JUDGMENT OF THE COURT
17 October 1989 *

In Joined Cases 97 to 99/87

Dow Chemical Ibérica SA, a company incorporated under Spanish law, whose registered office is in Axpe-Erandio (Spain),

Alcudia, Empresa para la Industria Química SA, a company incorporated under Spanish law, whose registered office is in Madrid, and

Empresa Nacional del Petróleo SA, a company incorporated under Spanish law, whose registered office is in Madrid,

all represented by José Pérez Santos, of the Madrid Bar, with an address for service in Luxembourg at the Chambers of Ernest Arendt, 4 avenue Marie-Thérèse,

applicants,

v

Commission of the European Communities, represented by Norbert Koch, Legal Adviser, and Luis Miguel Pais Antunes and Daniel Calleja y Crespo, members of its Legal Department, acting as Agents, with an address for service in Luxembourg at the office of Georgios Kremlis, a member of its Legal Department, Wagner Centre, Kirchberg,

defendant,

APPLICATION for a declaration that the Commission Decisions of 15 January 1987 (C(87)19/1, 2 and 3) 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), adopted in Cases IV/31.865 — PVC and IV/31.866 — Polyethylene, are void,

* Language of the case: Spanish

THE COURT

composed of: O. Due, President, Sir Gordon Slynn, C. N. Kakouris, F. A. Schockweiler and M. Zuleeg (Presidents of Chambers), T. Koopmans, G. F. Mancini, R. Joliet, T. F. O'Higgins, J. C. Moitinho de Almeida, G. C. Rodríguez Iglesias, F. Grévisse and M. Diez de Velasco, 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 2 April 1987, Dow Chemical Ibérica SA (hereinafter referred to as 'Dow Ibérica'), Alcudia, Empresa para la Industria Química SA (hereinafter referred to as 'Alcudia'), and Empresa Nacional del Petróleo SA (hereinafter referred to as 'EMP') brought an action under the second paragraph of Article 173 of the EEC Treaty for a declaration that the Commission Decisions of 15 January 1987 (C(87)19/1, 2 and 3) 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), adopted in Cases IV/31.865 — PVC, and IV/31.866 — Polyethylene, are void.

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 applicants in respect of which it adopted the contested decisions.

3 The investigations were carried out on 20 and 21 January 1987. After being shown the contested decisions and being informed by the Commission's officials of the rights and obligations of the undertakings concerned, the applicants' representatives considered that they were required to permit the investigation to take place and, consequently, did not object to the Commission's officials taking, examining and photocopying files, and assisted them therewith.

4 The Commission thus obtained access to all offices, archives, cabinets and files and to a briefcase and personal diary belonging to a representative of Dow Ibérica, and it made all the photocopies it wished.

5 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.

6 Insupport of their applications, the applicants rely on eight submissions alleging an infringement of the fundamental right to the inviolability of the home and respect for private life, an infringement of the principle of proportionality, an infringement of the prohibition of discrimination, the defective nature of the statement of the reasons on which the contested decisions are based, the non-existence or indeterminate nature of the facts underlying the decisions, an infringement of the fundamental right to be presumed innocent, a breach of essential procedural requirements, and that the decisions dealt with conduct prior to Spain's accession to the Community.

The submission alleging an infringement of the fundamental right to the inviolability of the home and respect for private life

7 According to the applicants, the contested decisions, or at least the implementation thereof, infringe their fundamental right to the inviolability of the home and respect for private life. Article 14 of Regulation No 17 is indeed a derogation from

that right but it in no way authorizes the Commission's officials to take steps which the applicants describe as a search. They add that if that provision must be interpreted as empowering the Commission to carry out a search, 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 obtained in advance.

8 The Commission points out first that there cannot be a violation of the home and private life since the applicants submitted to the investigation without expressing any opposition whatever. It also argues that its powers under Article 14 of Regulation No 17 extend to the adoption of measures which, under the laws 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 the 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 an 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.

9 The Court has recently pointed out (judgment of 21 September 1989 in Joined Cases 46/87 and 227/88 *Hoechst* v *Commission* [1989] ECR 2859), that Article 14 of Regulation No 17 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.

10 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 '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).

11 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).

12 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 and for which they may be liable.

13 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.

14 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.

15 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.

16 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).

17 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.

18 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'.

19 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.

20 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.

21 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.

22 As the Court pointed out in the abovementioned judgment of 26 June 1980 (*National Panasonic*, 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.

23 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.

24 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.

25 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.

26 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.

27 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.

28 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, which may, however, be implied, in particular by the provision of assistance to the Commission's officials.

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

30 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.

31 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.

32 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.

33 In the light of the foregoing, it must be held that the measures which the contested decisions 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 those decisions merely requires each 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 inquiry which are requested by the said officials and to provide immediately any explanations which those officials may seek'.

34 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.

35 With regard to the argument concerning the way in which the contested decisions were implemented, it should be pointed out that even if the conduct of the Commission's officials was not in accordance with their powers under Article 14 of Regulation No 17 and the contested decisions, that does not affect the lawfulness of the decisions. As the Court held in its judgment of 8 November 1983 in Joined Cases 96 to 102, 104, 105, 108 and 110/82 *IAZ* v *Commission* [1983] ECR 3369, paragraph 16, the validity of a decision cannot be affected by acts subsequent to its adoption. Consequently, there is no need in these proceedings to consider the complaints concerning the way in which the investigations were carried out.

36 It follows from the foregoing that the submission alleging an infringement of the fundamental right to the inviolability of the home and respect for private life must be rejected.

The submission alleging an infringement of the principle of proportionality

37 The applicants consider that the contested decisions infringe the Community principle of proportionality inasmuch as they infringe unnecessarily the fundamental right of undertakings under Article 18(2) of the Spanish Constitution to oppose investigations and searches except where an offence is presently being committed or where the investigation or search is carried out on the basis of a court order obtained in advance. By virtue of the Community principle of proportionality, the Commission should have interpreted Article 14 of Regulation No 17 in accordance with the abovementioned national provision so as to avoid grave interference with the Spanish constitutional order, which is compatible, in this regard, with the structure and objectives of the Community.

38 It should be pointed out that although they are invoking the Community principle of proportionality, the applicants' argument amounts in reality to saying that the validity of the contested decisions depends on an interpretation of Regulation No 17 in the light of a provision of national law. However, as the Court already decided in its judgment of 17 December 1970 in Case 11/70 *Internationale Handelsgesellschaft* v *Einfuhr- und Vorratsstelle für Getreide und Futtermittel* [1970] ECR 1125, paragraph 3, the validity of Community measures can only be judged in the light of Community law and, therefore, reference either to infringements of fundamental rights as formulated in the Constitution of a Member State or to the principles of a national constitutional structure cannot affect the validity of a Community measure or its effect in the territory of that State.

39 The submission alleging an infringement of the principle of proportionality must therefore be rejected.

The submission alleging an infringement of the prohibition of discrimination

40 The applicants allege an infringement of the prohibition of discrimination inasmuch as the Commission carried out the contested investigations without any prior judicial review whereas it carried out investigations into other undertakings established in other Member States of the Community only after such proceedings.

41 It is sufficient to note in that regard that the applicants' complaint concerns the manner in which the contested decisions were implemented. However, as was pointed out above, there is no need to consider, in the context of these proceedings, the complaints made in regard to the way in which the investigations were carried out.

42 Consequently, the submission alleging an infringement of the prohibition of discrimination must be rejected.

The submission alleging that the statements of the reasons on which the decisions are based are defective

43 According to the applicants, the contested decisions do not fulfil the requirements regarding the statement of the reasons on which measures are based laid down in Article 190 of the Treaty and Article 14(3) of Regulation No 17 because they are vague, imprecise and partly erroneous. The applicants argue in particular that the contested decisions contain an incorrect definition of the relevant market, without drawing any distinction between the PVC and polyethylene markets, that they fail to provide any geographical definition of that market, do not provide an adequate description of the presumed infringements and contain no indication as to the period during which those infringements were supposedly committed and take no account of the uncontested fact that Dow Ibérica and Alcudia neither produce nor market PVC and that, although EMP is the majority shareholder in Alcudia, it does not itself either produce or market any of the substances involved.

44 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'.

45 As has been pointed out 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 effec-

tiveness 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.

46 In the light of the foregoing considerations, the applicants' complaints concerning the statement of the reasons on which the contested decisions are based must be rejected. It is not indispensable for a decision ordering an investigation to delimit precisely the relevant market, to set out the exact legal nature of the presumed infringements and to indicate the period during which those infringements were committed, provided that the decision contains the essential information set out above.

47 Although the statements of the reasons on which the contested decisions are based are drawn up in very general terms which might well have been made more precise, and are therefore open to criticism in that respect, they none the less contain the essential indications prescribed by Article 14(3) of Regulation No 17. The decisions at issue refer 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. They state that those agreements and practices may constitute a serious infringement of Article 85(1) of the Treaty. According to Article 1 of the decisions in question, each 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'.

48 With regard to the particular complaint made by EMP against the decision adopted in regard to it, it is sufficient to observe that the participation of that undertaking, as the parent company of Alcudia, in the anti-competitive conduct which is the subject-matter of the investigation, which is a possibility mentioned in the contested decision, cannot be excluded merely because EMP does not itself either produce or market any of the substances to which the anti-competitive conduct relates.

49 It follows from the foregoing that the submission alleging that the statement of reasons is insufficient must be rejected.

The submission alleging the non-existence or indeterminate nature of the facts underlying the decisions

50 The applicants consider that the contested decisions infringe the principle of legality because they are not based on evidence or indicia of such a nature as to justify the investigations ordered.

51 It should be pointed out in that regard that in so far as this submission is based on the argument that the Commission is required to inform addressees of decisions ordering investigations of all the information it possesses concerning the presumed infringements, that argument has already been rejected in the context of the examination of the submission alleging that the statements of the reasons on which the decisions are based are defective.

52 In so far as this submission is based on the claim that there are no facts capable of justifying the investigations ordered and, consequently, on the arbitrary nature of the investigations ordered, the applicant has in no way substantiated that claim and the submission must therefore be rejected.

53 The submission alleging the non-existence or indeterminate nature of the facts underlying the decisions must therefore be rejected.

The submission alleging an infringement of the fundamental right to be presumed innocent

54 The applicants claim that the contested decisions infringe their fundamental right to be presumed innocent inasmuch as those decisions refer to 'evidence' of the applicants' participation in agreements and concerted practices.

55 It is sufficient in that regard to note that the terms of the decisions themselves show that the agreements and concerted practices at issue were not regarded as proved but were merely 'suspected'.

56 Consequently, the submission alleging an infringement of the fundamental right to be presumed innocent must be rejected without it being necessary to consider whether undertakings have such a right in the Community legal order.

The submission alleging a breach of essential procedural requirements

57 According to the applicants, the contested decisions constitute a breach of essential procedural requirements inasmuch as, on the one hand, they do not make it possible to identify the decision-making body or to determine whether or not that body was entitled to adopt the decision at issue and, on the other, they were not signed by the decision-making body.

58 With regard to the first complaint, it should be noted that the contested decisions were 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. There could not therefore be any doubt as to the identity and powers of the decision-making body, namely the Commission of the European Communities.

59 With regard to the second complaint, it should be observed that there is no provision which requires that the copy of the decision notified to the undertaking must be signed by the Member exercising the delegated power. Furthermore, it is common ground that the contested decisions were duly certified as authentic by signature of the Secretary-General of the Commission.

60 The submission alleging a breach of essential procedural requirements must therefore be rejected.

The submission based on the fact that the decisions dealt with conduct prior to Spain's accession to the Community

61 The applicants argue that although conduct prior to Spain's accession to the Community is clearly subject to the 'territorial' jurisdiction of the Community in so far as it produces anti-competitive effects in Community territory, such conduct is not subject to the 'personal' jurisdiction of the Community, that is to say, it cannot be the subject of an investigation to which undertakings are obliged to submit since those undertakings were not subject to the Commission's authority. The Commission's powers of investigation are not retroactive.

62 It should be noted first in that regard that since no derogation is provided for in respect of Regulation No 17, that measure is applicable in the new Member States as from the time of accession by virtue of the general rule laid down in Article 2 of the Act concerning the conditions of accession of the Kingdom of Spain and the Portuguese Republic. Consequently, undertakings established in Spain could be the subject of investigations with effect from 1 January 1986.

63 The subject-matter of investigations carried out by the Commission after that date into undertakings established in the new Member States may be limited only by the scope of the Community competition rules. No such rule limits the Commission's powers of investigation merely to conduct after accession.

64 It follows that the submission based on the fact that the decisions dealt with conduct prior to Spain's accession to the Community must be rejected.

65 It follows from the all foregoing that none of the submissions made against the contested decisions can be accepted and that the applications must be dismissed.

Costs

66 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 applicants have failed in their submissions, they must be ordered jointly and severally to pay the costs.

On those grounds,

THE COURT

hereby:

(1) Dismisses the applications;

(2) Orders the applicants jointly and severally to pay the costs.

Due Slynn Kakouris Schockweiler Zuleeg

Koopmans Mancini Joliet O'Higgins

Moitinho de Almeida Rodríguez Iglesias Grévisse Diez de Velasco

Delivered in open court in Luxembourg on 17 October 1989.

J.-G. Giraud
Registrar

O. Due
President