JUDGMENT OF THE COURT OF FIRST INSTANCE (Fifth Chamber)
12 July 2001 *

In Case T-204/99,

Olli Mattila, residing in Hyvinkää, Finland, represented by Z. Sundström and M. Kauppi, Lawyers, with an address for service in Luxembourg,

applicant,

v

Council of the European Union, represented by J. Aussant and M. Bauer, acting as Agents,

and

Commission of the European Communities, represented by U. Wölker and X. Lewis, acting as Agents, with an address for service in Luxembourg,

defendants,

* Language of the case: English.

APPLICATION for annulment of the Commission's and the Council's decisions of 5 and 12 July 1999 respectively refusing the applicant access to certain documents,

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

composed of: P. Lindh, President, R. García-Valdecasas and J.D. Cooke, Judges,
Registrar: B. Pastor, Principal Administrator,

having regard to the written procedure and further to the hearing on 21 November 2000,

gives the following

Judgment

Relevant legislation

1 On 6 December 1993, the Council and the Commission approved a Code of Conduct concerning public access to Council and Commission Documents (OJ 1993 L 340, p. 41, hereinafter 'the Code of Conduct') aimed at establishing the principles governing access to the documents they hold.

2 The Code of Conduct lays down the following general principle:

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

3 It defines 'document' as meaning 'any written text, whatever its medium, which contains existing data and is held by the Council or the Commission'.

4 The circumstances which may be relied on by an institution to justify refusing an application for access to documents are set out in the Code of Conduct in the following terms:

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

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

...

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

5 The Code of Conduct further provides:

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

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

7 Article 4 of Decision 93/731 lists the circumstances which may be relied on by the Council in order to justify its refusing an application for access to documents. They are the same as those set out in the Code of Conduct.

8 The Commission, for its part, in order to put its commitment into effect, adopted Decision 94/90/ECSC, EC, Euratom of 8 February 1994 on public access to Commission documents (OJ 1994 L 46, p. 58), Article 1 of which formally adopts the Code of Conduct, the text of which is set out in an annex to the decision.

Facts of the dispute

9 On 8 March 1999, the applicant, through his legal adviser, wrote to the Commission's Directorate-General for External Relations: Relations with the New Independent States, Common Foreign and Security Policy, External Service, requesting access to the following documents:

'— EU-Russia Joint Committee Agenda, dated 17 February 1997, Doc. Séance No 32 (Working Party on Eastern Europe and Central Asia);

— Russia, Preparation of the First Cooperation Council under the Agreement on Partnership and Cooperation, 8 December 1997, dated 14 November 1997 (IA.C.2/SG/jhp D(97));

— First Cooperation Council EU-Russian Federation (Brussels, 27 January 1998), draft annotated agenda dated 9 January 1998;

— Annex to the minutes of the meeting of the EU-Russia Cooperation Committee, dated 7 April 1998, Doc. Séance No 23/98 (Working Party on Eastern Europe and Central Asia);

— Annotated agenda of the meeting of the EU-Russia Cooperation Committee, dated 20 April 1998, Doc. Séance No 35/98 (Working Party on Eastern Europe and Central Asia).'

10 By letter of the same date, received on 12 March 1999, the applicant addressed a request to the Council for access to the following documents:

'— Outcome of Proceedings of the Working Party on Eastern Europe and Central Asia on 23 September 1997, dated 24 September 1997, No 10859/97;

— EU-USA background note, Doc. Séance No 27/98. (Document from the EU III section);

— First EU-Ukraine Cooperation Council, Brussels, 8-9 June 1998, annotated draft agenda dated 15 May 1998. Doc. Séance No 40/98 (Working Party on Eastern Europe and Central Asia);

— COREU: COEST/CODIA Report on the meeting between the Troika of the Working Party on Eastern Europe and Central Asia and the United States on 10 February 1998 CFSP/SEC/0203/98;

— COREU: COEST Caspian Energy: Draft EU/US statement of 11 May 1998 CFSP/PRES/1239/98;

— COREU: COCEN COEST: Russia/Latvia: Meeting with Mr Primakov on 8 May 1998 CFSP/PRES/LON/1244/98.'

11 Since some of the documents requested had been drawn up jointly by the two institutions, informal contacts took place between the Council and Commission with a view to coordinating the replies to be given to those requests.

12 By letter of 19 April 1999, the Council informed the applicant of its decision to grant access to document 10859/97, the first document mentioned in the applicant's list for the attention of the Council. As regards the other documents to which access had been sought, the Council rejected the applicant's request, stating that 'each of these documents concerns negotiations with certain third countries. Disclosure of these texts could be detrimental to the EU position in these negotiations or possibly to any future negotiations between the EU and these or other third countries'. The Council also stated that the documents in question could not be made available by virtue of Article 4(1) of Decision 93/731.

13 By letter of the same date the Commission refused to grant access to the documents sought by the applicant. It invoked the public interest exception in the Code of Conduct and referred to the need to keep discussions between the European Union and non-member countries confidential.

14 By letters of 30 April 1999 the applicant, through his legal adviser, made confirmatory applications to the two institutions pursuant to Article 7(1) of Decision 93/731 and Article 2(2) of Decision 94/90, in order to obtain access to the documents which had been denied him.

15 By letter of 5 July 1999 addressed to the applicant's legal adviser, the Commission refused the applicant's confirmatory application. The Secretary-General stated,

first of all, that the fourth document mentioned (Annex to the minutes of the meeting of the EU-Russia Cooperation Committee, of 7 April 1998, Doc. Séance No 23/98 (Working Party on Eastern Europe and Central Asia)) could not be identified. He then went on:

'Having examined your request for the other documents, I have to confirm that I cannot make these documents available to you, as they are covered by the mandatory exception of the protection of the public interest, in particular international relations. This exception is expressly foreseen in the code of conduct concerning public access to Commission and Council documents adopted by the Commission on 4 February 1994.

Each of the documents requested contains detailed information on the position the European Union intends to take in its relations with Russia. Disclosure of these documents can thus undermine the position of the EU in current and future negotiations with this third country and [they] therefore cannot be made available to you.

These documents have been prepared by the Commission services for the use of the respective Council bodies. As the Council has refused access to similar documents for the same reasons as stated above, the Commission is not in a position, for that reason as well, to give you access to the documents.'

16 The General Secretariat of the Council prepared a draft reply which was first considered by the 'Working Party on Information' of the Permanent Representative's Committee (Coreper) at its meeting on 23 June 1999. All the delegations approved the General Secretariat's draft response, refusing to disclose the documents on the basis of Article 4(1) of Decision 93/731. The draft reply then

appeared as a 'I-item' on the agenda for the 30 June 1999 meeting of Coreper II, which consists of the permanent representative ambassadors of the Member States to the European Union, and then as an 'A-item' on the Council's agenda; it was approved by the Council on 12 July 1999. The General Secretariat notified the applicant of the negative response by letter of 14 July 1999. That letter reads as follows:

'The Council carefully considered the abovementioned documents and came to the following conclusions:

1. DS 27/98: EU-USA background note on Ukraine, drafted by the services of the European Commission for examination by the Working Party on Eastern Europe and Central Asia. The document describes in a very precise manner the EU position and priority objectives for the negotiations to be conducted with the United States *vis-à-vis* Ukraine. Disclosure of this strategy could be harmful to the EU interests in these negotiations as well as in other similar negotiations with third countries.

   Furthermore, disclosure of the comments and considerations as they are contained in the document could have a negative effect on the EU relations with Ukraine.

   For these reasons, the Council, in agreement with the European Commission, decided that the document cannot be released by virtue of Article 4(1) of... Decision [93/731] (international relations).

2. DS 40/98: annotated draft agenda for the first Cooperation Council EU-Ukraine (8/9 June 1998) put to the Working Party on Eastern Europe and Central Asia by the services of the European Commission.

The document contains extensive comments, including EU positions and objectives, on each of the items on the agenda. Disclosure of these comments could be harmful to the EU's position in future Cooperation Council meetings as well as to its relations with Ukraine in general.

The Council therefore decided, in agreement with the European Commission, that the document cannot be released by virtue of Article 4(1) of... Decision [93/731] (international relations).

3. COREU CFSP/SEC/0203/98: confidential report of the meeting between the Troika of the Eastern Europe/Central Asia Working Group and the United States (Washington, 10 February 1998).

The document contains extensive comments revealed by the US delegation at the Troika meeting, which took place in a confidential framework. It also contains EU and US assessments of third countries' situations and policies, disclosure of which could jeopardise the EU negotiating position with these countries.

The Council therefore decided that the document cannot be made available by virtue of Article 4(1) of... Decision [93/731] (international relations).

4. COREU CFSP/PRES/1239/98: COEST Caspian Energy: Draft EU/US statement. This confidential document was established in preparation of the EU negotiating position with the United States on the subject of Caspian energy. Disclosure of the information contained in the document could be harmful to the EU interests in these still ongoing negotiations as well as in other similar negotiations to be conducted in the future.

The Council therefore decided that the document cannot be made available by virtue of Article 4(1) of... Decision [93/731] (international relations).

5. COREU CFSP/PRES/LON/1244/98: COEST: Russia/Latvia: meeting with Mr Primakov (8 May 1998). This document contains comments revealed by Mr Primakov in the confidential framework of a bilateral meeting between Foreign Ministers.

The document furthermore contains EU and Russian assessments of third countries' situations and policies, as well as of negotiations taking place with the third countries in question. Disclosure of these assessments could jeopardise the EU and Russian relations as well as the negotiating positions with these countries.

The Council therefore decided that the document cannot be made available by virtue of Article 4(1) of... Decision [93/731] (international relations).'

Procedure and forms of order sought by the parties

17 Those were the circumstances in which, by application lodged at the Registry of the Court of First Instance on 23 September 1999, the applicant brought the present action seeking, principally, annulment of the decisions of the Commission and of the Council of 5 and 12 July 1999 (hereinafter 'the contested decisions').

18 On hearing the report of the Judge-Rapporteur, the Court of First Instance, Fifth Chamber, decided to open the oral procedure and, by way of measures of organisation of procedure, called upon the Commission to produce its letter of 19 April 1999 refusing the applicant's initial request for access to documents held by it, which it duly produced.

19 The parties presented oral argument and answered the questions put to them by the Court at the hearing in open court on 21 November 2000.

20 The applicant claims that the Court should:

— annul the contested decisions;

— call upon the Council and the Commission to reconsider their position and grant him access to the documents sought, as listed in his letters of 8 March 1999;

and/or, in the alternative, in so far as the Court should regard it as being necessary,

— grant him at least partial access to the documents, after removal of the passages disclosure of which is regarded as liable to undermine the international relations of the European Community;

— order the Council and the Commission jointly to bear the costs.

21 In his reply, the applicant also asks for an order that the documents sought be produced to the Court so that it may examine them.

22 The Council contends that the Court should:

— dismiss the application as unfounded;

— order the applicant to pay the costs.

23 The Commission contends that the Court should:

— dismiss the application for access to the documents and the application for partial access as inadmissible;

— dismiss the application as unfounded;

— order the applicant to pay the costs.

Admissibility

Admissibility of the claim for access to the documents

Arguments of the parties

24 The Commission and the Council submit that the action is manifestly inadmissible, as to part, in so far as the applicant invites the Court to grant him at least partial access to the documents, after removal of the passages disclosure of which might be regarded as liable to undermine the international relations of the European Community. The Commission refers to existing case-law according to which the Community judicature has no jurisdiction to issue

directions to the institutions (see Joined Cases T-374/94, T-375/94, T-384/94 and T-388/94 *European Night Services and Others* v *Commission* [1998] ECR II-3141, paragraph 53, and order of the Court of First Instance of 27 October 1999 in Case T-106/99 *Meyer* v *Commission* [1999] ECR II-3273, paragraph 21).

25 The applicant maintains that the case-law relied on by the Commission is not applicable to the present case, since he is asking the Court to annul decisions refusing access to documents emanating from the Council and Commission. The issue is public access to official documents, an essential aspect of transparency.

Findings of the Court

26 It is settled case-law that the Court of First Instance is not entitled, when exercising judicial review of legality, to issue directions to the institutions or to assume the role assigned to them. That limitation of the scope of judicial review applies to all types of contentious matters that might be brought before it, including those concerning access to documents, as indeed the Court ruled in its order in *Meyer* v *Commission*, cited above (see paragraph 21).

27 It is therefore not open to the applicant to ask the Court to call upon the Council and the Commission to grant him access to the documents sought, as listed in his letters of 8 March 1999, and to grant him at least partial access to the documents, after removal of the passages disclosure of which is regarded as liable to undermine the international relations of the European Community.

Admissibility of the applicant's pleas

28 In his application, the applicant puts forward five pleas in law in support of his action: first, manifest error of assessment in interpreting the exception concerning the protection of international relations, second, breach of the principle of proportionality in that partial access to the documents in question has not been granted or even considered, third, breach of the principle that an application for access to documents must be considered with regard to each individual document, fourth, failure in the duty to state reasons and, fifth, failure to take account of his private interest in having access to the documents.

29 In his reply, the applicant adds two pleas, which he presents in the following manner:

— the contested decisions violate the 'principle of independent review' by the Council and the Commission, in particular because the procedure adopted by Coreper II resulted in substituting review by the [permanent representative ambassadors] of the Member States to the European Union for independent review by the bodies responsible for the documents. In fact, the draft reply to the application for access was set down as a 'I-item' on the agenda for Coreper II and as an 'A-item' on the agenda for the Council, which means that no discussion took place and there was no review by the institution before it adopted a decision which was made in actual fact, though perhaps not formally, by Coreper II;

— the contested decisions are unlawful because of a misuse of powers, inasmuch as the Council and the Commission provided only general reasons for refusing to disclose the documents, without having regard to the content of those documents or the actual harm which their disclosure could cause. That approach makes it impossible for an applicant, who will not have access to

the documents, to demonstrate how, in terms of the content of the documents, the position of the Council and the Commission is wrong.

30 At the hearing, the applicant put forward a further plea for annulment by which he alleged that the defendant institutions had failed in their duty of cooperation in that they rejected, in part, his applications on the ground that they lacked precision, without making any attempt to identify and locate the documents in question.

31 The Commission disputes the admissibility of the plea alleging breach of the 'principle of independent review'. However, given that, under Article 113 of its Rules of Procedure, the Court of First Instance may, of its own motion, consider whether there exists any absolute bar to proceeding with an action, the Court will consider whether the pleas put forward for the first time in the reply and at the hearing are admissible and not confine itself to the objection raised by the Commission (see Joined Cases T-305/94 to T-307/94, T-313/94 to T-316/94, T-318/94, T-325/94, T-328/94, T-329/94 and T-335/94 *Limburgse Vinyl Maatschappij and Others* v *Commission* [1999] ECR II-931, paragraphs 60 and 63).

32 It is clear from the provisions of Articles 44(1)(c) and 48(2) of the Rules of Procedure of the Court of First Instance, taken together, that the application initiating proceedings must indicate the subject-matter of the dispute and set out in summary form the pleas raised and that no fresh issue may be raised in the course of proceedings unless it is based on matters of law or of fact which come to light in the course of the procedure. However, a submission which expands upon a plea made earlier, directly or by implication, in the originating application, and which bears a close relationship to that earlier plea, must be held to be admissible (Case 306/81 *Verros* v *Parliament* [1983] ECR 1755, paragraph 9, Case T-207/95 *Ibarra Gil* v *Commission* [1997] ECR-SC I-A-13 and II-31, paragraph 51, and Case T-217/95 *Passera* v *Commission* [1997] ECR-SC I-A-413 and II-1109, paragraph 87).

33 The pleas alleging breach of the 'principle of independent review', misuse of powers and the institutions' failure to comply with their duty of cooperation, were not raised, either directly or indirectly, in the application, nor do they bear a close relationship with the other pleas set out therein. They thus constitute new pleas.

34 Moreover, it has not been proven or even alleged that those pleas are based on points of law or fact that arose during the course of the proceedings. They must, therefore, be held to be manifestly inadmissible.

Substance

35 The first two pleas put forward by the applicant in his application may be considered together, as may be the third and fourth pleas (see paragraph 28 of the present judgment).

The first and second pleas alleging manifest error of assessment in interpreting the exception concerning the protection of international relations and breach of the principle of proportionality in that partial access to the documents in question was not granted or considered

Arguments of the parties

36 The applicant claims that the two institutions misinterpreted the exception laid down in Decisions 93/731 and 94/90 for the protection of the public interest. He

submits that disclosure of the documents in question poses no risk of undermining the public interest.

37 In his reply, the applicant claims that, in their interpretation, the institutions have observed neither the wording of those decisions nor the case-law of the Court of Justice and the Court of First Instance from which it is clear that the general rule is that of access to documents. In his submission, the Council and the Commission have elected to discuss only the grounds justifying restrictions on access without taking into account the fact that those restrictions must be interpreted narrowly.

38 He emphasises that, in its judgment in Case T-14/98 *Hautala* v *Council* [1999] ECR II-2489 (on appeal before the Court of Justice in Case C-353/99 P) the Court of First Instance specifically emphasised the Council's duty to grant the widest possible access to documents.

39 The applicant explains that the present case is unusual in that he has some knowledge of the content of the documents requested, based on certain versions of those documents, even though he cannot state categorically that the documents requested are identical in all respects to those of which he has knowledge. He gained that knowledge through his work in the Finnish Foreign Ministry and through his participation on behalf of Finland in the work of the European Union working group on Russia and Eastern Europe. He is thus in a position to assert that, prima facie, the Council and Commission have not correctly applied the current rules on transparency. That being so, he argues that the burden of proving the contrary falls on the defendant institutions.

40 The applicant claims that all the documents requested from the Commission concern, in one way or another, the EU-Russia Cooperation Committee or the Cooperation Council, bodies whose activities fall within the public domain.

According to the applicant, examination of the topics discussed by the Committee and the Council reveals no sign that the matters dealt with in those documents are secret within the meaning of the applicable legislation. He lays stress on the fact that, whilst document 10859/97 addresses the same topic as the documents access to which was denied him, that particular document was nevertheless disclosed to him. After noting the content of each document, the applicant reaches the conclusion that nothing in them appears to need to be kept confidential. The documents ought, therefore, to have been disclosed.

41 In the applicant's submission, the same holds good for the documents held by the Council. Most of these concern the Agreement on partnership and cooperation establishing a partnership between the European Communities and their Member States, of one part, and the Russian Federation, of the other part (OJ 1997 L 327, p. 3) and its implementation. One document concerns a meeting of the 'Troika' in June 1998, while the document bearing number 1239/98 contains a statement by the European Union and the United States of America intended for publication and actually published. Document 1244/98 relates to a meeting in Finland in which the Prime Minister of the Russian Federation, Mr Primakov, took part, and contains notes which, to the applicant's knowledge, were published too. At the hearing, after hearing explanations proffered by the Council, the applicant accepted that document 1244/98 relates to a meeting held in London, rather than in Finland, and, consequently, indicated that he no longer sought access to that document.

42 The applicant submits that the documents requested do not deal with issues of security and that, furthermore, they contain no information disclosure of which is liable to damage relations with a non-member country. There are therefore, in his opinion, no valid grounds for refusing to disclose the documents requested.

43 Moreover, according to the applicant, the actual content of the requested documents is of limited scope. They deal with matters generally revealed to the public, such as commercial transactions, nuclear safety, the progress of the TACIS

programme, matters to do with protection of the environment, consumer protection, legislative programmes, etc. He adds that the fact that there is Community funding for programmes designed to achieve these objectives, in so far as such funding may be described in the documents requested, is of the greatest interest to the public and may even be regarded as an argument in itself for the widest possible disclosure.

44 The applicant infers from these factors that his applications for access to the documents in question were assessed essentially, not to say exclusively, on the basis of the documents' apparent classification, that is to say, as documents prepared in the context of the COREU network, the special system of correspondence adopted by the Member States and the Commission in the framework of their common foreign and security policy pursuant to Title V of the Treaty on European Union.

45 The applicant adds that, if it is sufficient for the Commission or Council to state, in a decision rejecting an application for access, that a document falls under one of the exceptions provided for in the rules, it follows that they will not need to refer to the content of those documents. There is thus no means by which private individuals may determine whether any review has been made of a document's content or, if it has, whether the refusal of access is based on valid grounds or, as in the present case, on the mere presence of some connection with international relations or a particular method of document transmission.

46 Lastly, the applicant maintains that the institutions are required, in accordance with existing case-law (see *Hautala* v *Council*, cited above), to grant the widest possible access to documents held by them. That ought to have prompted them to investigate whether it would be possible to grant at least partial access to the documents requested, which they failed to do in this instance.

47 The Council, referring to paragraphs 71 and 72 of the judgment in *Hautala* v *Council*, notes that, in the present case, its discretion is connected with the political responsibilities conferred on it by Title V of the Treaty on European Union. It is in fact on that basis that the Council must determine the possible consequences which disclosure of a document might have for the international relations of the European Union. That being so, review by the Court of First Instance must be limited to verifying whether the procedural rules have been complied with, the contested measure is properly reasoned and the facts accurately stated, and whether there has been a manifest error of assessment of the facts or a misuse of powers.

48 The Council submits that it has carried out a specific analysis of the risks of disclosing the documents requested by the applicant. It concluded, in agreement with the Commission, that disclosure of the documents would risk harming the European Union's international relations.

49 The Council points out that half the documents were drawn up within the COREU system and that distribution of documents within that system is restricted to a limited number of authorised recipients in the Member States, the Commission and the General Secretariat. In its opinion, COREU messages are the equivalent of diplomatic telegrams. Nevertheless, at the hearing, the Council emphasised that documents sent within the COREU network are not excluded from the scope of Decision 93/731 and that the question whether or not they should be disclosed is always considered on the merits, as it was in the present case.

50 The Council also argues that the documents in question contain detailed comments on the European Union's positions and objectives in the international negotiations in question, and that that information remains important even after negotiation meetings have taken place. Consequently, access to those documents could undermine the Union's international relations, in particular those with Ukraine.

51 It rejects the applicant's allegations that the documents contain nothing that requires to be kept confidential. It observes that it is not only the subject-matter addressed in a document which determines whether or not it is confidential, but also the nature and the degree of detail of the information contained in it. Unlike document 10859/97, which was disclosed to the applicant and which amounts to a summary of the questions dealt with by the Working Party on Eastern Europe and Central Asia and contains no substantial information on the dossiers at issue, document DS 27/98 (the EU-United States background note on Ukraine) describes very precisely the position and objectives of the European Union in connection with the negotiations to be conducted with the United States concerning Ukraine. The same applies to document DS 40/98, which contains detailed information on the positions taken by the European Union at the first sitting of the EU-Ukraine Cooperation Council.

52 The Council emphasises that document 1239/98 on the draft EU-United States statement on Caspian Sea energy resources not only contains the draft text of the public statement but also addresses some sensitive matters which arose during the negotiations between the European Union and the United States and indicates how those were taken into account in the drafting of the statement.

53 As regards partial access to the documents in question, the Council claims that no account need be taken of the judgment in *Hautala* v *Council*, which was delivered on 19 July 1999, that is to say, after the date on which it adopted its decision, 12 July 1999.

54 Moreover, there is no obligation to allow partial access to the documents pursuant to Decision 93/731. In this connection, the Council points out that the judgment in *Hautala* v *Council* is presently under appeal.

55 In any event, given the nature of the documents in question, its was not possible, according to the Council, to grant the applicant partial access to them.

56 The Commission observes that it has a broad discretion and that review by the Court of First Instance must be limited to verifying whether the procedural rules have been complied with, the contested decision is properly reasoned and the facts accurately stated, and whether there has been a manifest error of assessment of the facts or misuse of powers.

57 It puts forward the same arguments as the Council in order to justify its refusal to grant the applicant access. It emphasises that what is at issue are the Community's international relations with Russia, a matter which falls within Title V of the Treaty on European Union. Furthermore, it carried out a specific assessment of the risks entailed by disclosure of the documents in question. It adds that, in view of the specific nature of those documents, it was necessary for the Commission to align its response with that of the Council.

58 The Commission states that, even if there were an obligation to consider granting partial access, it would not have been possible in the present case to draw a distinction between the documents and the information they contain. Masking the information which the Council and the Commission consider to be covered by the exception concerning the protection of the public interest would have resulted in releasing documents containing so little information as to be of no use to the applicant.

Findings of the Court

59 In the contested decisions, the defendant institutions refused access to the documents at issue on the basis of the exception relating to the protection of the public interest in the field of international relations. Any review by the Court of First Instance of the legality of those decisions must be confined to ascertaining whether the procedural rules have been complied with, whether the contested decisions are properly reasoned and the facts accurately stated and whether there has been any manifest error of assessment of the facts or a misuse of powers.

60 That being so, the fact that the applicant has some knowledge of the content of the documents and thus makes reference to their content in support of his action does not mean that he is absolved from proving that the defendant institutions have made an error in the reasoning upon which the contested decisions are based which is capable of bringing about their annulment.

61 In the present case, the applicant maintains that the defendant institutions misinterpreted the exception relating to the protection of the public interest in the field of international relations provided for in Decisions 93/731 and 94/90.

62 That exception, drafted in mandatory terms, provides that 'the institutions will refuse access to any document whose disclosure could undermine... the protection of the public interest (... international relations...)'. It follows that the institutions are obliged to refuse access to documents falling under that exception once the relevant circumstances are shown to exist (see Case T-105/95 *WWF UK* v *Commission* [1997] ECR II-313, paragraph 58).

63 In the present case, it is common ground that the documents at issue contain information on the European Union's position as regards its relations with Russia and Ukraine and on negotiations to be held with the United States on the subject of Ukraine. Clearly, the documents to which access has been requested were drafted in the context of international negotiations in which the interests of the European Union, viewed from the perspective of its relations with non-member countries, particularly Russia, Ukraine and the United States, are at stake.

64 It must also be observed that the Council is right to assert that, in the circumstances, in order to determine whether or not access to the documents in question ought to be granted, it is appropriate to take into account the nature and degree of detail of the information contained in them. There is thus no basis for the applicant's argument drawn from the fact that document 10859/97, which addresses the same subject as the documents to which he was refused access, was disclosed to him. As the Council has explained, that document, which is among the documents put before the Court, is a summary of the topics discussed by the Working Party on Eastern Europe and Central Asia. Unlike the other documents to which access is sought, it contains no substantive information on the files in question.

65 In light of the foregoing, the Court holds that the defendant institutions did not make a manifest error of assessment in deciding that disclosure of the documents at issue was likely to undermine the public interest in the field of international relations. Having regard to the content of the documents in question, they were entitled to take the view that disclosure could compromise the European Union's position in current and future negotiations with the countries mentioned in paragraph 63 of this judgment.

66 The applicant also argues that, following what is stated in the judgment in *Hautala* v *Council*, cited above, the institutions ought to have considered whether to grant him at least partial access to the documents in question. In that case, the Court of First Instance held that the exception concerning the protection of the public interest must be interpreted in light of the principle of the right to information and the principle of proportionality. The Court found that the

Council was thus obliged to examine whether partial access should be granted to the documents requested, that is, to the information not covered by the exceptions (see *Hautala* v *Council*, paragraph 87).

67 The Council's argument that the judgment in *Hautala* v *Council* should not be taken into account must be dismissed. Whilst it is true that it was delivered after the adoption of the contested decisions, it is nevertheless the case that that judgment clarified the extent of a pre-existing right, namely the right of access to documents held by the Council and the Commission as provided for in the Code of Conduct.

68 It is clear from the judgment in *Hautala* v *Council* that the principle of proportionality permits the Council and the Commission, in particular cases where the volume of the document or the passages to be removed would give rise to an unreasonable amount of administrative work, to balance the public's interest in gaining access to those fragmentary parts against the burden of work so caused (paragraph 86 of the judgment). The Council and the Commission could thus, in those particular cases, safeguard the interests of good administration.

69 Similarly, whilst, in accordance with *Hautala* v *Council*, the Council and the Commission are required to consider whether access ought to be granted to information not covered by the exceptions, the principle of sound administration requires that the duty to grant partial access should not result in an administrative burden which is disproportionate to the applicant's interest in obtaining that information. In light of this, it is clear that the Council and the Commission are in any event entitled to refuse partial access in cases where examination of the documents in question shows that partial access would be meaningless because the parts of the documents that could be disclosed would be of no use to the applicant.

70 During the course of these proceedings, the Council and the Commission have asserted that partial access was not possible in this case, because the parts of the documents to which access could have been granted contained so little information as to be of no use to the applicant. At the hearing, the Council submitted that the documents in question cannot generally be taken individually, and that their component parts are not easily removable.

71 The defendant institutions do not therefore dispute that they failed to consider the possibility of granting partial access to the documents in question. Nevertheless, having taken account of the explanations they have proffered and in view of the nature of the documents in question, it seems that, had they done so, they would not in any event have agreed to partial access. Given the particular circumstances of the present case, the fact that the defendant institutions failed to consider the question of granting partial access had no effect on the outcome of their examination (see, to that effect, Case T-75/95 *Günzler Aluminium* v *Commission* [1996] ECR II-497, paragraph 55, and Case T-106/95 *FFSA and Others* v *Commission* [1997] ECR II-229, paragraph 199).

72 In this connection, it is appropriate to stress the fact already mentioned that the documents at issue were prepared in the context of negotiations and contain information on the European Union's position as regards its relations with Russia and Ukraine and on negotiations to be held with the United States on the subject of Ukraine. The fact that the documents are sensitive is corroborated by the applicant's statement at the hearing to the effect that the Supreme Court of Finland condemned him for having communicated to Russia certain other documents whose content was almost identical to that of the documents to which access was denied him by the defendant institutions.

73 Secondly, the Council's assertion that the documents in question cannot easily be taken separately and that their component parts are not easily removable is uncontested. It must be observed in this connection that the applicant has no basis for alleging that document COREU CFSP/PRES/1239/98 contains, *inter*

alia, a draft of an EU/United States statement which, precisely because of its public nature, ought to have been divulged. The fact that that document contains information which was the subject of a public statement does not mean that the Council was under an obligation to divulge the draft of that statement which, by definition, was purely a preparatory document intended for internal use only. As the Council emphasised during the hearing, there are, generally speaking, differences between the draft of a statement and the final text that may point up differences of opinion which must remain confidential. Furthermore, the public's right to be informed is adequately protected by its right of access to the final version of the statement.

74 It follows that the defendant institutions did not infringe the principle of proportionality by failing to grant partial access to the documents at issue.

75 It is clear from the foregoing that the applicant's first and second pleas must be rejected.

The third and fourth pleas alleging breach of the principle that an application for access to documents must be considered with regard to each individual document, and breach of the duty to state reasons

Arguments of the parties

76 First of all, the applicant maintains that the defendant institutions rejected 'as a block' his application for access to the documents.

77 He alleges that, since the two institutions consulted each other before answering him, there are grounds for supposing that the Commission took the views of the Council as the basis for its refusal to disclose the documents, rather than reaching its own opinion through independent review.

78 He also claims that the Council's release of document 10859/97 was motivated by the fact that the contents of that document were, at least in part, available on the Internet. For the applicant, this demonstrates that there was no systematic review of the contents of the documents requested. On the contrary, the Council and the Commission justified their denial of access by reference to the nature of the documents or their classification as confidential in view, in particular, of the manner in which they were transmitted, that is to say, via the COREU network, rather than their content.

79 Secondly, the applicant maintains that there is insufficient reasoning for the contested decisions. He points out that the Commission's decision contains only a single paragraph setting out the reasons for refusing access to the documents, which cannot be regarded as being adequate.

80 He claims that the Commission must state the reasons on which its decisions are supposed to be based. In this connection he refers to the judgments in Case T-194/94 *Carvel and Guardian Newspapers* v *Council* [1995] ECR II-2765 and *WWF UK* v *Commission*, cited above, in which the Court held that a Community institution, when exercising its discretion in deciding whether to release documents, must strike a genuine balance between, on the one hand, the interest of private individuals in obtaining access to those documents and, on the other, its own interest in protecting the confidentiality of its deliberations. According to the applicant, the Commission is obliged to give adequate reasons for not pursuing the objective of transparency and applying an exception to the general principle of access.

81 For its part, the Council states that it is clear from the contested decision that it carefully and separately examined the possibility of giving access to each individual document.

82 It rejects the applicant's allegations that access to the documents was refused, in particular, because they were circulated via the COREU network, and that their content was not, therefore, examined. As indicated in the reasons given for denial of access, all the documents to which the applicant refers deal with the 'core of the European Union's international relations'.

83 The Council also submits that it provided sufficient reasons for its refusal to grant the applicant access to the documents. Referring to paragraph 65 of the judgment in *WWF UK* v *Commission*, it argues that it cannot be 'obliged in all cases to furnish, in respect of each document, "imperative reasons" in order to justify the application of the public interest exception' without compromising the essential purpose of the exception in question.

84 In the present case it contends that its decision contains sufficient information to enable the applicant to know the reasons for the refusal, and to enable the Court to exercise its review, without revealing facts the disclosure of which might undermine the public interest.

85 The Commission submits that it did not refuse to grant access 'in block' but rather, on the contrary, examined the possibility of granting access to each document individually.

86 Furthermore, the Commission submits that it gave sufficient reasons for its decision.

Findings of the Court

87 It is quite true that the Council and the Commission are not entitled to give a blanket refusal to grant access to documents sought by an interested party. They are required, before deciding an application for access to documents, to examine, in the case of each document requested, whether, in the light of the information available to them, disclosure is in fact likely to undermine a protected public interest. However, that obligation does not mean that the institutions are obliged in all cases to furnish, in respect of each document, imperative reasons in order to justify the application of the public interest exception, and thereby risk jeopardising the essential function of the exception in question. It might be impossible, in practical terms, to give reasons justifying the need for confidentiality in respect of each individual document without disclosing the content of the document and, thereby, depriving the exception of its very purpose (see *WWF UK* v *Commission*, paragraph 65).

88 In the present case, as has already been observed, the defendant institutions were entitled to take the view that each of the undisclosed documents fell within the scope of the exception concerning the protection of the public interest in the field of international relations.

89 That being so, the applicant's contention that the Commission and the Council gave a blanket refusal to grant access to the documents, which he bases on the fact that the documents had been sent via the COREU network and the assumption that their content had not therefore been examined, must be dismissed. It is in fact clear from the Council's decision (see paragraph 16 of the present judgment) that, in considering the application for access, regard was had

to the content of each document. Whilst the statement of reasons for the Commission's decision is more concise, it nevertheless makes plain that, in considering the application for access, it too examined each document individually. That fact is corroborated, moreover, by the circumstance that the Commission refers to the reasoning on which the Council based its decision refusing access to similar documents (see paragraph 15 of the present judgment). The applicant's assumption that the reason why Council document 10859/97 was disclosed is that its content was available, at least in part, via the Internet is irrelevant and does not indicate that the Council failed to examine systematically the content of each of the documents requested.

90 Nor does it avail the applicant to argue that the defendant institutions consulted one another before answering him, given that the documents sought were drafted, in part, in the context of a joint programme of work of theirs. The defendants' conduct was appropriate in the present case and complied with the principle of sound administration.

91 The duty to state reasons has the purpose, on the one hand, of permitting interested parties to know the reasons for the adoption of measures so that they can protect their own interests and, on the other hand, of enabling the Community judicature to exercise its jurisdiction to review the validity of decisions (see, in particular, Case C-350/88 *Delacre and Others* v *Commission* [1990] ECR I-395, paragraph 15, and Case T-85/94 *Branco* v *Commission* [1995] ECR II-45, point 32).

92 Moreover, it has consistently been held that a statement of reasons must show clearly and unequivocally the reasoning of the Community authority which adopted the contested measure (Case C-278/95 P *Siemens* v *Commission* [1997] ECR I-2507, paragraph 17, *WWF UK* v *Commission*, cited above, paragraph 66, and Case T-124/96 *Interporc* v *Commission* [1998] ECR II-231, paragraph 53).

93 It must also be observed that, contrary to the applicant's submission, the duty of the defendant institutions actually to weigh the interests of private individuals in gaining access to documents against the need to preserve the confidentiality of their deliberations is irrelevant to the present case, as the decisions to refuse the applicant access were not based on the need to protect the confidentiality of the institutions' deliberations (see *WWF UK* v *Commission*, paragraph 59).

94 In the present case, the defendant institutions were required to indicate, at the very least by reference to categories of documents, the reasons for which they considered that the documents detailed in the requests they received fell within the scope of the exception concerning the protection of the public interest in the field of international relations, stating in what way disclosure of the documents might undermine that interest, and in so doing to comply with the general requirements regarding statements of reasons mentioned in paragraphs 91 and 92 of the present judgment (see, to that effect, *WWF UK* v *Commission*, cited above, paragraph 64).

95 Clearly, the institutions relied on the exception concerning the protection of the public interest in the field of international relations and stated the reasons for which they regarded that exception to be applicable. Indeed, when it rejected the applicant's confirmatory application, the Council explained, in the case of each document, why that document fell within the scope of the exception (see paragraph 16 of the present judgment). It is clear from that statement of reasons that the disclosure of any one of the documents requested by the applicant could compromise the European Union's position in present or future negotiations with given non-member countries. The Commission's statement of reasons for its decision, albeit succinct, is equally compliant with the requirements laid down by case-law. The Commission in fact aligned its answer with that given by the Council, stating that each of the documents requested contained detailed information on the position which the European Union intends to adopt in its relations with Russia (see paragraph 15 of the present judgment). In the present instance, the Council and the Commission cannot be criticised for having used overly general terms, since they were entitled to take the view that it was impossible to state more precisely the reasons warranting confidential treatment

of the documents without revealing their content and, thereby, depriving the exception of its essential purpose (see *WWF UK* v *Commission*, paragraph 65).

96 It follows that the defendant institutions did not breach their duty to state reasons laid down in Article 253 EC.

97 The third and fourth pleas must therefore be rejected.

The fifth plea alleging failure to take account of the applicant's private interest in having access to the documents

Arguments of the parties

98 The applicant claims that it was incumbent upon the defendant institutions to take account not only of the public interest but also of his private interest in gaining access to the documents. In the circumstances, the applicant says that he needs the documents in order to defend himself before the Finnish courts.

99 In his reply, he adds that the fact that the legal proceedings in Finland involve in part the same documents as those the release of which he has requested in the instant case serves to indicate a more personal interest in the application in this case of the general principle of access to documents.

100 At the hearing, the applicant stated that he was not certain whether the documents whose contents he had divulged, thus giving rise to the proceedings against him in Finland, were exactly the same as those to which he had requested access. That is why he had had recourse to the defendant institutions in the present case.

101 He submits that the defendant institutions ought to have weighed in the balance the various interests at stake before taking a decision.

102 The Council asserts that the applicant had not brought to its attention the fact that he needed the documents in order to defend himself before the Finnish courts. That fact could therefore not be taken into account in this case. At the hearing, the Council argued that that particular interest had ceased to exist in that the Finnish legal proceedings had come to an end and a decision of the Supreme Court had been handed down. In any event, the applicant's alleged special interest was not relevant to its decision and would not have been taken into account.

103 The Commission observes that the exception concerning the protection of the public interest is mandatory. It follows that the Commission is not required to balance the interests of persons seeking access to documents against the interest of the Commission in withholding them.

104 It also states that the applicant had not made it known, until he brought his action before the Court of First Instance, that he needed the documents in question in order to defend himself before the Finnish courts. Accordingly, the Commission could not have taken that particular interest of the applicant's into consideration in its assessment of the request for access.

105 At the hearing, the Commission added that the applicant had not advanced that argument in good faith, given that, contrary to what he had implied, the legal proceedings in Finland had ended, which in turn throws doubt upon the applicant's interest in proceeding with the present action.

Findings of the Court

106 It is appropriate to observe, first of all, that any person may request access to any unpublished Council or Commission document, without being required to give reasons for the request (*Interporc* v *Commission*, cited above, paragraph 48, and Case T-174/95 *Svenska Journalistförbundet* v *Council* [1998] ECR II-2289, paragraphs 65 to 67). It follows that a person who is refused access to a document or to part of a document has, by virtue of that very fact, an interest in the annulment of that decision.

107 Next, as regards the applicant's allegation that the defendant institutions failed to take into consideration his private interest in obtaining the documents in question, suffice it to observe that the Council and the Commission are required to weigh the various interests in the balance only when they are considering an application for access to documents relating to their deliberations, which is not the case in the present instance (*WWF UK* v *Commission*, paragraph 59).

108 The present plea is therefore irrelevant and must be rejected.

The request for production of documents

109 In his reply the applicant claims that the Court should order the production of the documents requested so that it may review them, having regard to his claims concerning their likely contents, and may thus assess the way in which the Commission and Council considered his applications for access to those documents. The applicant requests that his legal adviser be authorised to examine the documents together with the Court, under an obligation of secrecy if need be. If necessary, the applicant and his counsel waive the right to have sight of the documents.

110 However, having regard to the Court's findings in relation to all the pleas put forward by the applicant, the Court holds that it is not necessary for the resolution of the dispute to order production of the documents.

Costs

111 Under Article 87(2) of the Rules of Procedure of the Court of First Instance, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicant has been unsuccessful, he must be ordered to pay the costs, in accordance with the form of order sought by the Council and the Commission.

On those grounds,

THE COURT OF FIRST INSTANCE (Fifth Chamber)

hereby:

1. **Dismisses the action;**

2. **Orders the applicant to bear his own costs together with those incurred by the Council and the Commission.**

Lindh García-Valdecasas Cooke

Delivered in open court in Luxembourg on 12 July 2001.

H. Jung P. Lindh

Registrar President