OPINION OF MR ADVOCATE GENERAL LENZ
delivered on 12 July 1989 *

Mr President,
Members of the Court,

A — Facts

1. The question at issue in these proceedings is whether Council Directive 87/64/EEC of 30 December 1986 amending Directive 72/461/EEC on health problems affecting intra-Community trade in fresh meat and Directive 72/462/EEC on health and veterinary inspection problems upon importation of bovine animals and swine and fresh meat from third countries [1] was properly adopted on the basis of Articles 100 and 113 of the EEC Treaty or whether it should have been founded solely on Article 43 of the EEC Treaty.

2. The directive was introduced because certain raw materials needed for pharmaceutical manufacturing purposes — namely glands, organs and blood — are not available in the Community in sufficient quantities. Its main objective is to facilitate the importation of such products from third countries and it provides in addition — in the interests of maintaining Community preference — for a certain liberalization of intra-Community trade in those products.

3. To that end it was thought necessary to amend Directive 72/462/EEC, [2] under which imports are permitted only from certain third countries specified on a list, provided that certain conditions laid down by the so-called administrative-committee procedure are satisfied. Thus it was provided (in a paragraph added to Article 16 of Directive 72/462) essentially that glands, organs and blood could also be imported as raw materials for the pharmaceutical processing industry from third countries which do not appear in the abovementioned list.

4. Secondly, it was considered necessary to amend Directive 72/461 [3] under which certain conditions have to be satisfied with regard to intra-Community trade (*inter alia* that the meat must not have been obtained from animals which come from a holding or area which, for health reasons, is subject to prohibition pursuant to the Council directive on animal health problems affecting intra-Community trade in bovine animals and swine as a result of certain diseases). In that respect it was provided (in a paragraph added to Article 3 of that directive) that by way of derogation from Article 8a (under which the export of fresh pigmeat from Member States in which African swine fever has been recorded within a specific period is in principle prohibited) authorization may be given for the introduction of glands, organs and blood as raw materials for the pharmaceutical processing industry.

* Original language: German.

1 — OJ L 34, 5.2.1987, p. 52.

2 — OJ, English Special Edition 1972 (31 December), p. 7.

3 — OJ, English Special Edition 1972 (31 December), p. 3.

5. The Commission based its proposal to that effect solely on Article 43 of the EEC Treaty. Because Articles 100 and 113 of the EEC Treaty were chosen as the legal basis for the amending directive (which, moreover, made changes to the content of the Commission's proposal), the Commission brought these proceedings with the aim of having the amending directive annulled on the ground that an inappropriate legal basis had been chosen. That aim is supported by the Kingdom of the Netherlands, whereas the Council's position in the case has been defended by the United Kingdom and the Kingdom of Denmark.

B — Analysis

6. In my view the following observations may be made with regard to this dispute.

1. As we know — and for the details I would refer to the Report for the Hearing — the Commission has, in fact, two lines of argument.

7. It considers that even the original directives, dating from 1972, (which were actually based on Articles 43 and 100 of the EEC Treaty) should have been adopted on the basis of Article 43 of the Treaty alone. Essentially the directives concerned merely the establishment of common health provisions in respect of meat imports with a view to stabilizing the market and assuring the availability of supplies and therefore measures that are important for the functioning of a common organization of the market because they ensure free trade in conditions of fair competition. Accordingly, it would normally follow that the same would be true of the amending directive.

8. Secondly, it also considers that it is clear from the content itself of the contested directive that Article 43 of the Treaty is sufficient since the directive lays down rules concerning the products listed in Annex II to the Treaty and thus seeks to achieve objectives defined in Article 39 of the Treaty. The Commission relies in this respect principally on the judgment in Case 68/86 [4] concerning the so-called 'hormone directive'. In that judgment it was emphasized that Article 43 was the appropriate legal basis for any legislation concerning the production and marketing of agricultural products listed in Annex II to the Treaty which contributes to the achievement of one or more of the objectives of the common agricultural policy set out in Article 39 of the Treaty; it was also made clear that where legislation is directed both to objectives of agricultural policy and to other objectives which, in the absence of specific provisions, are pursued on the basis of Article 100 of the Treaty, recourse to Article 43 is sufficient.

9. I consider it preferable to deal with the second line of argument first. That will clearly avoid a digression (namely the resolution of a dispute concerning the amended directive which was not settled when it first came up), and also save the need to examine the problem of how far

4 — Judgment of 23 February 1988 in Case 68/86 *United Kingdom* v *Council and Commission* [1988] ECR 855

there really is the 'parallelism of form' [5] emphasized by the Commission.

10. In particular the question arises — in view of the abovementioned judgment and the position in these proceedings — whether the products at issue are included without exception in Annex II to the Treaty (whereupon a subsidiary question may arise as to whether they must be the subject-matter of an organization of the market and whether that condition is met by the products in this case). Secondly, there is also the question whether the contested legislation does actually (also) pursue agricultural policy objectives within the meaning of the judgment in Case 68/86.

11. 2. As far as the first question is concerned (that is to say, whether the contested decision actually concerns only products that are included in Annex II to the EEC Treaty), critical observations were made by the United Kingdom in its intervention pleadings. Referring to the Explanatory Notes to the Tariff Nomenclature (it was, however, acknowledged at the hearing that the 1986 version had mistakenly been used rather than the earlier version which continued to apply to the unamended Annex II), the United Kingdom concluded that the products to which the contested decision refers do not for the most part, when imported as raw material for the pharmaceutical industry, fall under tariff headings listed in Annex II to the Treaty.

12. Subsequently the Council, in its rejoinder, expressed doubts as to whether all the products covered by the contested directive fell under Annex II to the EEC Treaty. It points out that in the Explanatory Notes to Chapter 2 of the Brussels Nomenclature (under 'General') it is stated that offals which are used solely in the preparation of pharmaceutical products fall under Heading 05.14 or Heading 30.01 (when dried), that is to say, under headings which are not covered by Annex II. The Council also considers the statement significant that offals which can be used for human consumption *or* for the preparation of pharmaceutical products are to be classified under Heading 05.14 (when provisionally preserved for the preparation of pharmaceutical products) or in Heading 30.01 (when dried). It further notes that in the Explanatory Notes under paragraph (1) to Heading 05.14 it is stated that the heading includes animal glands and other animal organs used in the preparation of organo-therapeutic products, which are unfit, by reason of their nature or the manner in which they are put up, for human consumption and that subheading 30.01 A covers glands or other organs of animal origin of the kind used in medicine. It also observes that as regards blood (which as such falls under Heading 05.15, and therefore under a heading covered by Annex II), it is clear from the description for Heading 30.01 that it falls under that heading if it is prepared for therapeutic or prophylactic uses. The only possible inference is that the products in question here fall within the scope of Annex II only if they are suitable for human consumption which, however, will rarely be the case.

13. The Commission began by stressing that when the contested directive was adopted

5 — Meaning that an amending legal measure should have the same legal basis as the original measure.

no such doubts were apparent or played any part in the choice of legal basis. It attempted to resolve the doubts expressed by pointing out that what was really important as far as the Tariff Nomenclature was concerned in this connection was the differentiation between products which are suitable for human consumption and those which are not, and thus end-use was not the first consideration. It referred on the one hand to the description of Heading 02.01 (which corresponds to the chapter heading) and to the Explanatory Notes to Chapter 2 ('General', first paragraph) and, on the other hand to Note 1(a) to Chapter 5 (according to which the chapter does not cover edible products), to the description of Heading 05.15 (products of animal origin unfit for human consumption) and to paragraph (1) of the Explanatory Notes to Heading 05.14 (which refers to animal glands and other animal organs unfit for human consumption). However, inasmuch as the Explanatory Notes also mention use for pharmaceutical purposes (as in the general comments on Chapter 2 in paragraphs (2) and (3)), it should not be overlooked that in the explanations following Category 3 it is made clear that the products in question fall in any case under Chapter 2 if they are suitable as such for human consumption, and there is no doubt that Category 2 (concerning products which are used solely in the preparation of pharmaceutical products) covers only such products as can never be fit for human consumption (which are therefore classified under Heading 05.14 — glands and other animal organs unfit for human consumption — or under Heading 30.01 — dried glands and other organs of animal origin of the kind used in medicine). Moreover, since the contested directive provides for derogations from Directives 72/461/EEC and 72/462/EEC and the latter directives, according to the express definition given, are concerned only with meat fit for human consumption — from which it follows that the scope of the contested directive is also similarly circumscribed — there can be no doubt that the directive refers only to products which are covered by Annex II (simply because glands and organs fit for consumption clearly fall under Chapter 2 of the Customs Tariff and as regards blood, it is plain that in edible form it falls under Heading 05.15).

14. It must be pointed out at the outset that it is common ground in this dispute that the exact extent of the headings listed in Annex II is to be determined by reference to the Explanatory Notes to the Brussels Tariff Nomenclature (as was noted in the judgment in Case 61/80[6]). It is also evidently not disputed that the scope of the contested directive cannot simply be determined by reference to its preamble (which speaks of the liberalization of the importation of glands, organs and blood for the pharmaceutical industry) which would mean that — according to the Explanatory Notes to the Customs Tariff, which mention one such end-use — headings are clearly encompassed which are not listed in Annex II (namely Headings 05.15 and 30.01).

6 — Judgment of 25 March 1981 in Case 61/80 *Coöperatieve Stremsel en Kleurselfabriek* v *Commission* [1981] ECR 851

15. More important as far as the scope of the contested directive is concerned is its connection with Directives 72/461/EEC and 72/462/EEC and thus their field of application which is determined by the precise definition of fresh meat (of certain animals) as including all parts of those animals which are fit for human consumption and have not undergone any preserving process except chilling or freezing (Article 1 of Directive 72/461; Article 2 of Directive 72/462, which refers to the definitions given in Directives 64/432,[7] 64/433[8] and 72/461).

16. Accordingly it is perfectly clear that the contested directive does not relate to products which are dealt with in the Explanatory Notes to Chapter 2 of the Customs Tariff (under 'General' in paragraph (3)), at all events in so far as the products might fall under Heading 05.14 — by virtue of provisional *preservation* — or under Heading 30.01 — by virtue of being *dried* — and that it does not refer either to the products mentioned in the Explanatory Notes as falling under subheadings 30.01 A or 30.01 B which are also described as 'dried, powdered or preserved'. The fact that such products are not listed in Annex II to the Treaty is thus immaterial to the decision in this case.

17. In actual fact this case hinges on the proper interpretation of the definition of meat ('all parts which are fit for human consumption' of the listed animals) applying for the purposes of the amended directives, that is to say the question whether it follows from that definition that the contested directive only encompasses meat that is directly, in its actual state, fit for consumption (as the Commission appears to assume) or whether (as the Council and the United Kingdom suggest) that interpretation is incorrect and the directive therefore encompasses all parts of the animal which, by reason of their nature, can be consumed even though in a specific case they might be in a state which excludes consumption. The answer to that question is irrelevant as regards the products also mentioned in this case which are referred to in the Explanatory Notes to Chapter 2 'General', paragraph (2), since clearly here — according to the uncontradicted assertions of the Commission — are meant only offals, which by reason of their *nature*, are definitely not for human consumption. The answer is, however, significant as regards the products listed in the Explanatory Notes to Heading 05.14 (a heading not mentioned in Annex II), because it is relevant that this concerns glands and other animal organs used in the preparation of organo-therapeutic products which are unfit for human consumption by reason of their nature or *of the manner in which they are put up*. If the Commission's view is followed, those products do not fall within the field of application of the contested directive (because it is enough in that respect that they are not fit for consumption in their actual state), whereas they are covered by the directive according to the position adopted by the Council and the United Kingdom, because it is irrelevant that the way they are put up excludes their being consumed, if, by reason of their nature, they could be.

7 — OJ, English Special Edition 1964, p. 164.

8 — OJ, English Special Edition 1964, p. 185.

18. Let it be said right away that on this central issue (regarding the substantive field of application of the directive) the Council and the United Kingdom seem to me to have the stronger case.

19. I am not, however, thinking of the distinction on which the United Kingdom laid emphasis between 'fit' and 'suitable' which in its view is important as far as the Customs Tariff is concerned and turns on whether a product (in the case of the first term) can be consumed having regard to its actual state or whether (in the case of the second term) it can be regarded as suitable for consumption by reason of its nature. For although it must be acknowledged that in the English version of the Explanatory Notes to Chapter 2 in paragraph (a) both terms appear (the French version contains only the term 'impropre') and that the Explanatory Notes to Chapter 3 speak of 'fish, dead, unfit or unsuitable for human consumption by reason of either their species or their condition', on the other hand, in the Explanatory Notes to Heading 05.14 it is stated that the heading includes 'animal glands and other animal organs of a kind used in the preparation of organo-therapeutic products and unfit by reason of their nature or of the manner in which they are put up for human consumption', and that in the directive in question the English version uses the term 'fit' rather than 'suitable' in the definition of meat.

20. What does seem significant, however, is the argument based on the phrasing of the definition in question ('"meat" means *all parts* of [those animals] *which are fit* for human consumption'). That would indeed suggest that a contrast is intended between parts which are in principle fit for consumption and other parts which cannot conceivably be consumed, which means that the directive refers to parts which by reason of their nature can be consumed, including those which, because of their particular actual state, are no longer fit for consumption.

21. Other arguments drawn by the Council and the United Kingdom from the scheme of the directive also carry some weight. Thus it is hardly reasonable to suppose that Directive 72/462 (which refers to Directive 64/433) is applicable only to meat in an edible state when there are rules on the technical requirements to be satisfied before products are regarded as fit for human consumption.

22. Furthermore, Article 19(a) of Directive 72/462, which states that Articles 17 and 18 are not to apply to meat imported for uses other than human consumption, is noteworthy because it makes clear that other provisions of the directive do indeed apply to such meat. Also of some interest is the prohibition contained in Article 20(g) on the importation of offals (because it does not only apply in a limited form, as would be suggested by the interpretation of the definition of meat favoured by the Commission) and the prohibition on the importation of blood (in Article 20(h)) which is not limited to blood falling under Heading 05.15 but also encompasses blood under Heading

30.01. It should finally be noted that in December 1988 the Commission itself adopted a decision based on Directive 72/462 on the importation of fresh meat for the manufacture of dog food (thus not for human consumption), which would not seem comprehensible if the directive in fact covered only meat fit for human consumption.

23. Thus it must be held that the field of application of the contested directive (like that of the amended directives) extends to meat that is in principle fit for consumption, including therefore meat that because of its actual state is no longer fit for consumption. At the same time it follows that it also covers glands and organs which, according to the Explanatory Notes to the Customs Tariff, fall under Heading 05.14 (when they are used in the preparation of organo-therapeutic products and are unfit for human consumption by reason of the manner in which they are put up), that is to say under a heading not mentioned in Annex II to the Treaty.

24. If, however, the products concerned are not just agricultural products listed in Annex II, it would surely not be conceivable to adopt a measure such as the contested directive solely in reliance on rules from the agricultural sector, in particular Article 43. Since, in my view, the Commission's attitude that it is the main objective of the directive that is determinant and not certain products which are to be regarded as more or less mere appendages does not seem tenable (it is after all not excluded that the contested directive may lead principally to trade in glands and organs which because of their actual state cannot be used for human consumption) the only conclusion that may be drawn is that the argument put forward by the Commission regarding the legal basis of the contested directive fails because a condition laid down in the case-law — that the provisions regulate agricultural products within the meaning of Annex II — is not satisfied.

25. *3.* That suffices to establish that the Commission's claim that the directive should be annulled is unfounded. Accordingly there is no need to go into the further issues that have been raised such as: whether application of Article 43 of the Treaty is conditional on the products included falling under a common organization of the market; the pursuit in the present case of objectives of the agricultural policy under Article 39; the significance in that connection of Article 113 of the Treaty; and whether in any case annulment of the directive is ruled out because the Parliament (which must be consulted under Article 43) was consulted under Article 100 and as far as the Council was concerned unanimity was required in accordance with Article 149 of the Treaty (because the Commission's proposal was amended).

26. *4.* However, I shall make some further observations in case the Court does not share the view I have set out above (for the purpose of these observations it is to be assumed that the contested directive relates only to products listed in Annex II).

27. (a) As far as the first question is concerned, the Council has pointed out that offal for the preparation of pharmaceutical products is expressly excluded from the common organizations of the markets in the sectors of beef and veal, pigmeat and poultry (see Regulations Nos 3905/87, 3906/87 and 3907/87 [9]) and it has accordingly expressed the view that in this respect, because there was no common organization of the market to ensure free trade, the general rules must be applicable. In a somewhat less emphatic form the Kingdom of Denmark stated in this connection that the fact that the products in question did not fall under a common organization of the market supported the presumption that Article 43 could not serve as the legal basis.

28. It seems to me — and here I would follow the Commission — that both those parties are working on a false premiss, or at least one for which no support is to be found in the case-law. It is clear from the wording of paragraph 12 of the judgment in Case 68/86 that objectives of the common agricultural policy may be pursued not merely in the framework of the common organizations of the markets and it is particularly noteworthy that the remarks made in respect of Article 43 in paragraphs 11 and 14 do not provide any basis for a restrictive application of that provision in the rules on the marketing of agricultural products.

29. But it is also plain that the Council's position cannot be derived from the Treaty. That is shown by Article 43, which does not merely refer to the common agricultural policy as 'including' forms of common organization but speaks generally in this connection of implementing the measures specified in Title II. It is also borne out by Article 40, according to which various forms of organization, that is to say not only organizations of the markets, may be used in the common agricultural policy and in which mention is made of all the measures required to attain the objectives set out in Article 39.

30. Above all it is significant that the products in question (if we are assuming that they are included in Annex II) are indeed the subject of a common organization of the market, namely that established by Regulation No 827/68 'in certain products listed in Annex II to the Treaty'. [10] This is shown by the annex to that regulation in its original version and in the version of Regulation No 1014/73 which mentions subheading 02.01 B 1 and Headings 05.04 and 05.15, and is also shown by the new version of the annex after its adaptation to the 1988 Nomenclature by Regulation No 3911/87. [11]

31. (b) As regards the further question of the pursuit of the objectives of the agricultural policy set out in Article 39, the Commission does indeed mention such a purpose by referring to the intention of assuring the availability of supplies to the

9 — OJ L 370, 30.12.1987, p. 7 *et seq.*

10 — OJ, English Special Edition 1968 (I), p 209

11 — OJ L 370, 30.12.1987, p. 36.

pharmaceutical industry (Article 39(1)(d)) and ensuring that supplies reach consumers at reasonable prices (Article 39(1)(e)) which could not be guaranteed because of insufficient Community production.

32. The Council, on the other hand, contended in its pleadings essentially that assuring the availability of supplies to the pharmaceutical industry was not the ultimate objective of the directive, but only a means to ensure the protection of health through adequate production of pharmaceutical preparations (that is to say, the attainment of an objective that is not included in Article 39); at the hearing the Council also emphasized that when rules were laid down on supplies for the pharmaceutical industry, it was necessary to ensure that public health was adequately protected (in which respect Article 100 of the Treaty was relevant) and it also expressed doubts whether, taking into account the lexical meaning and significance of the term in other Community measures, industrial undertakings could be regarded as consumers within the meaning of Article 39. The Commission's point of view was also challenged by the Kingdom of Denmark, which argued that, properly construed, Article 39(1)(e) did not envisage supplies to industry but only the availability of food to humans and animals. The United Kingdom's attitude is similar, that is to say that the phrase 'to assure the availability of supplies' means measures to improve and maintain Community production in line with demand, not liberalization of imports in the interest of industry in areas where Community production is inadequate.

33. In this regard the Kingdom of the Netherlands made the fundamental point, with which I concur, that provisions on the agricultural policy were to be broadly construed because they were part of the 'foundations of the Community'. If that view is taken, then it cannot follow merely from the wording of Article 39 that assuring the availability of supplies is to be restricted to providing humans and animals with food, since that wording can readily cover everything relating to the supply of agricultural products within the meaning of Annex II. There is also no apparent reason why 'consumer' should be understood only in the narrow sense of certain specialized rules to which the Council referred, for of course there is an interest in ensuring reasonable prices for everyone who participates in the demand for agricultural products, including industrial consumers.

34. Similarly, I remain unconvinced by the United Kingdom's view that the aim of assuring the availability of supplies can only be pursued by production measures within the Community. In so far as support for that view is drawn from the judgment in Joined Cases 56 and 60/74 [12] (where it was sought to establish the non-contractual liability of the Community in connection with the production of durum wheat), it may be countered that from the circumstance that in this connection mention was made of assuring the availability of supplies through the promotion of intra-Community production, it certainly does not follow that those are the only possible measures as far

12 — Judgment of 2 June 1976 in Joined Cases 56 and 60/74 *Kampffmeyer* v *Commission and Council* [1976] ECR 711.

as Article 39(1)(d) is concerned. Indicative in that respect is that Article 40(3) includes, among the measures required pursuant to Article 39, machinery for stabilizing imports or exports.

35. Furthermore it is quite plain from its preamble that the contested measure's primary objective is to assure adequate supplies of raw materials for the pharmaceutical industry, whereas it does not appear that the ultimate main purpose is to ensure the protection of public health by adequate supplies of medicinal products. The availability of those supplies could — after all — be assured by other means.

36. Accordingly, I see little difficulty in regarding the measures adopted in Directive 87/64 as measures to stabilize the market, assure the availability of supplies and ensure that supplies reach consumers at reasonable prices. Consequently the Commission is correct in thinking that the directive does indeed pursue agricultural policy objectives and that — in view of the observations made in this connection in Case 68/86 — Article 43 is a sufficient legal basis and recourse to Article 100 was not necessary, even though 'requirements . . . such as the protection of the health and life of humans and animals . . . must be taken into account' (paragraph 12 of the abovementioned judgment).

37. (c) Furthermore, the Commission is right that recourse to Article 113 of the EEC Treaty, which the Council and the Member States supporting it consider necessary on the ground that the achievement of uniformity with regard to liberalization of imports from third countries is a measure of commercial policy, was not required.

38. One reason is that import problems had already been dealt with in Chapters II and III of the amended Directive 72/462 and that neither it nor the many measures amending it were based on Article 113. That would suggest that it is appropriate to uphold the same approach in respect of the contested directive, which envisages nothing more than a provisional limitation on the field of application of the amended directive.

39. Moreover, common organizations of the markets (such as in cereals, milk, beef and veal) often contain provisions concerning trade with third countries (and therefore take account of the principles of Article 110) but they do so solely on the basis of Article 43 (which should once again bring to mind Article 40(3) — machinery for stabilizing imports or exports).

40. Furthermore reference may again be made to the judgment in Case 68/86 in which the measures at issue concerned *inter alia* the import of live animals and meat into the Community (paragraph 19) and the fact

that the directive was adopted solely on the basis of Article 43 was approved.

41. In contrast, the reference by the Council to a range of measures of commercial policy based on Article 113 of the Treaty cannot be conclusive since the Commission has pointed out that they were concerned with international agreements and their implementation, while this case is concerned with an autonomous Community measure.

42. (d) On the premiss that the contested directive was concerned solely with agricultural products within the meaning of Annex II, it would have to be acknowledged that the Commission was correct in its assertion that the directive was adopted improperly because it took as its basis Articles 100 and 113 of the EEC Treaty instead of Article 43.

43. Consideration would then have to be given to the further question whether that would actually justify annulment of the directive, because it must be assumed that the choice of legal basis could have an effect on the content of the measures (as stated in the judgment in Case 45/86 [13]).

44. It would seem that that was not the case here as far as the participation of the Parliament (in the form of consultation under Article 43, which is not prescribed under Article 113) is concerned. Participation of the Parliament is provided for in Article 100, the article in fact used, and it was not alleged that consultation with the Parliament was not comprehensive but limited to that part of the directive which deals with intra-Community trade and its harmonization.

45. The position is not the same, however, as regards the different requirements for the adoption of the directive (qualified majority under Article 43; unanimity under Article 100). In this connection it is difficult to accept the mere statement that the content of the directive (to which the Commission itself does not object) had to be adopted unanimously in any event because the Council had not followed the Commission's proposal (Article 149 of the EEC Treaty). It cannot be excluded that if Article 43 had been taken as the legal basis from the outset, another result would have ensued; that is to say, quite possibly the Commission's proposal was amended only because the Council in any case assumed that unanimity was necessary, whereas, applying Article 43 and with a qualified majority, a differently formulated measure might have emerged.

46. I would therefore consider that it would not be enough to hold that the directive was adopted on an inappropriate legal basis but that the measure would have to be declared void, as submitted by the Commission (if the assumption were correct that it related solely to agricultural products).

13 — Judgment of 26 March in Case 45/86 *Commission* v *Council* [1987] ECR 1493.

C — Conclusion

47. In view of my primary conclusion, I must of course propose that the Court dismiss the Commission's application as unfounded. The Commission should also be ordered to pay the costs of the proceedings, including those of the United Kingdom, but not those of the Kingdom of the Netherlands, which failed in its submissions, nor those of the Kingdom of Denmark, which did not ask for costs.