JUDGMENT OF THE COURT OF FIRST INSTANCE (First Chamber)
19 July 1999 *

In Case T-14/98,

Heidi Hautala, Member of the European Parliament, residing in Helsinki, represented by Onno W. Brouwer and Thomas Janssens, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Marc Loesch, 11 Rue Goethe,

applicant,

supported by

Republic of Finland, represented by Holger Rotkirch, Head of the Legal Department, Ministry of Foreign Affairs, and Tuula Pynnä, Legislative Adviser in that ministry, acting as Agents, with an address for service in Luxembourg at the Finnish Embassy, 2 Rue Heinrich Heine,

and

Kingdom of Sweden, represented by Lotty Nordling, Director-General of Legal Affairs, Ministry of Foreign Affairs, and Karin Kussak, Kristina Svahn Starrsjö and Anders Kruse, Legal Advisers in that ministry, acting as Agents, with an address for service in Luxembourg at the Swedish Embassy, 2 Rue Heinrich Heine,

interveners,

* Language of the case: English.

Council of the European Union, represented by Jill Aussant, Director in the Legal Service, and Giorgio Maganza and Martin Bauer, Legal Advisers, acting as Agents, with an address for service in Luxembourg at the office of Alessandro Morbilli, Manager of the Legal Affairs Directorate, European Investment Bank, 100 Boulevard Konrad Adenauer,

defendant,

supported by

French Republic, represented by Kareen Rispal-Bellanger, Head of Subdirectorate in the Legal Directorate of the Ministry of Foreign Affairs, and Denys Wibaux, Foreign Affairs Secretary, acting as Agents, with an address for service in Luxembourg at the French Embassy, 8B Boulevard Joseph II,

intervener,

APPLICATION for annulment of the Council's decision of 4 November 1997 to refuse the applicant access to a document,

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (First Chamber),

composed of: B. Vesterdorf, President, J. Pirrung and M. Vilaras, Judges,

Registrar: H. Jung,

having regard to the written procedure and further to the hearing on 4 March 1999,

gives the following

Judgment

Legal background

1 The Final Act of the Treaty on European Union signed at Maastricht on 7 February 1992 contains a Declaration (No 17) on the right of access to information (hereinafter 'Declaration No 17'), which states:

'The Conference considers that transparency of the decision-making process strengthens the democratic nature of the institutions and the public's confidence in the administration. The Conference accordingly recommends that the Commission submit to the Council no later than 1993 a report on measures designed to improve public access to the information available to the institutions.'

2 At the close of the European Council in Birmingham on 16 October 1992, the Heads of State and of Government issued a declaration entitled 'A Community close to its citizens' (Bull. EC 10-1992, p. 9), in which they stressed the need to make the Community more open. That commitment was reaffirmed by the European Council in Edinburgh on 12 December 1992 (Bull. EC 12-1992, p. 7).

3 On 5 May 1993 the Commission addressed to the Council, the Parliament and the Economic and Social Committee Communication 93/C 156/05 on public access to the institutions' documents (OJ 1993 C 156, p. 5). It contained the results of a comparative survey on public access to documents in the Member States and some non-member countries, and concluded that there was a case for developing further the access to documents at Community level.

4 On 2 June 1993 the Commission adopted Communication 93/C 166/04 on openness in the Community (OJ 1993 C 166, p. 4), setting out the basic principles governing access to documents.

5 At the European Council in Copenhagen on 22 June 1993, the Council and the Commission were invited to 'continue their work based on the principle of citizens' having the fullest possible access to information' (Bull. EC 6-1993, p. 16, point I.22).

6 Within the framework of these preliminary steps towards implementing the principle of transparency, the Council and the Commission approved on 6 December 1993 a Code of Conduct concerning public access to Council and Commission documents (OJ 1993 L 340, p. 41, hereinafter 'the Code of Conduct'), aimed at establishing the principles to govern access to documents held by them.

7 The Code of Conduct sets out the following general principle:

'The public will have the widest possible access to documents held by the Commission and the Council.'

8 'Document' is defined as 'any written text, whatever its medium, which contains existing data and is held by the Council or the Commission'.

9 The circumstances which may be relied on by an institution as grounds for rejecting a request for access to documents are listed in the Code of Conduct in the following terms:

'The institutions will refuse access to any document whose disclosure could undermine:

— the protection of the public interest (public security, international relations, monetary stability, court proceedings, inspections and investigations),

— ...

They may also refuse access in order to protect the institution's interest in the confidentiality of its proceedings.'

10 The Code of Conduct further provides:

'The Commission and the Council will severally take steps to implement these principles before 1 January 1994.'

11 In order to put that undertaking into effect, the Council adopted on 20 December 1993 Decision 93/731/EC on public access to Council documents (OJ 1993 L 340, p. 43).

12 Article 4(1) of Decision 93/731 provides:

'Access to a Council document shall not be granted where its disclosure could undermine:

— the protection of the public interest (public security, international relations, monetary stability, court proceedings, inspections and investigations),

...'

Facts of the case

13 The applicant is a Member of the European Parliament.

14 On 14 November 1996 she put a written question to the Council (Written Question P-3219/96, OJ 1997 C 186, p. 48) seeking clarification of the eight criteria for arms exports defined by the European Council in Luxembourg in June 1991 and in Lisbon in June 1992. In particular, she asked the following questions:

'What will the Council do to put an end to violations of human rights which are assisted by arms exports from EU Member States? What are the reasons for the secrecy surrounding the guidelines which the Council's Working Group on Conventional Arms Exports has proposed to the political committee with a view to clarifying the criteria?'

15 The Council answered on 10 March 1997, stating in particular:

'One of the eight criteria concerns the respect of human rights in the country of final destination, an issue of concern to all Member States. Exchanges between Member States on this and other aspects of arms export policy take place within the Common Foreign and Security Policy (CFSP) Working Group on Conventional Arms Exports, which has been charged with giving particular attention to the implementation of the eight criteria, with a view to reaching a common interpretation thereof.

At its meeting of 14-15 November 1996, the Political Committee approved a report from the Working Group on Conventional Arms Exports, with a view to further enhancing the consistent implementation of the common criteria. The

Political Committee also agreed that the Group should continue to follow this matter closely.

Actual decisions on the granting of export licences remain, however, a matter for national authorities. The Council is therefore not in a position to comment on individual export authorisations or on national public information policies in this area.'

16 By letter of 17 June 1997, addressed to the Secretary-General of the Council, the applicant asked to be sent the report mentioned in the Council's answer (hereinafter 'the contested report').

17 The contested report was approved by the Political Committee but not by the Council. It was drawn up under the COREU special European correspondence system — adopted by the Member States and the Commission in 1995 within the framework of the CFSP in application of Title V of the Treaty on European Union — and was not distributed through the normal channels of distribution of Council documents. In the Council's practice, the COREU network is reserved for questions falling within Title V. Distribution of documents transmitted via the COREU network is restricted to a limited number of authorised recipients in the Member States, the Commission and the General Secretariat of the Council.

18 By letter of 25 July 1997, the General Secretariat of the Council refused access to the contested report under Article 4(1) of Decision 93/731, stating that it contained 'highly sensitive information disclosure of which would undermine the public interest, as regards public security'.

19 By letter of 1 September 1997, the applicant made a confirmatory application, in accordance with Article 7(1) of Decision 93/731.

20 The confirmatory application was considered by the Information Working Party of the Committee of Permanent Representatives at its meeting of 24 October 1997 and by the members of the Council at its meeting of 3 November 1997, following which the necessary simple majority considered that a negative reply should be given. Four delegations were in favour of releasing the document.

21 By letter of 4 November 1997 (hereinafter 'the contested decision'), the Council rejected the confirmatory application, in the following terms:

'I refer to your letter of 1 September 1997 in which you make a confirmatory application, pursuant to Article 7(1) of Decision 93/731/EC, for access to [the contested report].

Your application was reviewed by the Council on the basis of an examination of the document in question.

As a result of this consideration, the Council has concluded that disclosure of [the contested report] could be harmful for the EU's relations with third countries.

Access to the document in question is therefore to be refused by virtue of Article 4(1) of Decision 93/731/EC in order to protect the public interest with regard to international relations.'

22 The contested report prompted the Council to adopt, on 8 June 1998, a code of conduct for arms exports. That code was published.

Procedure and forms of order sought by the parties

23 By application lodged at the Registry of the Court of First Instance on 13 January 1998 the applicant brought the present action.

24 By fax received at the Registry on 7 May 1998 the applicant informed the Court that she waived submission of a reply.

25 By document lodged at the Registry on 5 June 1998 the French Republic sought leave to intervene in support of the form of order sought by the Council.

26 By documents lodged at the Registry on 15 June 1998 the Republic of Finland and the Kingdom of Sweden sought leave to intervene in support of the form of order sought by the applicant.

27 By order of 6 July 1998 the President of the First Chamber of the Court of First Instance granted the applications for leave to intervene.

28 The French Republic, the Kingdom of Sweden and the Republic of Finland lodged their statements in intervention at the Registry of the Court of First Instance on 19 August, 15 September and 16 September 1998 respectively.

29 By pleadings lodged at the Registry on 18 November 1998 the main parties submitted their observations on the statements in intervention.

30 On hearing the report of the Judge-Rapporteur, the Court of First Instance (First Chamber) decided to open the oral procedure without any preparatory inquiry.

31 The hearing took place on 4 March 1999. The parties presented oral argument and answered the oral questions put by the Court.

32 The applicant asks the Court to:

— annul the contested decision;

— order the Council to pay the costs, including those of any interveners.

33 The Council contends that the Court should:

— dismiss the application as unfounded;

— order the applicant to pay the costs.

34 The Republic of Finland and the Kingdom of Sweden, interveners, ask the Court to annul the contested decision.

35 The French Republic, intervener, contends that the Court should:

— dismiss the application;

— order the applicant to pay the costs.

Jurisdiction of the Court of First Instance

Arguments of the parties

36 The Council submits that the present case raises the same questions concerning the Court's jurisdiction as those raised in Case T-174/95 *Svenska Journalistförbundet* v *Council* [1998] ECR II-2289. The contested report deals exclusively with questions falling within Title V of the Treaty on European Union, the provisions of which are expressly excluded from the jurisdiction of the Court of Justice by Article L of that Treaty (now, after amendment, Article 46 EU). At the hearing, however, the Council stated that it was not raising this plea of inadmissibility and left it to the Court of First Instance to consider the question of its jurisdiction in the present case.

37 The French Government submits that the application is not within the jurisdiction of the Court. By virtue of Article L of the Treaty on European Union, it considers that where the Council has decided to apply Decision 93/731 to documents falling within Title V, its decisions on access to such documents also come under Title V and, as such, may not be the subject of an action under Article 173 of the EC Treaty (now, after amendment, Article 230 EC).

38 The applicant submits that the Court of First Instance has jurisdiction to rule in an action challenging a decision on access to a document adopted on the basis of Title V of the Treaty on European Union.

39 The Finnish and Swedish Governments support the applicant's arguments.

Findings of the Court

40 It should be noted, first, that under Article 113 of its Rules of Procedure the Court may at any time of its own motion consider whether there exists any absolute bar to proceeding with a case.

41 The fact that the contested report comes under Title V of the Treaty on European Union has no effect on the jurisdiction of the Court. The Court has already held in *Svenska Journalistförbundet*, paragraphs 81 and 82, that Decision 93/731 applies to all Council documents, irrespective of their content. It also held that, under Article J.11(1) of the Treaty on European Union (Articles J to J.11 of that Treaty have been replaced by Articles 11 to 28 EU), acts adopted pursuant to

Article 151(3) of the EC Treaty (now, after amendment, Article 207(3) EC), which is the legal basis for Decision 93/731, are applicable to measures within the scope of Title V of the EU Treaty.

42 Thus, in accordance with the conclusion reached in *Svenska Journalistförbundet* (paragraph 85), documents relating to Title V of the Treaty on European Union are covered by Decision 93/731 in the absence of provisions to the contrary. The fact that under Article L of that Treaty the Court of First Instance does not have jurisdiction to assess the lawfulness of acts falling within Title V thus does not exclude its jurisdiction to rule on public access to those acts.

Substance

43 The applicant puts forward three pleas in law to support her application: first, infringement of Article 4(1) of Decision 93/731; second, infringement of Article 190 of the EC Treaty (now Article 253 EC); third, breach of the fundamental principle of Community law that citizens of the European Union must be given the widest and fullest possible access to documents of the Community institutions, and of the principle of protection of legitimate expectations.

44 The Swedish Government intervenes in support of the first two pleas. The Finnish Government intervenes in support of the second plea only. The French Government intervenes in support of the Council to contest the applicant's first two pleas.

The first plea: infringement of Article 4(1) of Decision 93/731

Arguments of the parties

45 The applicant submits, first, that the Council interpreted and applied the exception relating to protection of the public interest concerning international relations in a way which was too wide and hence unlawful.

46 Citing Case T-105/95 *WWF UK* v *Commission* [1997] ECR II-313, the applicant submits that the widest possible access to documents must be ensured. The exception relating to protection of international relations should be interpreted and applied strictly (Case T-124/96 *Interporc* v *Commission* [1998] ECR II-231, Case T-83/96 *Van der Wal* v *Commission* [1998] ECR II-545, currently under appeal to the Court of Justice (Case C-189/98 P), and *Svenska Journalistförbundet*).

47 In her opinion, the Council made no specific assessment, or at least no adequate one, of the impact which access to the report in question might have on the public interest in general and international relations in particular. The way in which the Council treated her confirmatory application also shows that the contested decision was taken without any genuine debate or analysis.

48 Second, the applicant disputes that disclosure of the contested report could harm the public interest with regard to international relations. The report concerned only the implementation and interpretation of publicly known criteria governing arms exports.

49 Third, the applicant submits that the Council infringed Article 4(1) of Decision 93/731 by refusing access to those parts of the document which are not covered by the exception relating to protection of the public interest.

50 The Swedish Government submits that it is for the Council, in each individual case, to consider whether a document contains information which, if disclosed, could undermine protection of the public interest. Only if that examination shows that to be the case is the Council obliged to refuse access to the information under Article 4(1) (*Svenska Journalistförbundet*, paragraph 112).

51 In the present case, neither the Information Working Party nor the Council considered the confirmatory application in accordance with those principles.

52 It submits, next, that to interpret the exception in Article 4(1) as meaning that if part of the document requested may harm international relations, that suffices for the other parts of the document, which the public would otherwise have been able to see, to be excluded from disclosure goes beyond what is necessary for protecting the public interest (see, to that effect, Case C-321/96 *Mecklenburg* v *Kreis Pinneberg* [1998] ECR I-3809, paragraph 25, on the interpretation of certain exceptions in Council Directive 90/313/EEC of 7 June 1990 on the freedom of access to information on the environment (OJ 1990 L 158, p. 56)). The final subparagraph of Article 3(2) of that directive provides, moreover, that information held by the public authorities is to be supplied in part where it is possible to separate out the confidential parts.

53 On this point, the Swedish Government states that the Council has already granted partial access to a document (see the Secretary-General's report on implementation of Decision 93/731 for the years 1994 and 1995, Document 8330/96, p. 12).

54 Finally, as regards the Council's argument that the words 'access to... documents' in Decision 93/731 prevent it from granting partial access to a document which has been requested, the Swedish Government replies that it is not the basic rule in Article 1 of that decision which must be interpreted strictly but the exception in Article 4(1).

55 The Council submits that under Article 4(1) of Decision 93/731 it is obliged to refuse access to documents whose disclosure could undermine in particular the protection of the public interest, which is manifestly affected where public security, international relations, monetary stability, court proceedings and inspections and investigations are involved.

56 It states that, contrary to the applicant's assertion, it carried out a specific and adequate assessment of the implications of her request, which received particular attention.

57 It observes that assessment of the harm which might be caused to the public interest by the disclosure of one of its documents is within its sole discretion and the Court cannot substitute its own assessment.

58 It goes on to state that after thorough debate it decided not to allow partial communication of its documents. In its view, Decision 93/731 merely provides for the public to have access to 'documents' of the Council. The Council therefore has to examine requests for access with respect to the original form of its documents, and is not obliged to adapt them so as to make their disclosure possible. Furthermore, the deletion of certain passages would have the consequence that an applicant would receive not an authentic document but fragmentary information, which would run counter to the objective of transparency pursued by Decision 93/731.

59 At the hearing, the Council confirmed that it had adopted that position even though Decision 93/731 does not expressly prohibit partial communication. It submitted that the example referred to by the Swedish Government (see paragraph 53 above) was only an isolated case. The approach taken by the General Secretariat in that case was never followed at Council level.

60 According to the Council, it is possible, contrary to the Swedish Government's view, that certain categories of documents necessarily imply by their very nature that their disclosure may harm the public interest (see, to that effect, the order of the President of the Court of First Instance of 3 March 1998 in Case T-610/97 R *Carlsen and Others* v *Council* [1998] ECR II-485, paragraphs 46 and 47). That applies in particular to documents drawn up within the COREU system. These are documents which by their nature are internal working instruments whose disclosure could compromise the proper functioning of the CFSP. However, the Council stresses that the contested decision was not taken merely because the report had passed through the COREU system; in fact it carried out an examination of its content.

61 On this point, the reference by the Swedish Government to *Svenska Journalistförbundet*, paragraph 112, is irrelevant in the present case. In that case the Council refused access to 16 different documents without specifying, for each of those documents, whether it relied on the mandatory exception on the ground of protection of the public interest (public security, etc.) or the discretionary exception on the ground of confidentiality of its proceedings.

62 The French Government submits that the Council correctly applied Article 4(1) of Decision 93/731, as interpreted by the Court of First Instance in Case T-194/94 *Carvel and Guardian Newspapers* v *Council* [1995] ECR II-2765.

63 As regards partial communication of the document sought, it adds that the method used in some Member States of deleting certain passages which are considered confidential when granting access to a document cannot be applied

satisfactorily in the case of access to documents of the Community institutions. Moreover, such a method would not comply with the provisions of Decision 93/731.

64 Finally, the French Government submits that the procedure followed in adopting the contested decision was correct.

Findings of the Court

65 The three arguments put forward by the applicant in support of her first plea in law should be considered in turn. It should thus be determined, first, whether the confirmatory application was given adequate consideration by the Council; second, whether access to the contested report could be refused by reference to the public interest concerning international relations; and third, whether the Council was obliged to consider whether it could grant partial access, authorising disclosure of the parts of the document not covered by the exception on grounds of protection of the public interest.

66 As to the first argument, it is not disputed that the Council carried out some examination of the application. However, the applicant and the Swedish Government submit that that examination was not adequate in view of the requirements of the handling of a confirmatory application and the application of Article 4 of Decision 93/731.

67 The purpose of examining a confirmatory application is to enable the Council to determine whether disclosure of the document asked for falls within one of the exceptions set out in Article 4 of Decision 93/731 and consequently whether the general principle that the public have access to Council documents must be

displaced. It thus follows from the scheme of Decision 93/731 that a decision to reject a confirmatory application must be based on a genuine examination of the particular circumstances of the case.

68 As stated in paragraph 20 above, the confirmatory application was considered by the Information Working Party at its meeting of 24 October 1997 and by the members of the Council at its meeting of 3 November 1997, following which the necessary simple majority considered and voted that a negative reply should be given. The Council then, by the contested decision, rejected the applicant's confirmatory application on the ground of the exception relating to protection of the public interest concerning international relations.

69 It follows that the confirmatory application was indeed given adequate consideration by the Council. In any event, the mere assertions made by the applicant and the Swedish Government do not suffice as such to show that in the present case that consideration was inadequate or inappropriate having regard to the objectives described above.

70 Consequently, the first argument put forward by the applicant and the Swedish Government must be rejected.

71 As to the applicant's second argument, disputing that access to the contested report would harm the public interest concerning international relations, it must be remembered that the Council's discretion is connected with the political responsibilities conferred on it by Title V of the Treaty on European Union. It is on that basis that the Council must determine the possible consequences which disclosure of the contested report may have for the international relations of the European Union.

72 In those circumstances, review by the Court of First Instance must be limited to verifying whether the procedural rules have been complied with, the contested decision is properly reasoned, and the facts have been accurately stated, and whether there has been a manifest error of assessment of the facts or a misuse of powers.

73 As may be seen from paragraph 17 above, the contested report was drawn up within the COREU system, and in the Council's practice the COREU network is reserved for questions falling within Title V of the Treaty on European Union. Moreover, it appears from the Council's answer of 10 March 1997 (see paragraph 15 above) that the contested report contains exchanges of views between the Member States on respect for human rights in the country of final destination. Finally, as the Council observed in its defence (point 44), the contested report was produced for internal use and not with a view to publication, and so contains formulations and expressions which might cause tension with certain non-member countries.

74 In those circumstances, there is no reason to fault the Council's assessment. The applicant's second argument must therefore be rejected.

75 As regards the third argument, which is supported by the Swedish Government, namely that the Council infringed Article 4(1) of Decision 93/731 by refusing to grant access to the passages in the contested report which are not covered by the exception based on protection of the public interest, it should be observed that the Council considers that the principle of access to documents applies only to documents as such, not to the information contained in them.

76 It is thus for the Court to verify whether the Council was obliged to consider whether partial access could be granted. Since this is a question of law, review by the Court is not limited.

77 Decision 93/731 is a measure of internal organisation adopted by the Council on the basis of Article 151(3) of the EC Treaty. In the absence of specific Community legislation, the Council determines the conditions for dealing with requests for access to its documents (see, to that effect, Case C-58/94 *Netherlands* v *Council* [1996] ECR I-2169, paragraphs 37 and 38). Consequently, if the Council so wished, it could decide to grant partial access to its documents, under a new policy.

78 Decision 93/731 does not expressly require the Council to consider whether partial access to documents may be granted. Nor, as the Council accepted at the hearing, does it expressly prohibit such a possibility.

79 In view of the above, the basis on which the Council adopted Decision 93/731 must be borne in mind for the purpose of interpreting Article 4 of that decision.

80 Declaration No 17 recommended that the Commission should submit to the Council no later than 1993 a report on measures designed to improve public access to the information available to the institutions. That commitment was restated at the European Council in Copenhagen on 22 June 1993, which invited the Council and the Commission to 'continue their work based on the principle of citizens' having the fullest possible access to information'.

81 In the preamble to the Code of Conduct, the Council and the Commission refer expressly to Declaration No 17 and the conclusions of the European Council in Copenhagen as the basis for their initiative. The Code of Conduct states the general principle that the public will have the widest possible access to documents.

82 Furthermore, the Court of Justice stressed in *Netherlands* v *Council*, paragraph 35, the importance of the public's right of access to documents held by public authorities. The Court of Justice noted that Declaration No 17 links that right with 'the democratic nature of the institutions'. In his Opinion in that case ([1996] ECR I-2171, point 19), the Advocate General stated, with reference to the individual right to information, as follows:

'Instead, the basis for such a right should be sought in the democratic principle, which constitutes one of the cornerstones of the Community edifice, as enshrined now in the Preamble to the Maastricht Treaty and Article F [of the Treaty on European Union, now, after amendment, Article 6 EU] of the Common Provisions.'

83 The Court of First Instance recently held in *Svenska Journalistförbundet*, paragraph 66, referring to *Netherlands* v *Council*, that:

'The objective of Decision 93/731 is to give effect to the principle of the largest possible access for citizens to information with a view to strengthening the democratic character of the institutions and the trust of the public in the administration.'

84 Next, it should be noted that where a general principle is established and exceptions to that principle are then laid down, the exceptions should be construed and applied strictly, in a manner which does not defeat the application of the general rule (see, to that effect, *WWF UK* v *Commission*, paragraph 56, and *Interporc* v *Commission*, paragraph 49). In the present case, the provisions to be construed are those of Article 4(1) of Decision 93/731, which lists the exceptions to the above general principle.

85 Furthermore, the principle of proportionality requires that 'derogations remain within the limits of what is appropriate and necessary for achieving the aim in view' (Case 222/84 *Johnston* v *Chief Constable of the Royal Ulster Constabulary* [1986] ECR 1651, paragraph 38). In the present case, the aim pursued by the Council in refusing access to the contested report was, according to the reasons stated in the contested decision, to 'protect the public interest with regard to international relations'. Such an aim may be achieved even if the Council does no more than remove, after examination, the passages in the contested report which might harm international relations.

86 In that connection, the principle of proportionality would allow the Council, in particular cases where the volume of the document or the passages to be removed would give rise to an unreasonable amount of administrative work, to balance the interest in public access to those fragmentary parts against the burden of work so caused. The Council could thus, in those particular cases, safeguard the interests of good administration.

87 Accordingly, Article 4(1) of Decision 93/731 must be interpreted in the light of the principle of the right to information and the principle of proportionality. It follows that the Council is obliged to examine whether partial access should be granted to the information not covered by the exceptions.

88 As appears from paragraph 75 above, the Council did not make such an examination, since it considers that the principle of access to documents applies only to documents as such and not to the information contained in them. Consequently, the contested decision is vitiated by an error of law and must therefore be annulled.

89 It follows that there is no need for the Court to rule on the two other pleas in law put forward by the applicant in support of her application.

Costs

90 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Council has been unsuccessful, it must be ordered to pay the costs, having regard to the applicant's pleadings. Under Article 87(4) of those Rules, Member States and institutions which intervene in the proceedings are to bear their own costs. In those circumstances, the Republic of Finland, the Kingdom of Sweden and the French Republic must bear their own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (First Chamber),

hereby:

1. Annuls the Council's decision of 4 November 1997 refusing the applicant access to the report of the Working Group on Conventional Arms Exports;

2. Orders the Council to pay the costs;

3. Orders the Republic of Finland, the Kingdom of Sweden and the French Republic to bear their own costs.

Vesterdorf Pirrung Vilaras

Delivered in open court in Luxembourg on 19 July 1999.

H. Jung

Registrar

B. Vesterdorf

President