and cooperative relationship with a view to promoting widespread cooperation capable of improving political stability and economic progress in the region'. During the meeting at Edinburgh on 11 and 12 December 1992 it laid particular stress on 'the importance of providing access (for the FYROM) to funding from the international financial institutions and of the regular and properly monitored supply of oil' and on the need for the Community to 'make available to the former Yugoslav Republic of Macedonia a substantial package of economic assistance'. The Commission states that humanitarian and technical assistance amounting to ECU 50 million was granted to the FYROM in 1993 out of the Community budget.

75 The Commission points out that the application of the measures at issue may cause irreparable harm to the FYROM, which has already suffered considerable damage in the conflict in the former Yugoslavia. It explains that the port of Thessaloniki is a vital passage for trade with the FYROM as a result of the embargo imposed by the Security Council on Serbia and Montenegro which prevents goods entering through the north of the FYROM, and the poor state of the roads in Albania and Bulgaria.

76 According to the Commission, the fact that the damage to be taken into account is damage to a non-Member country is no obstacle to the application for interim

measures. The application of Article 83(2) of the Rules of Procedure of the Court of Justice may, in general, entail consideration of situations outside the territorial sphere of Community law provided that there is a sufficiently close link to it.

77 The Commission also mentions the case of Community traders whose activity depends primarily on trade with the FYROM and who have suffered direct and irreparable harm in the absence of other economically viable means of access, following the closure of the port of Thessaloniki. That harm is, however, difficult to quantify in the absence of reliable statistics on trade between the Community and the FYROM.

78 Lastly, the Commission adds that the application of the measures at issue, which is incompatible with the approach advocated by the European Union, is likely to exacerbate international tension in that part of the Balkans, which, until now, has escaped the conflagration into which the other territories of the former Yugoslavia have been drawn.

The argument of the Greek Government

79 The Greek Government considers that since a decision on the main action will be given shortly, the need to adopt interim measures as well must be shown to be evident and urgent. It alleges that the Commission has wholly neglected that aspect of the case and is relying on arguments appropriate to an action under Article 169 of the Treaty.

80 It recalls that the Commission has given priority for two months to political procedures and concludes that it did not itself consider that the urgency was such as to justify the immediate bringing of an action accompanied by an application for interim measures.

81 As regards the party which has suffered injury, the Greek Government considers that the Commission may seek interim measures against a Member State only if the harm is to other Member States or their nationals, but not if it is to a non-Member country.

82 It challenges the Commission's linking of the matter to the Community legal order, an approach which would mean that any circumstance whatever occurring in a country with which the Community has some kind of economic relationship would be a circumstance with regard to which the Commission must act in its capacity as guardian of the Treaties. It points out that the Commission cannot act as guardian of the interests of non-Member countries and, moreover, cannot do so at the expense of the interests of Member States of the European Union.

83 As regards the extent of the damage, the Greek Government observes that the Commission, which bears the burden of proof, has provided no concrete indications on which to base an assessment. It states that trade between the Community and the FYROM is a very small part of total Community trade, so that the measures at issue cannot influence the functioning of the common market and cannot occasion serious and irreparable, or even appreciable, harm.

84 In view of the exceptions allowed for in the measures at issue, and assuming for the sake of argument that all Community trade with the FYROM passes through Greek ports, the Greek Government claims that Eurostat statistics show that the measures at issue inhibit only 0.067% of Community exports and 0.048% of Community imports. It concludes that the application for interim measures to avoid supposedly irreparable harm is excessive.

85 As regards the harm which may have been suffered by Community traders, the Greek Government points out that no trader has come forward as yet and that the alleged harm, which is financial, may in any event be compensated.

86 The Greek Government denies that the decision of the European Union to offer assistance to a non-Member country forms part of the common foreign policy so as to bind a Member State vis-à-vis that non-Member country. It therefore denies that the Union's foreign policy will be jeopardized by the measures in question.

87 In response to the Commission's argument that the measures are capable of compromising the achievement of a peaceful resolution of the conflict it states that the assessment of the effects of a measure on peaceful resolution of a dispute is a political one and a matter for the sovereign appreciation of the Member States.

88 It considers that it is precisely the measures now at issue which have gained the attention of European public opinion and led to the opening of consultations within the United Nations at a time when the procedure for achieving a peaceful solution had reach an impasse.

Appraisal of the Court

89 As regards the requirement of urgency, it should be noted that the Court has consistently held (see in particular the order in Case C-280/93 R *Germany* v *Council* [1993] ECR I-3667, paragraph 22) that the urgency of the interim measures, referred to in Article 83(2) of the Rules of Procedure, must be considered in the light of the need to adopt provisional measures in order to avoid serious and irreparable harm resulting from application of the measure which is the subject-matter of the main action.

90 The various types of harm alleged by the Commission must be considered in turn.

91 As regards in the first place the harm to the common commercial policy, to freedom of transit for goods within the Community and to the internal market, it should be observed that the arguments put forward by the Commission are based on the link between the harm alleged and the breach of Community law by the Hellenic Republic. According to the Commission, the seriousness of the harm results from the manifest nature of the breach.

92 However, applying the considerations set out in paragraphs 67 to 70, above, although the Commission's arguments may be sufficient to establish a *prima facie* case it is not possible to confirm that the Hellenic Republic has committed a manifest breach of Community law, as the Commission maintains, since without detailed consideration of the matter it is not possible to establish that the Greek Government relied improperly on Article 224 of the Treaty or made an improper use of the powers provided for by that article.

93 The existence of harm in that respect has therefore not been established.

94 As regards in the second place the breach of the general political guidelines laid down by the European Council and the harm resulting from the exacerbation of tension in the Balkans and of the risk of war, which is alleged to have been caused by the maintenance of the measures adopted by the Hellenic Republic against the FYROM, it must be noted that even if the Court were competent to make the political judgments which would be indispensable in order to assess the existence of harm and, above all, of a link between that harm and the conduct of the Greek Government, it could not, in any event, form an opinion at this stage of the procedure for interim measures. The assessments it might make would inevitably

encroach upon the powers of the Court in the context of Articles 224 and 225 of the Treaty and, therefore, prejudice the decision on the substance of the case.

95 As regards in the third place the irreparable harm suffered by Community traders, the Commission has merely made general assertions without any attempt to support them with adequate facts. That harm has therefore not been established.

96 As regards in the last place the harm suffered by the FYROM, the information supplied by the Commission appears to be sufficient to establish its existence.

97 Nevertheless, it is necessary to consider whether the Commission is entitled in these proceedings on an application for the adoption of interim measures to rely — regardless of any harm to Community interests — on harm suffered by a non-Member country as a result of measures which the Hellenic Republic considers justified under Article 224 of the Treaty.

98 In view of the fact that the proceedings on the application for interim measures are accessory to the main action, the urgency of the interim measures must be considered in the light of the interests which Articles 224 and 225 of the Treaty seek to protect, those provisions being applicable to the case before the Court.

99 Article 224 requires the Member States to consult each other with a view to taking together the steps needed to prevent the functioning of the common market being affected by measures which a Member State may be called upon to take in certain exceptional circumstances. Article 225, by contrast, provides in the first paragraph for the Commission to intervene only where measures taken under Articles 223 and 224 have the effect of distorting the conditions of competition in the common market.

100 Without prejudice to a more detailed interpretation of those provisions in the course of the main proceedings, it would seem that the task entrusted to the Commission by Article 225, with regard to Article 224, is intended to safeguard the interests of the Community.

101 Accordingly, the Court considers that it cannot take into account in these proceedings for interim measures the harm suffered by the FYROM.

102 In those circumstances the application for interim measures must be dismissed.

On those grounds,

THE COURT

hereby orders:

1. The application for the adoption of interim measures is dismissed;

2. Costs are reserved.

Luxembourg, 29 June 1994.

R. Grass

Registrar

O. Due

President