JUDGMENT OF THE COURT
21 September 1989 *

In Joined Cases 46/87 and 227/88

Hoechst AG, a company incorporated under German law whose registered office is in Frankfurt am Main, represented by Hans Hellmann, Rechtsanwalt, Cologne, with an address for service in Luxembourg at the Chambers of Marc Loesch, 8, rue Zithe,

applicant,

v

Commission of the European Communities, represented by its Legal Adviser, Norbert Koch, acting as Agent, with an address for service in Luxembourg at the office of Georgios Kremlis, a member of its Legal Department, Wagner Centre,

defendant,

APPLICATION for a declaration that the following Commission decisions, adopted in Cases IV/31.865 — PVC, and IV/31.866 — Polyethylene, are void:

(i) decision K(87)19/5 of 15 January 1987 concerning an investigation under Article 14(3) of Regulation No 17 of the Council of 6 February 1962 (Official Journal, English Special Edition 1959-62, p. 87),

(ii) decision K(87)248 of 3 February 1987 imposing a periodic penalty payment under Article 16 of Regulation No 17,

(iii) decision K(88)928 of 26 May 1988 fixing the definitive amount of a periodic penalty payment under Article 16 of Regulation No 17,

* Language of the case: German.

THE COURT

composed of: O. Due, President, T. Koopmans, R. Joliet, T. F. O'Higgins and F. Grévisse (Presidents of Chambers), Sir Gordon Slynn, G. F. Mancini, C. N. Kakouris, F. A. Schockweiler, J. C. Moitinho de Almeida, G. C. Rodríguez Iglesias, M. Diez de Velasco and M. Zuleeg, Judges,

Advocate General: J. Mischo
Registrar: B. Pastor, Administrator

having regard to the Report for the Hearing and further to the hearing on 8 December 1988,

after hearing the Opinion of the Advocate General delivered at the sitting on 21 February 1989,

gives the following

Judgment

1 By applications lodged at the Court Registry on 16 February 1987 and 5 August 1988 respectively, Hoechst AG brought two actions under the second paragraph of Article 173 of the EEC Treaty for declarations that three Commission decisions adopted in Cases IV/31.865 — PVC and IV/31.866 — Polyethylene, under Regulation No 17 of the Council of 6 February 1962 (First Regulation implementing Articles 85 and 86 of the Treaty (Official Journal, English Special Edition 1959-62, p. 87)) were void. The first action is directed against Decision K(87)19/5 of 15 January 1987 concerning an investigation under Article 14(3) of Regulation No 17 and Decision K(87)248 of 3 February 1987 imposing a periodic penalty payment under Article 16 of Regulation No 17. The second action is directed against Decision K(88)928 of 26 May 1988 fixing the definitive amount of a periodic penalty payment under Article 16 of Regulation No 17.

2 Having grounds for suspecting the existence, as between certain producers and suppliers of PVC and polyethylene in the Community, of agreements or concerted

practices concerning the fixing of prices and delivery quotas for those products, the Commission decided to carry out an investigation into several undertakings, including the applicant in respect of which it adopted the abovementioned contested decision of 15 January 1987 (hereinafter referred to 'the decision ordering the investigation').

3 On 20, 22 and 23 January 1987, the Commission sought to carry out the investigation in question, but the applicant refused to submit to the investigation on the ground that it constituted an unlawful search. The applicant expressed the same point of view in its reply to a telex in which the Commission called upon it to undertake to submit to the investigation and set a periodic penalty payment, in the event of non-compliance, of ECU 1 000 for each day of delay. The Commission then adopted the abovementioned contested decision of 3 February 1987, in which it imposed the periodic penalty payment mentioned above on the applicant (hereinafter referred to as 'the decision imposing the periodic penalty payment').

4 By decision of 12 February 1987, the Amtsgericht (Local Court) Frankfurt am Main dismissed an application by the Bundeskartellamt (Federal Cartel Office) whose assistance had been sought in accordance with Regulation No 17, for a search warrant on the ground that no facts had been put before it to justify the suspicion of the existence of agreements or concerted practices.

5 By order of 26 March 1987, the President of the Court of Justice dismissed the applicant's application for suspension of the operation of the decision ordering the investigation and the decision imposing the periodic penalty payment.

6 On 31 March 1987 the Bundeskartellamt obtained from the Amtsgericht Frankfurt am Main a search warrant issued directly in the name of the Commission. The latter carried out the investigation on 2 and 3 April 1987.

7 After giving the applicant an opportunity to express its views and after hearing the Advisory Committee on Restrictive Practices and Dominant Positions, the Commission, in the abovementioned contested decision of 26 May 1988 (here-

inafter referred to as 'the decision fixing the definitive amount'), fixed the definitive amount of the periodic penalty payment at ECU 55 000, that is to say, ECU 1 000 per day from 6 February to 1 April 1987 inclusive.

8 Reference is made to the Report for the Hearing for a fuller account of the background to the dispute, the course of the procedure and the submissions and arguments of the parties which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

The decision ordering the investigation

9 The applicant relies on three submissions against the decision ordering the investigation, alleging that the Commission exceeded its powers of investigation, that the statement of reasons for the decision was inadequate and that the procedure followed was irregular.

(a) *The Commission's powers of investigation*

10 The applicant considers that the contested decision is unlawful inasmuch as it permitted the Commission's officials to take steps which the applicant describes as a search, which are not provided for under Article 14 of Regulation No 17 and which infringe fundamental rights recognized by Community law. It adds that if that provision is to be interpreted as empowering the Commission to carry out searches, it is unlawful on the ground that it is incompatible with fundamental rights, for the protection of which it is necessary that searches should be carried out only on the basis of a judicial warrant issued in advance.

11 The Commission contends that its powers under Article 14 of Regulation No 17 extend to the adoption of measures which, under the law of some Member States, would be regarded as searches. It none the less considers that the requirements of judicial protection deriving from fundamental rights, which it does not contest in principle, are fulfilled in so far as the addressees of decisions ordering investigations have an opportunity, on the one hand, to contest those decisions before the Court and, on the other, to apply for suspension of their operation by way of interim order, which permits the Court to check rapidly that the investigations

ordered are not arbitrary in nature. Such review is equivalent to a judicial warrant issued in advance.

12 It should be noted, before the nature and scope of the Commission's powers of investigation under Article 14 of Regulation No 17 are examined, that that article cannot be interpreted in such a way as to give rise to results which are incompatible with the general principles of Community law and in particular with fundamental rights.

13 The Court has consistently held that fundamental rights are an integral part of the general principles of law the observance of which the Court ensures, in accordance with constitutional traditions common to the Member States, and the international treaties on which the Member States have collaborated or of which they are signatories (see, in particular, the judgment of 14 May 1974 in Case 4/73 *Nold* v *Commission* [1974] ECR 491). The European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 (hereinafter referred to as 'the European Convention on Human Rights') is of particular significance in that regard (see, in particular, the judgment of 15 May 1986 in Case 222/84 *Johnston* v *Chief Constable of the Royal Ulster Constabulary* [1986] ECR 1651).

14 In interpreting Article 14 of Regulation No 17, regard must be had in particular to the rights of the defence, a principle whose fundamental nature has been stressed on numerous occasions in the Court's decisions (see, in particular, the judgment of 9 November 1983 in Case 322/81 *Michelin* v *Commission* [1983] ECR 3461, paragraph 7).

15 In that judgment, the Court pointed out that the rights of the defence must be observed in administrative procedures which may lead to the imposition of penalties. But it is also necessary to prevent those rights from being irremediably impaired during preliminary inquiry procedures including, in particular, investigations which may be decisive in providing evidence of the unlawful nature of conduct engaged in by undertakings for which they may be liable.

16 Consequently, although certain rights of the defence relate only to the contentious proceedings which follow the delivery of the statement of objections, other rights, such as the right to legal representation and the privileged nature of correspondence between lawyer and client (recognized by the Court in the judgment of 18 May 1982 in Case 155/79 *AM & S* v *Commission* [1982] ECR 1575) must be respected as from the preliminary-inquiry stage.

17 Since the applicant has also relied on the requirements stemming from the fundamental right to the inviolability of the home, it should be observed that, although the existence of such a right must be recognized in the Community legal order as a principle common to the laws of the Member States in regard to the private dwellings of natural persons, the same is not true in regard to undertakings, because there are not inconsiderable divergences between the legal systems of the Member States in regard to the nature and degree of protection afforded to business premises against intervention by the public authorities.

18 No other inference is to be drawn from Article 8(1) of the European Convention on Human Rights which provides that: 'Everyone has the right to respect for his private and family life, his home and his correspondence'. The protective scope of that article is concerned with the development of man's personal freedom and may not therefore be extended to business premises. Furthermore, it should be noted that there is no case-law of the European Court of Human Rights on that subject.

19 None the less, in all the legal systems of the Member States, any intervention by the public authorities in the sphere of private activities of any person, whether natural or legal, must have a legal basis and be justified on the grounds laid down by law, and, consequently, those systems provide, albeit in different forms, protection against arbitrary or disproportionate intervention. The need for such protection must be recognized as a general principle of Community law. In that regard, it should be pointed out that the Court has held that it has the power to determine whether measures of investigation taken by the Commission under the ECSC Treaty are excessive (judgment of 14 December 1962 in Joined Cases 5 to 11 and 13 to 15/62 *San Michele and Others* v *Commission* [1962] ECR 449).

20 The nature and scope of the Commission's powers of investigation under Article 14 of Regulation No 17 should therefore be considered in the light of the general principles set out above.

21 Article 14(1) authorizes the Commission to undertake all necessary investigations into undertakings and associations of undertakings and provides that: 'To this end the officials authorized by the Commission are empowered:

(a) to examine the books and other business records;

(b) to take copies of or extracts from the books and business records;

(c) to ask for oral explanations on the spot;

(d) to enter any premises, land and means of transport of undertakings'.

22 Article 14(2) and (3) provide that investigations may be carried out upon production of an authorization in writing or of a decision requiring undertakings to submit to the investigation. As the Court has already decided, the Commission may choose between those two possibilities in the light of the special features of each case (judgment of 26 June 1980 in Case 136/79 *National Panasonic* v *Commission* [1980] ECR 2033). Both the written authorizations and the decisions must specify the subject-matter and purpose of the investigation. Whichever procedure is followed, the Commission is required to inform, in advance, the competent authority of the Member State in whose territory the investigation is to be carried out and, according to Article 14(4), that authority must be consulted before the decision ordering the investigation is adopted.

23 According to Article 14(5), the Commission's officials may be assisted in carrying out their duties by officials of the competent authority of the Member State in whose territory the investigation is to be made. Such assistance may be provided either at the request of that authority or of the Commission.

24 Finally, according to Article 14(6), the assistance of the national authorities is necessary for the carrying out of the investigation where it is opposed by an undertaking.

25 As the Court pointed out in the abovementioned judgment of 26 June 1980 (paragraph 20), it follows from the seventh and eighth recitals in the preamble to Regulation No 17 that the aim of the powers given to the Commission by Article 14 of that regulation is to enable it to carry out its duty under the EEC Treaty of ensuring that the rules on competition are applied in the common market. The function of those rules is, as follows from the fourth recital in the preamble to the Treaty, Article 3(f) and Articles 85 and 86, to prevent competition from being distorted to the detriment of the public interest, individual undertakings and consumers. The exercise of the powers given to the Commission by Regulation No 17 thus contributes to the maintenance of the system of competition intended by the Treaty with which undertakings are absolutely bound to comply. The eighth recital states that for that purpose the Commission must be empowered, throughout the common market, to require such information to be supplied and to undertake such investigations 'as are necessary' to bring to light any infringement of Articles 85 or 86.

26 Both the purpose of Regulation No 17 and the list of powers conferred on the Commission's officials by Article 14 thereof show that the scope of investigations may be very wide. In that regard, the right to enter any premises, land and means of transport of undertakings is of particular importance inasmuch as it is intended to permit the Commission to obtain evidence of infringements of the competition rules in the places in which such evidence is normally to be found, that is to say, on the business premises of undertakings.

27 That right of access would serve no useful purpose if the Commission's officials could do no more than ask for documents or files which they could identify precisely in advance. On the contrary, such a right implies the power to search for various items of information which are not already known or fully identified. Without such a power, it would be impossible for the Commission to obtain the information necessary to carry out the investigation if the undertakings concerned refused to cooperate or adopted an obstructive attitude.

28 Although Article 14 of Regulation No 17 thus confers wide powers of investigation on the Commission, the exercise of those powers is subject to conditions serving to ensure that the rights of the undertakings concerned are respected.

29 In that regard, it should be noted first that the Commission is required to specify the subject-matter and purpose of the investigation. That obligation is a fundamental requirement not merely in order to show that the investigation to be carried out on the premises of the undertakings concerned is justified but also to enable those undertakings to assess the scope of their duty to cooperate while at the same time safeguarding the rights of the defence.

30 It should also be pointed out that the conditions for the exercise of the Commission's investigative powers vary according to the procedure which the Commission has chosen, the attitude of the undertakings concerned and the intervention of the national authorities.

31 Article 14 of Regulation No 17 deals in the first place with investigations carried out with the cooperation of the undertakings concerned, either voluntarily, where there is a written authorization, or by virtue of an obligation arising under a decision ordering an investigation. In the latter case, which is the situation here, the Commission's officials have, *inter alia*, the power to have shown to them the documents they request, to enter such premises as they choose, and to have shown to them the contents of any piece of furniture which they indicate. On the other hand, they may not obtain access to premises or furniture by force or oblige the staff of the undertaking to give them such access, or carry out searches without the permission of the management of the undertaking.

32 The situation is completely different if the undertakings concerned oppose the Commission's investigation. In that case, the Commission's officials may, on the basis of Article 14(6) and without the cooperation of the undertakings, search for any information necessary for the investigation with the assistance of the national authorities, which are required to afford them the assistance necessary for the performance of their duties. Although such assistance is required only if the under-

taking expresses its opposition, it may also be requested as a precautionary measure, in order to overcome any opposition on the part of the undertaking.

33 It follows from Article 14(6) that it is for each Member State to determine the conditions under which the national authorities will afford assistance to the Commission's officials. In that regard, the Member States are required to ensure that the Commission's action is effective, while respecting the general principles set out above. It follows that, within those limits, the appropriate procedural rules designed to ensure respect for undertakings' rights are those laid down by national law.

34 Consequently, if the Commission intends, with the assistance of the national authorities, to carry out an investigation other than with the cooperation of the undertakings concerned, it is required to respect the relevant procedural guarantees laid down by national law.

35 The Commission must make sure that the competent body under national law has all that it needs to exercise its own supervisory powers. It should be pointed out that that body, whether judicial or otherwise, cannot in this respect substitute its own assessment of the need for the investigations ordered for that of the Commission, the lawfulness of whose assessments of fact and law is subject only to review by the Court of Justice. On the other hand, it is within the powers of the national body, after satisfying itself that the decision ordering the investigation is authentic, to consider whether the measures of constraint envisaged are arbitrary or excessive having regard to the subject-matter of the investigation and to ensure that the rules of national law are complied with in the application of those measures.

36 In the light of the foregoing, it must be held that the measures which the contested decision ordering the investigation permitted the Commission's officials to take did not exceed their powers under Article 14 of Regulation No 17. Article 1 of that decision merely requires the applicant 'to permit officials authorized by the Commission to enter its premises during normal office hours, to produce for inspection and to permit copies to be made of business documents related to the

subject-matter of the enquiry which are requested by the said officials and to provide immediately any explanations which those officials may seek'.

37 During the proceedings before the Court, the Commission did indeed argue that its officials are entitled, when making investigations, to carry out searches without the assistance of the national authorities and without respecting the procedural guarantees provided for under national law. However, that misinterpretation of Article 14 of Regulation No 17 cannot render unlawful decisions adopted on the basis of that provision.

38 The submission alleging that the Commission exceeded its powers of investigation must therefore be rejected.

(b) *The statement of reasons*

39 According to the applicant, the decision ordering the investigation infringes Article 190 of the Treaty and Article 14(3) of Regulation No 17 on the ground that it is imprecise, in particular in regard to the subject-matter and purpose of the investigation.

40 It should be pointed out that, as the Court held in its abovementioned judgment of 26 June 1980 (*National Panasonic*, paragraph 25), Article 14(3) of Regulation No 17 itself lays down the essential constituents of the statement of the reasons upon which a decision ordering an investigation is based by providing that it 'shall specify the subject-matter and the purpose of the investigation, appoint the date on which it is to begin and indicate the penalties provided for in Article 15(1)(c) and Article 16(1)(d) and the right to have the decision reviewed by the Court of Justice'.

41 As has been stated above, the Commission's obligation to specify the subject-matter and purpose of the investigation constitutes a fundamental guarantee of the rights of the defence of the undertakings concerned. It follows that the scope of the obligation to state the reasons on which decisions ordering investigations are based cannot be restricted on the basis of considerations concerning the effectiveness of the investigation. Although the Commission is not required to communicate to the addressee of a decision ordering an investigation all the information at its disposal concerning the presumed infringements, or to make a precise

legal analysis of those infringements, it must none the less clearly indicate the presumed facts which it intends to investigate.

42 Although the statement of the reasons on which the contested decision is based is drawn up in very general terms which might well have been made more precise, and is therefore open to criticism in that respect, it none the less contains the essential indications prescribed by Article 14(3) of Regulation No 17. The decision at issue refers in particular to information suggesting the existence and application of agreements or concerted practices between certain producers and suppliers of PVC and polyethylene (including, but not limited to, LdPE) in the EEC, concerning prices, quantities or sales targets for those products. It states that those agreements and practices may constitute a serious infringement of Article 85(1) of the Treaty. According to Article 1 of the decision in question, the applicant 'is required to submit to an investigation concerning its possible participation' in those agreements or concerted practices and, consequently, to give the Commission's officials access to its premises and to produce or allow copies to be made for the purpose of inspection of business documents 'related to the subject-matter of the investigation'.

43 In those circumstances, the submission alleging that the statement of reasons is insufficient must be rejected.

(c) *The procedure under which the decision was adopted*

44 It is common ground that the contested decision ordering the investigation was adopted by the so-called delegation procedure, provided for by the Commission Decision of 5 November 1980, empowering the Member of the Commission with responsibility for competition to adopt a decision under Article 14(3) of Regulation No 17 on behalf of and under the responsibility of the Commission ordering undertakings to submit to investigations. In its judgment of 23 September 1986 in Case 5/85 *AKZO Chemie* v *Commission* [1986] ECR 2585, the Court has already held that that decision delegating authority did not infringe the principle of collegiate responsibility enshrined in Article 17 of the Merger Treaty.

45 However, the applicant considers it necessary for the Court to re-examine the lawfulness of that delegation procedure which the applicant regards as incompatible with the principle *nulla poena sine lege*. It claims that the Commission, by a mere internal administrative measure, has modified the constituent elements of an

infringement in respect of which a fine may be imposed under Article 15 of Regulation No 17 because, with effect from the abovementioned decision of 5 November 1980, such an infringement is constituted by a refusal to submit to an investigation ordered by a single Member of the Commission and not, as previously, by the Commission as a collegiate body.

46 In that regard, it should be pointed out that although it is correct that the conditions under which a fine may be imposed under Article 15 of Regulation No 17 cannot be amended by a decision of the Commission, it was neither the purpose nor the effect of the abovementioned decision delegating authority to make such an amendment. In so far as the system of delegation of authority for decisions ordering investigations does not infringe the principle of collegiality, the decisions adopted by virtue of such delegation must be regarded as decisions of the Commission within the meaning of Article 15 of Regulation No 17.

47 The submission alleging that the procedure was unlawful must therefore be rejected.

48 Since none of the submissions raised against the decision ordering the investigation can be accepted, the application for a declaration that that decision is void must be dismissed.

The decision imposing the periodic penalty payment

49 According to the applicant, the adoption of the decision imposing the periodic penalty payment was vitiated by a breach of essential procedural requirements because the Commission adopted it without first having heard the undertaking concerned and consulted the Advisory Committee on Restrictive Practices and Dominant Positions.

50 The Commission, on the other hand, considers that there has been no breach of essential procedural requirements since such hearing and consultation took place before the definitive fixing of the periodic penalty payment.

51 It should be pointed out that the undertakings concerned must be given the opportunity 'of being heard on the matters to which the Commission has taken objection', pursuant to Article 19(1) of Regulation No 17, before the adoption of various decisions, including those provided for in Article 16 concerning periodic penalty payments.

52 That hearing is an essential part of the rights of the defence. It is necessary in order for undertakings and associations of undertakings to be able 'to submit their comments on the whole of the objections raised against them which the Commission proposes to deal with in its decisions' (third recital in the preamble to Regulation No 99/63 of the Commission of 25 July 1963 on the hearings provided for in Article 19(1) and (2) of Council Regulation No 17 (Official Journal, English Special Edition 1963-64, p. 47)).

53 With regard to the Advisory Committee on Restrictive Practices and Dominant Positions, Article 16(3) provides that 'Article 10(3) to (6) shall apply'. Those provisions govern the powers, composition, and procedure for consulting the Advisory Committee.

54 According to Article 1 of Regulation No 99/63, 'before consulting the Advisory Committee on Restrictive Practices and Dominant Positions, the Commission shall hold a hearing pursuant to Article 19(1) of Regulation No 17'. That provision confirms that the hearing of the undertakings concerned and the consultation of the Advisory Committee are necessary in the same situations.

55 In determining whether the Commission was required to hear the applicant and consult the Advisory Committee before adopting the decision imposing the periodic penalty payment, it should be borne in mind that the fixing of periodic penalty payments under Article 16 of Regulation No 17 necessarily involves two stages. In its first decision, referred to in Article 16(1), the Commission imposes a periodic penalty payment expressed in terms of a number of units of account per day of delay, calculated from a date fixed by it. Since that decision does not determine the total amount of the periodic penalty payment, it cannot be enforced. That amount can be definitively fixed only in another decision.

56 Therefore, the obligation to hear the undertaking concerned and to consult the Advisory Committee on Restrictive Practices and Dominant Positions is fulfilled if the hearing and consultation take place before the fixing of the definitive amount of the periodic penalty payment, so that both the undertaking concerned and the Advisory Committee are then in a proper position to express their views on all the matters on the basis of which the Commission has imposed the periodic penalty payment and fixed the definitive amount thereof.

57 Furthermore, the requirement to hear the undertaking and consult the Advisory Committee before the adoption of a decision imposing a periodic penalty payment on an undertaking which has refused to submit to an investigation would entail delaying the date of adoption of that decision and, therefore, jeopardizing the effectiveness of the decision ordering the investigation.

58 It follows from the foregoing that the adoption of the decision imposing the periodic penalty payment was not vitiated by a breach of essential procedural requirements. The application for a declaration that that decision is void must therefore be dismissed.

The decision fixing the definitive amount of the periodic penalty payment

59 According to the applicant, the definitive amount of the periodic penalty payment, which was fixed by the contested decision of 26 May 1988, must be reduced for two reasons.

60 It claims first that the Commission should have excluded from its calculations the period during which the application for interim measures, in which the applicant sought suspension of the operation of the decision ordering the investigation, was pending before the Court. It claims that the Commission has contradicted its own position inasmuch as it had stated that it was prepared to delay the implementation of that decision until the Court had ruled on the matter.

61 It suffices to point out in that regard that the statement to that effect made by the Commission during the proceedings concerned only the position that it might subsequently adopt if, in accordance with the argument that it put forward, the application for interim measures before the Court was recognized as being the appropriate means of prior judicial review of investigations ordered by the

Commission. Such a statement cannot therefore have any consequences in this case in regard to the fixing of the definitive amount of the periodic penalty payment.

62 In the second place, the applicant considers that the definitive amount is disproportionate, because the applicant acted solely on the basis of the higher interests of ensuring a lawful and constitutional investigation procedure.

63 It should be noted in that regard that the applicant did not merely oppose specific measures, which, in its view, went beyond the powers of the Commission's officials; it refused to cooperate in any way in the implementation of the decision addressed to it ordering the investigation.

64 Such conduct is incompatible with the obligation imposed upon all persons subject to Community law to acknowledge that measures adopted by the institutions are fully effective so long as they have not been declared invalid by the Court and to recognize their enforceability unless the Court has decided to suspend the operation of the said measures (see, in particular, the judgment of 13 February 1979 in Case 101/78 *Granaria* v *Hoofdproduktschap voor Akkerbouwprodukten* [1979] ECR 623, paragraph 5) and cannot be justified on the basis of superior legal interests.

65 It follows from all the matters considered by the Court that there are no grounds for reducing the amount of the periodic penalty payment. That claim must therefore be rejected.

66 It follows from the foregoing that the applications must be dismissed.

Costs

67 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been asked for in the successful party's pleading. Since the applicant has failed in its submissions, it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

(1) Dismisses the applications.

(2) Orders the applicant to pay the costs.

Due Koopmans Joliet O'Higgins Grévisse

Slynn Mancini Kakouris Schockweiler

Moitinho de Almeida Rodríguez Iglesias Díez de Velasco Zuleeg

Delivered in open court in Luxembourg on 21 September 1989.

J.-G. Giraud
Registrar

O. Due
President