consult the Advisory Committee before the adoption of such a decision would entail delaying the date of adoption of that decision and, therefore, jeopardizing the effectiveness of the decision ordering the investigation.

On the other hand, that hearing is an essential part of the rights of the defence and the consultation must 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.

9. All persons subject to Community law must 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. The conduct of an undertaking which refuses to cooperate in any way in the implementation of a decision ordering an investigation under Article 14 of Regulation No 17 addressed to it is incompatible with that obligation and cannot be justified on the basis of superior legal interests with the result that there are no grounds for reducing the amount of the periodic penalty payment imposed on account of that refusal.

REPORT FOR THE HEARING
delivered in Joined Cases 46/87 and 227/88 *

I — Facts

The applicant is a chemical undertaking which produces and markets, *inter alia*, PVC and polyethylene.

Since it had grounds for suspecting the existence of agreements or concerted practices concerning the fixing of prices and delivery quotas for PVC and polyethylene between certain producers and suppliers of those substances in the Community, the Commission decided to carry out an investigation into several undertakings, including the applicant, and adopted the contested decision on 15 January 1987.

Two Commission officials, having the decision in their possession and accompanied by an official of the Bundeskartellamt (Federal Cartel Office), the German authority competent in competition matters, paid an unannounced visit to the applicant on 20 January 1987 in order to carry out the investigation. The applicant refused to submit to the investigation on the ground that it was an unlawful search, at least, in the absence of a prior judicial warrant.

* Language of the case: German.

Two days later, the Commission made a second attempt, this time in the presence of two representatives of the Bundeskartellamt and of two police officers. However, the latter withdrew, since they considered that the Commission was intending to carry out a search.

On 29 January 1987, after the failure of a third attempt to carry out the investigation on 23 January 1987, the Commission sent a telex calling on the applicant to declare, before 2 February 1987, its readiness to submit to the investigation; otherwise it would be subject to a periodic penalty payment of ECU 1 000 for each day of delay. In reply to that telex, the applicant maintained its position that the proposed investigation was an unlawful search. On 3 February 1987, the Commission adopted the contested decision imposing a periodic penalty payment on the applicant.

By decision of 12 February 1987, the Amtsgericht (Local Court) Frankfurt dismissed the Bundeskartellamt's application for a search warrant on the ground that no facts had been put before it to justify the suspicion that agreements or concerted practices existed.

By order of 26 March 1987 in Case 46/87 R, the President of the Court of Justice dismissed Hoechst's application for suspension of the operation of the contested decisions of 15 January and 3 February 1987.

On 31 March 1987, the Bundeskartellamt obtained from the Amtsgericht Frankfurt a search warrant issued directly in the name of the Commission. The latter was able to carry out the investigation on 2 and 3 April 1987, when the applicant's representatives submitted to the investigation because of the court order, whilst maintaining their reservations as to the Commission's powers.

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

II — Written procedure

By applications lodged at the Court Registry on 16 February 1987 and 5 August 1988 respectively, Hoechst AG brought actions under the second paragraph of Article 173 of the EEC Treaty for declarations that the Commission decisions of 15 January and 3 February 1987 (Case 46/87) and 26 May 1988 (Case 227/88) were void.

The written procedure followed the normal course. In Case 227/88 the applicant refrained from submitting a reply.

By order of 23 November 1988, the Court joined the two cases for the purposes of the oral procedure and the judgment.

Upon hearing the Report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry. However, the parties were invited to reply in writing to certain questions, which they did within the prescribed period.

III — Conclusions of the parties

The applicant claims that the Court should:

(1) declare void the following decisions of the Commission:

(a) the decision of 15 January 1987, notified to the applicant on 20 January 1987, concerning an investigation under Article 14(3) of Regulation No 17 of the Council (IV/31.865 — PVC and IV/31.866 — Polyethylene),

(b) the decision of 3 February 1987, communicated to the applicant by telecopier on 4 February 1987, imposing a periodic penalty payment under Article 16 of Regulation No 17 (IV/31.865 — PVC and IV/31.866 — Polyethylene),

(c) the decision of 26 May 1988, notified to the applicant on 3 June 1988, definitively fixing the amount of a periodic penalty payment under Article 16 of Regulation No 17 (IV/31.865 — PVC and IV/31.866 — Polyethylene);

(2) in the alternative:

(a) declare void the decision contested in paragraph 1(a) above inasmuch as it contains the authorization to conduct a search, and in particular the authorization to inspect premises and storage facilities to see whether they contain business documents and if so what documents,

(b) declare void the decision of 3 February 1987 imposing a periodic penalty payment in so far as it serves to compel the applicant to submit to the measure specified in (a) above,

(c) reduce the amount of the definitive penalty payment;

(3) order the defendant to pay the costs.

The Commission contends that the Court should:

(1) dismiss the application;

(2) order the applicant to pay the costs.

IV — Submissions and arguments of the parties

A — *The decision concerning the investigation*

With regard to the decision of 15 January 1987, the applicant relies on submissions based on the fact that the decision was adopted by one Member of the Commission and not by the entire Commission (see 1, below), the lack of an adequate statement of reasons (see 2, below) and the limits to the Commission's investigatory powers (see 3, below).

1. *The adoption of the decision by one Member of the Commission and not by the entire Commission*

(a) The applicant expresses doubts as to the compatibility of the procedure whereby one Member of the Commission is empowered to decide in the name of the entire Commission with the Community constitutional order, in particular, with the principle *nulla poena sine lege*. Failure to comply with a decision ordering an investigation makes an undertaking liable to a fine under Article 15(1) of Regulation No 17. However, by a mere measure of internal administration, namely an enabling decision in competition matters of 5 November 1980, the Commission modified, without legal basis, the conditions laid down in the provision providing for the fine. Since 5 November 1980, the guarantees implicit in the involvement of a collegiate body have been diminished to the detriment of undertakings under investigation.

(b) The Commission contests that premiss on the basis of the judgment of 23 September 1986 in Case 5/85 *AKZO* v *Commission* [1986] ECR 2585. Furthermore, Article 15(1)(c) of Regulation No 17 punishes the breach of an obligation laid down not by an administrative measure, but by law, namely Article 14(3) of Regulation No 17.

2. *Lack of an adequate statement of reasons*

(a) According to the applicant, the decision of 15 January 1987 infringes Article 190 of the Treaty and Article 14(3) of Regulation No 17 inasmuch as it is not sufficiently precise and gives *carte blanche* to the officials responsible for implementing it.

The contested decision does not sufficiently define the subject-matter and purpose of the investigation. It fails to describe the conduct which is being investigated. It should have indicated concrete facts making it possible to determine the scope of the suspected infringement and the investigation by reference to the time, place, subject-matter or method by which the infringement was committed. The decision gives no indication of the time or period during which the applicant is alleged to have committed the infringement.

Furthermore, the contested decision does not sufficiently define the obligations imposed on the applicant or the documents which it is to produce. The operative part of the decision and the recitals in the preamble thereto contain no authority for a search but merely authority for an investigation. Moreover, the obligations set out in Article 1 of the decision go beyond the scope of the subject-matter of the investigation as set out in the preamble.

The total lack of precision also infringes fundamental and procedural constitutional rights, including those contained in Article 8 of the European Convention on Human Rights (see the judgment of 26 September 1986, cited above), and the principle of legal certainty (see the judgment of 9 July 1981 in Case 169/80 *Administration des douanes* v *Gondrand frères* [1981] ECR 1931).

(b) The Commission considers that the powers of the officials responsible for implementing the decision and the limits of those powers primarily stem not from the decision ordering the investigation but from the law. The enumeration of those powers in the decision is of merely declaratory value.

A decision under Article 14(3) of Regulation No 17 must specify at least the subject-matter of the investigation, namely the alleged infringement, and the purpose thereof, namely the clarification of the particular circumstances of that infringement (see the judgment of 26 June 1980 in Case 136/79 *National Panasonic* v *Commission* [1980] ECR 2033). The contested decision meets those requirements.

On the other hand, specific details of the alleged infringement do not form part of the contents of the decision ordering an investigation.

With regard to the date or period of the alleged infringement, the Commission contends that as a general rule that information is unknown to it. Furthermore, the infringements involved are normally continuous or continued and not individual acts. It is only in the case in which an agreement or concerted practice consists of a single act, which is not the case here and is extremely rare, that more precise indications may be required.

3. *The Commission's powers of investigation*

(a) According to the applicant, the contested decision is unlawful inasmuch as it authorized the Commission's officials to carry out the searches which they envisaged. Such measures are incompatible both with Article 14 of Regulation No 17 and with fundamental rights.

If Article 14 is to be interpreted as meaning that it gives the Commission powers to carry out searches, which the applicant contests, that article is unlawful on the ground that it is incompatible with fundamental rights.

The applicant bases itself first on the terms of Article 14(1) and (3) of Regulation No 17. The term 'investigation' used therein is in all the language versions different from the concept of a search. In all legal systems, the latter concept constitutes a category distinct from that of investigation and it is always subject to particular requirements of a legislative or constitutional nature.

Furthermore, the list of measures which may be adopted under Article 14(1) does not include searches. Rather than giving powers to 'search any premises', Regulation No 17 merely gives a power to 'enter any premises'.

The concept of a search is clear and is more than mere access to premises. The applicant cites the definition used by the Bundesverfassungsgericht (Federal Constitutional Court) (Volume 51, p. 97, at pp. 106 and 107), according to which a search is 'searching carried out with a precise objective and purpose by the authorities of a State to find persons or objects or to ascertain facts, so as to discover something that the occupant of the dwelling did not wish to disclose or hand over himself'.

According to the applicant, the *travaux préparatoires* (see Assemblée parlementaire européenne, documents de séance 1961-62, document 57, Deringer Report, p. 30) show that those who drafted Regulation No 17

were aware both of the distinction between an investigation and a search and of the particular constitutional requirements in regard to searches. Consequently, since the Community legislature did not provide the necessary constitutional guarantees in regard to searches, it intended to limit the powers of the Commission to investigations.

Furthermore, the applicant claims that the measures set out in Article 14(1) may not be interpreted widely. In particular, the duty to cooperate imposed on the undertaking is incompatible with a system of searches in which the person concerned plays merely a passive role. Furthermore, having regard to the provisions of Article 15(1)(c) of Regulation No 17 concerning fines, the constitutional principle *nulla poena sine lege* precludes an interpretation by analogy.

The prevailing view among legal writers is also that the Commission does not have a right to carry out a search. The same conclusion may be drawn from an interpretation of the national provisions implementing Regulation No 17 in accordance with Article 14(6) thereof, none of which contains all the necessary measures to give effect to a right to carry out a search.

The effectiveness of an investigation without a right to carry out a search has been shown in particular by United States anti-trust law (see the expert's report by Sullivan & Cromwell, Attorneys, New York, Annex 7 to the reply). Furthermore, the protection of fundamental rights in the context of Article 14 of Regulation No 17 cannot be made subject to the effectiveness of administrative action.

With regard to fundamental rights, the applicant adopts the conclusions of an expert's report drawn up by Professor J. A. Frowein, of Heidelberg, (Annex 6 to the reply):

(i) on the basis of the constitutional systems common to the Member States, there exists, at Community level, a fundamental right to protection of the home (Wohnung);

(ii) the fundamental right to protection of the home also applies to business premises;

(iii) in order to carry out a search — as distinct from an inspection — on business premises, a court order is necessary by virtue of the abovementioned fundamental right to protection;

(iv) the court order must be obtained before the search is carried out and must specify in detail the limits of the said search;

(v) under Community law, only a Community court (the Court of Justice of the European Communities) can have jurisdiction to issue a search warrant, in the absence of any other specific provision.

The applicant adds that judicial review which takes place only after the event is equivalent to a refusal to protect a fundamental right because review *a posteriori* is in any event ensured by the possibility of bringing an action under Articles 173 and 186 of the Treaty.

(b) By way of introduction, the Commission contends that the applicant's argument is inconsistent inasmuch as it alleges that searches are clearly excluded both by the provisions of Article 14 of Regulation No 17 and by the text of the decision while none the less seeking the annulment of the latter. The applicant's comments can at most be regarded as a criticism of the attitude of the Commission's officials, who are accused of having exceeded their powers. An application for a declaration that the decision of 15 January 1987 is void is not the appropriate legal recourse in such a case.

The Commission regards the submission alleging that Article 14 of Regulation No 17 is contrary to fundamental rights as inadmissible because the decision does not adversely affect the applicant in that respect. According to the applicant's own statements, the conditions for derogation from the fundamental right to the inviolability of business premises (adequate suspicion, judicial review) have been fulfilled because the Amtsgericht Frankfurt has issued a search warrant, considering that sufficient grounds for suspicion had been made out.

With regard to the substance of the case, the Commission states that Article 14 of Regulation No 17 gives it a power to carry out searches.

The concept of an investigation is a generic one which includes searches. A search is merely a more far-reaching form of investigation. That is true both in regard to Article 14 of Regulation No 17 and to Paragraph 46 of the German Gesetz gegen Wettbewerbsbeschränkungen (Law on hindrances to competition).

That result is corroborated by the overall structure of Article 14 of Regulation No 17. It can be seen from Article 14(6) that the Commission's officials may not directly use force, that is to say, they are not entitled themselves to act against the wishes of the person concerned. If the latter refuses to submit, assistance must be provided by the representatives of the competent national authority, if necessary, by using direct force, for example, by forcing open pieces of furniture and removing files so that the Commission's officials may find therein the documents they are looking for.

However, in the context of Article 14, the Member States enjoy, in substance, only the powers granted by Community law. Consequently, if Article 14(3) did not include powers to carry out searches, national officials could not provide the necessary assistance.

That interpretation corresponds to the situation in the Federal Republic of Germany as provided for in Paragraphs 3 and 4 of the Gesetz zur Ausführung der Verordnung Nr. 17 (Law for the implementation of Regulation No 17), read together with Paragraphs 8 and 12 of the Verwaltungsvollstreckungsgesetz (Law on the implementation of administrative decisions).

The right to carry out a search also flows from the right of access provided for in Article 14(1) of Regulation No 17. It follows clearly from that provision that the Commission's officials are not limited to accepting the documents chosen and determined by the undertaking, but that they are also entitled to carry out the investigation in the place in which the documents which they are seeking are kept and to examine them and sort them themselves.

Any other interpretation of Article 14 would render it ineffective and permit the undertaking, by passive resistance, to frustrate altogether an inquiry into the suspected infringement. In that case, a right of access for the Commission's officials would be superfluous. A request for information under Article 11 of Regulation No 17 would be sufficient for that purpose.

The situation in the United States cannot be used as a counter-argument. The anti-trust section of the United States Department of Justice has in the subpoena a very powerful instrument without equivalent in continental Europe and is also entitled to carry out searches on the basis of a court decision.

The Commission draws attention to the judgment of the Court of 21 February 1973 in Case 6/72 *Continental Can* v *Commission* [1973] ECR 215, according to which the protection of competition is one of the basic objectives of the Treaty which have binding force. That protection cannot be ensured if the Commission cannot effectively carry out inquiries.

From the point of view of fundamental rights, the Commission considers that the starting point must be the maximum level of protection provided for in the legal systems of the Member States.

With regard to the fundamental right to the inviolability of the home, the Commission agrees with the applicant that such a right exists at Community level, that, in principle, it also applies to the business premises of legal persons, that any encroachment on that right by the public authorities must be provided for by law and that, in principle, searches may be made only on the basis of a court decision.

According to the Commission, review by the courts may however take place before the investigation (at the initiative of the authorities) or after (at the initiative of the undertaking). Examples of review after the event are contained in Paragraph 55 of the German Law on hindrances to competition and Article 13(2) of the Italian Constitution.

Although Community law does not provide any special procedural rules on review by the courts, it none the less provides a solution to the problem by way of an application to the Court of Justice for the adoption of interim measures. Article 83(1) of the Rules of Procedure makes it possible to consider a possible infringement of a fundamental right in the context of that procedure. It is for the undertaking to take the initiative and it must at the same time bring an action for the annulment of the decision ordering the investigation but such proceedings ensure respect for the fundamental right before the inspection takes place. The Commission is willing not merely to assist in the drafting of the application for suspension of operation of the decision ordering the investigation but also to delay the implementation of that decision until the Court gives its ruling as long as the necessary protective measures are taken within the undertaking to ensure that evidence is not removed (for example, by placing seals on storage cupboards).

Finally, the Commission refutes the applicant's argument to the effect that the Court of Justice has implied jurisdiction to give authority for searches. There is no legal basis for such a jurisdiction since the Court may merely review the lawfulness of administrative decisions.

B — *The decision imposing a periodic penalty payment*

In order to make it easier to understand the arguments of the parties, it should be pointed out first of all that they each take as their premiss different conceptions of the procedure for the fixing of periodic penalty payments under Article 16 of Regulation No 17.

According to the Commission, there are two stages in the imposition of periodic penalty payments under that article. A distinction must be made between two steps which are not unrelated: provisional fixing (comminatory stage) and definitive fixing. Article 16(1) expressly governs the first step and Article 16(2) governs the second solely in the special case where the amount fixed in the initial decision may be reduced. Only the second decision fixing the total amount due at that date is enforceable within the meaning of Article 192 of the Treaty. The contested decision of 3 February 1987 constituted the first stage. It was necessary to consult the Advisory Committee on Restrictive Practices and Dominant Positions and to hear the undertaking concerned only before the adoption of the second decision.

On the other hand, the applicant considers that those procedural requirements had to be fulfilled before the adoption of the first decision, namely that of 3 February 1987.

1. The applicant claims first that the decision of 3 February 1987 imposing a periodic penalty payment becomes devoid of legal basis if the decision ordering the investigation is declared void. Furthermore, it considers that in adopting the decision imposing the penalty payment, the Commission infringed essential procedural requirements.

As can be seen clearly from Article 16(3), in conjunction with Article 10(3) to (6) of Regulation No 17, the Commission should have consulted the Advisory Committee before adopting the contested decision. The applicant relies on the Opinion of the Advocate General in Joined Cases 228 and 229/82 *Ford* v *Commission* [1984] ECR 1164, at p. 1173.

The failure to hear the applicant before the adoption of the decision at issue constitutes an infringement of Article 19(1) of Regulation No 17, in conjunction with Articles 2, 7, 10 and 11 of Commission Regulation No 99/63 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).

It can be seen from the terms of Article 19(1) of Regulation No 17 that that provision refers in particular to Article 16(1), the only provision in that article which deals with the imposition of a periodic penalty payment by decision.

If it was not necessary to hear the undertaking at the first stage of the fixing of a periodic penalty payment (Article 16(1)), the scheme of legal protection under the EEC Treaty would be called into question. The person concerned must be able to check any administrative measure adversely affecting him so that he may bring an action within the prescribed time-limits without the risk of no longer being able to rely on the infringement of the right to be heard.

The decision provided for under Article 16(1), which creates a substantive obligation to pay a periodic penalty payment,

constitutes in itself a serious and dangerous intervention, particularly as the penalty payment is intended to implement a decision ordering an investigation which raised major legal issues. It is therefore disproportionate not to hear the undertaking concerned before fixing the penalty payment. In this case, there was no urgent need to carry out the investigation since the proceedings had been pending for more than three years.

The hearing of the undertaking before adopting a decision fixing the periodic penalty payment would not diminish the effectiveness of the investigation system. The failure to comply with the obligation to submit to an investigation is punishable by a fine under Article 15(1)(c) of Regulation No 17, and also by the penalties imposed by the Member States in the provisions implementing Community law in that regard.

2. According to the Commission the applicant is relying on a misconception of the system of decisions concerning periodic penalty payments.

The Commission considers that all the applicant's arguments to the effect that the decision of 3 February 1987 is unlawful amount to a belated new submission, which is inadmissible under Article 42(2) of the Rules of Procedure. The applicant initially directed its action for annulment against the measure which it wrongly regarded as definitively fixing the amount of the periodic penalty payment. In its reply, by transferring its complaints against the (supposed) definitive fixing to the (actual) provisional fixing, the applicant changed course in a manner at variance with what is set out in its application.

Furthermore, its complaints are without foundation. The legal protection provided for under Regulation No 17 is ensured in so far as the Advisory Committee and the undertaking concerned are heard at one of the two stages of the procedure. It would be impossible to carry out an investigation by surprise if a hearing took place during the first stage. In the case of an investigation which was not carried out by surprise, a hearing at that stage would provoke a significant slowing down of the inquiry and could render it ineffective.

Moreover, the nature of a decision under Article 16(1) does not raise any significant question regarding the provisions applicable such as to justify a hearing. The provisional fixing of a periodic penalty payment does not presuppose fault on the part of the undertaking and the question of the appropriateness of the rate is not a matter coming within the scope of the procedural guarantees. Even in the context of Article 15 of Regulation No 17, the amount of the fines is not the subject of a hearing (see the consistent case-law of the Court). Consequently, the guarantee of a right to a hearing refers in any event only to the fixing of periodic penalty payments in the special case governed by Article 16(2) because, once an undertaking has adopted the required conduct, the definitive fixing of a periodic penalty payment is not a means of persuasion but a penalty.

Furthermore, the Commission complains that the applicant is seeking to extend the hearing in regard to the penalty payment procedure to objections to the investigation procedure. However, Regulation No 17 quite rightly does not provide for any hearing in regard to that procedure.

C — *The decision fixing the definitive amount of the periodic penalty payment*

1. The applicant considers that the decision of 26 May 1988 would be without foundation if the decision concerning the investigation or the decision imposing the periodic penalty payment were declared void because that declaration would have retroactive effect.

Furthermore, the decision must be declared void for the reasons set out above, namely that it obliges the applicant to submit to searches for which Regulation No 17 contains no legal basis and which, in the absence of a prior court order, are incompatible with Community constitutional principles.

With regard to the amount fixed for the periodic penalty payment, the applicant contends that the Commission has infringed Article 16 of Regulation No 17 from two points of view.

On the one hand, the Commission should have taken account of the application for suspension of the operation of the decision ordering the investigation. By fixing the definitive periodic penalty payment so as to include the period of the application for the adoption of interim measures, it contradicted its own position, namely that it was prepared to stay implementation in such a case until the Court had given a ruling.

On the other hand, the overall amount is disproportionate and is based on an error of assessment because the applicant was guided in its decisions solely by the higher interests of ensuring a lawful and constitutional investigation procedure. Having regard to the view of all the legal writers, the applicant was entitled to presume that Article 14 of Regulation No 17 gives the Commission no powers to carry out searches. It cannot therefore be criticized for its refusal to submit, whether objectively or subjectively. Furthermore, the Commission cannot claim that there was any interest justifying rapid enforcement since its information concerning the alleged infringements dated from October 1983.

2. The Commission considers that the application to declare the decision of 26 May 1988 void is inadmissible inasmuch as it is based on the nullity of the decision of 3 February 1987 imposing the periodic penalty payment. If that decision is declared void, the decision of 26 May 1988 automatically loses its purpose. Having brought an action for a declaration that the first decision is void, the applicant thus no longer has any interest in also applying for the annulment of the second decision.

With regard to the substance of the case, concerning the relationship between the contested decision and the decision ordering the investigation, the Commission contends that a declaration that the latter decision is void would not deprive the decision of 26 May 1988 of its legal basis. By reason of the presumption of validity of Community measures until they have been declared void by the Court, the applicant was obliged to accept the investigation, since operation of the decision had not been suspended. That consequence is definitive and is in no way affected by the possibility of subsequent annulment.

Furthermore, the application does not contain a consistent statement of the reasons on which it is based and is therefore without foundation in so far as it seeks a declaration that the decision of 26 May 1988 is void on the same grounds as were put forward against the decision ordering the investigation, even if the Court does not declare that decision void. The decision ordering

the investigation cannot be at the same time both valid and unlawful.

The Commission denies that in fixing the amount of the periodic penalty payment, it contradicted its position in these proceedings. Its statement that it was prepared to delay implementation of an investigation until the Court had ruled on an application for the adoption of interim measures referred only to the possible use in the future of Article 83 of the Rules of Procedure as a legal basis for Community judicial review prior to a search.

With regard to the question of the proportionality of the amount fixed, the Commission complains that the applicant is seeking compensation for an infringement of the law by the Commission to an extent which in common law systems would be regarded as contempt of court. The applicant had not merely disregarded the presumption of the validity of Community measures but had also persisted in its refusal even after its application for suspension of the operation of the decision had been dismissed by the President of the Court.

G. C. Rodríguez Iglesias
Judge-Rapporteur