ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE
15 January 2001 *

In Case T-236/00 R,

Gabriele Stauner, residing in Wolfratshausen (Germany),

Freddy Blak, residing in Næstved (Denmark),

Jens-Peter Bonde, residing in Bagsværd (Denmark),

Theodorus Bouwman, residing in Eindhoven (Netherlands),

Kathalijne Maria Buitenweg, residing in Amsterdam (Netherlands),

Mogens Camre, residing in Copenhagen (Denmark),

Rijk van Dam, residing in Rotterdam (Netherlands),

Michl Ebner, residing in Bolzano (Italy),

Christopher Heaton-Harris, residing in Kettering, Northamptonshire (United Kingdom),

Lousewies van der Laan, residing in Brussels (Belgium),

Joost Lagendijk, residing in Rotterdam,

Nelly Maes, residing in Sinaai (Belgium),

Franz-Xaver Mayer, residing in Landau-sur-l'Isar (Germany),

Franziska Emilia Müller, residing in Bruck (Upper Palatinate) (Germany),

Alexander Radwan, residing in Rottach-Egern (Germany),

Alexander de Roo, residing in Amsterdam,

Heide Rühle, residing in Stuttgart (Germany),

* Language of the case: German.

Ursula Schleicher, residing in Munich (Germany),

Inger Schöring, residing in Gävle (Sweden),

Esko Olavi Seppänen, residing in Helsinki (Finland),

Bart Staes, residing in Antwerp (Belgium),

Claude Turmes, residing in Esch-sur-Alzette (Luxembourg),

Members of the European Parliament, represented by J. Sedemund and T. Lübbig, lawyers, with an address for service in Luxembourg,

applicants,

v

European Parliament, represented by C. Pennera and M. Berger, acting as Agents, with an address for service in Luxembourg,

and

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

defendants,

APPLICATION for suspension of the application of points 17 and 29 of the Framework Agreement of 5 July 2000 on Relations between the European Parliament and the Commission and of Annex 3 to that agreement,

THE PRESIDENT OF THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES

makes the following

Order

Legal framework

1 Since 1990, the provisions regulating institutional relations between the European Parliament and the Commission have been contained in a 'Code of Conduct' (OJ 1995 C 89, p. 69).

2 In September 1999, a resolution of the European Parliament called for 'the early establishment of an Interinstitutional Agreement between the Commission and Parliament as a Framework for a new Code of Conduct'.

3 On 5 July 2000, the Framework Agreement on relations between Parliament and the Commission was adopted by a majority of the Members of the Parliament (hereinafter the 'Framework Agreement').

4 Point 1 of the Framework Agreement provides:

'In order to update the code of conduct adopted in 1990 and amended in 1995, the two institutions agree on the following measures to strengthen the responsibility and legitimacy of the Commission, to extend constructive dialogue and political cooperation, to improve the flow of information and to consult and inform the European Parliament on Commission administrative reforms. [The two institutions] also agree on a number of specific implementing measures (i) on the legislative process, (ii) on international agreements and enlargement, and (iii) on the transmission of confidential Commission documents and information. These implementing measures are annexed to this Framework Agreement'.

5 Point 17 of the Framework Agreement provides:

'In connection with the annual discharge governed by Article 276 of the EC Treaty, the [...] Parliament and the Commission agree that the Commission shall forward all information necessary for supervising the implementation of the budget for the year in question, which the chairperson of the parliamentary committee responsible for the discharge procedure pursuant to Annex VI of the Rules of Procedure of the European Parliament requests from it for that purpose.

If new aspects come to light concerning previous years for which discharge has already been given, the Commission shall forward all the necessary information on the matter with a view to arriving at a solution which is acceptable to both sides'.

6 Point 29 provides that '[a]ll specific measures are dealt with in the Annexes'.

7 Annex 3 to the Framework Agreement concerns the forwarding of confidential information to the Parliament. Points 1.1 to 1.5 of Annex 3 provide:

'1.1. This Annex shall govern the forwarding to the European Parliament and the handling of confidential information from the Commission in connection with the exercise of parliamentary prerogatives concerning the legislative and budgetary procedures, the procedure for giving discharge and the exercise in general terms of the European Parliament's powers of scrutiny. The two institutions shall act in accordance with their mutual duties of sincere cooperation and in a spirit of complete mutual trust as well as in the strictest conformity with the relevant Treaty provisions, in particular Articles 6 and 46 of the Treaty on European Union and Article 276 of the EC Treaty.

1.2. "Information" shall mean any written or oral information, whatever the medium and whoever the author may be.

1.3. The Commission shall ensure that the European Parliament is given access to information, in accordance with the provisions of this Annex, whenever it receives from one of the parliamentary bodies set out in point 1.4 below a request relating to the forwarding of confidential information.

1.4. In the context of this Annex, the following may request confidential information from the Commission: the President of the European Parliament, the chairperson of the parliamentary committees concerned, the Bureau and the Conference of Presidents.

1.5. Information on infringement procedures and procedures relating to competition, in so far as they are not covered by a final Commission decision on the date

when the request from one of the parliamentary bodies is received, shall be excluded from this Annex'.

8 The general rules, and the arrangements for access to and the handling of confidential information, are contained in points 2 and 3 respectively of Annex 3.

9 Moreover, the third paragraph of Article 197 EC provides that 'the Commission shall reply orally or in writing to questions put to it by the European Parliament or by its Members'.

Procedure

10 By application lodged at the Registry of the Court of First Instance on 7 September 2000, Mrs Stauner and 21 other Members of the European Parliament ('the applicants') brought an action under the fourth paragraph of Article 230 EC for the annulment of the Framework Agreement.

11 By a separate document lodged at the Registry of the Court of First Instance on 22 September 2000, they also submitted an application under Article 241 EC for suspension of the application of points 17 and 29 of the Framework Agreement and of Annex 3 thereto.

12 On 9 October 2000, the Parliament and the Commission submitted their observations on that application for interim measures.

13 On 25 October 2000, the arguments of the parties were heard. At the end of the hearing, the President of the Court of First Instance called on the parties to consider settling the interim relief proceedings amicably by means of a declaration by each of the defendant institutions that, in essence, points 17 and 29 of and Annex 3 to the Framework Agreement, concerning the forwarding of confidential information to the Parliament, are without prejudice to the provisions of the third paragraph of Article 197 EC.

14 By letter of 20 November 2000, received at the Registry of the Court of First Instance on 23 November, the applicants' representative indicated that they would withdraw their application for interim measures if the defendants accepted the abovementioned proposal. He also referred to certain passages in a document attached to his letter, entitled 'Practical Guide to the Framework Agreement', which confirmed the fear that the Commission might also take advantage of the Framework Agreement to limit requests for information made by individuals within the meaning of the third paragraph of Article 197 EC.

15 By letter received at the Registry of the Court of First Instance on 30 November 2000, the Parliament noted that the Framework Agreement 'in no way affects the individual rights that may be conferred on Members of Parliament... under [the third paragraph of] Article 197 EC' and stated as follows:

'The question of whether the replies given by the Commission also imply the forwarding of confidential information was discussed at length in the conference of presidents of the political groups on 16 November. The Parliament's representatives were therefore instructed to inform the President of the Court of First Instance... that the proposal outlined in that respect on 25 October could not be accepted by the Parliament'.

16 By letter received at the Registry of the Court of First Instance the same day, the Commission made it known that it had decided at its meeting of 15 November 2000 not to accept the proposal of an amicable settlement.

17 In the light of those refusals, the Parliament and the Commission were invited to present their observations on the letter of the applicants' agent of 20 November 2000 and on the document to which it referred, which both institutions did on 12 December 2000.

Law

18 By virtue of the combined provisions of Articles 242 EC and 243 EC and Article 4 of Council Decision 88/591/ECSC, EEC, Euratom of 24 October 1988 establishing a Court of First Instance of the European Communities (OJ 1988 L 319, p. 1), as amended by Council Decision 93/350/ECSC, EEC, Euratom of 8 June 1993 (OJ 1993 L 144, p. 21), the Court of First Instance may, if it considers that circumstances so require, order that application of the contested act be suspended or prescribe any other necessary interim measures.

19 In this case, the President of the Court of First Instance is of the opinion that consideration should first be given to whether the application for interim measures is admissible.

Arguments of the parties

20 The Parliament and the Commission contend, first, that the application should be rejected because, since it does not contain any account of the pleas of fact and law establishing a prima facie case for the suspension of application, it does not comply with the requirements of Article 104(3) of the Rules of Procedure of the Court of First Instance (order of the President of the Court in Case T-152/88 R *Sofrimport* v *Commission* [1988] ECR 2931, paragraph 12, and in Case T-29/92 R *SPO et al.* v *Commission* [1992] ECR II-2161, paragraphs 32 and 34).

21 Second, they consider that the application for interim measures should be rejected as the action on which it is founded is manifestly inadmissible because the Framework Agreement is not of direct and individual concern to the applicants.

22 In particular, the Framework Agreement is not of individual concern to the applicants as it can have effects only on the contracting parties, that is to say the defendants.

23 Contrary to the assertion of the applicants, it is contended that the Framework Agreement does not govern the right of each individual Member of Parliament to table questions to the Commission under the third paragraph of Article 197 EC. The Framework Agreement is concerned only with the forwarding of information to the Parliament in its capacity as an institution.

24 Accordingly, the Framework Agreement concerns the applicants in the same way as any other current or future Member of Parliament, that is to say as a member of a group subject to constant change.

25 The Parliament states that the effects of the application of the Framework Agreement are limited to the internal organisation of its activities and the application to annul that act lodged by the applicants cannot therefore be held to be admissible (orders in Cases 78/85 *Group of the European Right* v *European Parliament* [1986] ECR 1753 and C-68/90 *Yvan Blot and Front national* v *European Parliament* [1990] ECR I-2101).

26 Moreover, the possibility of determining the number of Members of Parliament affected does not suffice to establish that the Framework Agreement is of

individual concern to them (Case 307/81 *Alusuisse* v *Council and Commission* [1982] ECR 3463, paragraph 11, and Case 26/86 *Deutz und Geldermann* v *Council* [1987] ECR 941, paragraph 8). On that subject, the order of the President of the Court of First Instance in Case T-17/00 R *Rothley and Others* v *European Parliament* [2000] ECR II-2085 does not constitute a relevant precedent because, unlike the situation in this case, the contested decision refers expressly to Members of Parliament.

27 The applicants maintain that the application for interim measures is admissible inasmuch as the action in the main proceedings from which it is derived is admissible.

28 They contend that the rules of conduct agreed between the institutions of the Union constitute acts adopted by the defendants within the meaning of Article 230 EC. The Framework Agreement is of direct and individual concern to the applicants in their capacity as Members of Parliament, particularly as it affects their right to table questions and exercise control under the third paragraph of Article 197 EC.

29 Pursuant to Rule 186(c) of the Parliament's Rules of Procedure (OJ 1999 L 202, p. 1), the provisions of the Framework Agreement are applicable within the Parliament and consequently are binding on the applicants. By virtue of those provisions, the applicants are subject to specific obligations governing their conduct and liable to sanctions in the event of non-compliance with those obligations (point 3.3 of Annex 3).

30 The provisions of the Framework Agreement encroach on the powers of scrutiny conferred on the applicants by the third paragraph of Article 197 EC. That article confers on each of the applicants individual and 'original' rights *vis-à-vis* the Commission. The conditions of admissibility provided for in Article 230 EC are satisfied since the Framework Agreement is intended to produce legal effects *vis-à-vis* third parties and considerably limits the Commission's obligations to

provide information *vis-à-vis* each Member of Parliament pursuant to the third paragraph of Article 197 EC. In that respect, the applicants refer to point 1.5 of Annex 3 to the abovementioned Framework Agreement.

31 Moreover, the powers of scrutiny conferred by the third paragraph of Article 197 EC reflect the status of the applicants as representatives directly elected by the citizens and as the guardians of democratic legitimacy. The provisions of the Framework Agreement constitute direct interference in the exercise of the applicants' functions.

Findings of the President of the Court

On inadmissibility for infringement of the Rules of Procedure

32 Under Article 104(2) of the Rules of Procedure, applications for interim measures shall state 'the pleas of fact and law establishing a prima facie case for the interim measures applied for'.

33 Article 104(3) of the Rules of Procedure provides that the application for interim measures shall be made 'by a separate document and in accordance with the provisions of Articles 43 and 44'.

34 It follows from a combined reading of those provisions of Article 104 of the Rules of Procedure that an application for interim measures must be sufficient to

enable the defendant to submit its observations and the judge hearing the application to rule on that application, where necessary, without other supporting information. For the purposes of legal certainty and the proper administration of justice, it is necessary, for such an application to be admissible, that the essential elements of fact and law on which it is founded be set out in a coherent and comprehensible fashion in the application for interim measures itself. While the application may be supported and supplemented on specific points by references to certain passages in documents annexed thereto, an overall reference to other written documentation, even those annexed to the application for interim measures, cannot make up for the absence of essential elements in that application.

35 In this case, the applicants state in their application that the 'action is founded on the grounds' which they set out. The brief statement of the eight grounds mentioned is supplemented by a reference to the relevant points in the application for annulment. For instance, under the heading 'Grounds of the action (prima facie case)' it states:

'The action is well founded for the following reasons:

(a) essential procedural requirements were breached during the adoption, by the Parliament, of the [Framework Agreement] (see paragraphs 22 to 25 of the application);

(b) certain provisions of the [Framework Agreement] infringe the Parliament's Rules of Procedure in so far as they jeopardise the allocation of powers to holders of a mandate and to parliamentary bodies as well as the autonomy of committees and their rapporteurs, as laid down in the Rules of Procedure, and are incompatible with the provisions of Annex VII to the Parliament's

Rules of Procedure concerning the procedure for the consideration of confidential documents (see paragraphs 26 to 46 of the application);

(c) certain provisions of the [Framework Agreement] infringe the Financial Regulation and, in particular, jeopardise the power which that regulation confers on the Parliament to ensure that it receives all information and explanatory details on budgetary matters within its competence (see paragraphs 47 to 49 of the application);

(d) the [Framework Agreement] is founded, in breach of the Treaty, on Article 214 EC which governs the procedure for nominating Members of the Commission but does not constitute a legal basis for adopting provisions which have a bearing on the internal work of the Parliament and the relations between institutions as laid down by the Treaty (see paragraphs 50 to 53 of the application);

(e) certain provisions of the [Framework Agreement] are incompatible with the third paragraph of Article 197 EC which guarantees Members of Parliament autonomous and inalienable powers of scrutiny *vis-à-vis* the Commission (see paragraphs 54 to 60 of the application);

(f) certain provisions of the [Framework Agreement] restrict and undermine the Parliament's powers of scrutiny provided for in Article 276 EC concerning the implementation of the budget (see paragraphs 61 to 64 of the application);

(g) the [Framework Agreement] infringes Article 7 EC, which provides that each institution shall act within the limits of the powers conferred upon it, and thus pursuant to the provisions of the Treaties (see paragraph 65 of the application);

(h) the [Framework Agreement] infringes Article 211 EC, which requires the Commission to ensure that the provisions of the Treaty are applied (see paragraph 66 of the application)'.

36 As set out in subparagraphs (a) to (c) and (e) to (h), the reference to the pleas and arguments in the application for annulment of the Framework Agreement, even though that application is attached to the application for interim measures, cannot replace the account of the facts, pleas and arguments in the application for interim measures itself and thus cannot make up for the absence of any explanation in that application of the grounds in the action in the main proceedings which make out a prima facie case (in that regard, in application of Article 83(2) of the Rules of Procedure of the Court of Justice, see the order of the President of the Court of Justice in Case C-278/00 R *Greece* v *Commission* [2000] ECR I-8787).

37 It should be added that in the absence of that conclusion the judge hearing the application for interim measures would be compelled to consider the main action, which would render ineffective the provision of the Rules of Procedure which requires that the application for interim measures be made by separate document.

38 Accordingly, the account of the grounds contained in subparagraphs (a) to (c) and (e) to (h) does not comply with the requirements of the abovementioned provisions of the Rules of Procedure. Consequently, those grounds cannot be taken into consideration for the purpose of establishing a prima facie case for suspension of application.

39 As regards the ground set out under (d), alleging that the wrong legal basis was used for Framework Agreement, its wording alone is sufficient for its meaning and scope to be understood. It may thus need to be considered whether it constitutes a prima facie case for the purposes of that requirement for the granting of interim measures.

40 However, consideration should first be given to whether the main action is manifestly inadmissible, as the Parliament and the Commission contend.

Inadmissibility owing to the inadmissibility of the main action.

41 By virtue of the first paragraph of Article 104(1) of the Rules of Procedure, an application to suspend the operation of any measure is admissible only if the applicant is challenging that measure in proceedings before the Court of First Instance. That rule is not a mere formality: it requires that the main action from which the application for interim measures is derived may be effectively examined by the Court of First Instance.

42 It is settled case-law that the admissibility of an action before the court adjudicating on the substance should not, in principle, be examined in proceedings relating to an application for interim measures so as not to prejudge the case in the main proceedings. However, where, as in this case, it is contended that the main action from which the application for interim measures is derived is manifestly inadmissible, it may be necessary to establish certain grounds for the conclusion that such an action is prima facie admissible (order of the President of the Court of Justice in Case 221/86 R *Group of the European Right* v *Parliament* [1986] ECR 2969, paragraph 19, and Case 376/87 R *Distrivet v Council* [1988] ECR 209, paragraph 21; order of the President of the Court of First Instance in Case T-222/99 R *Martinez and de Gaulle* v *Parliament* [1999] ECR II-3397, paragraph 60, and *Rothley and Others* v *Parliament*, cited above, paragraph 45).

43 The first paragraph of Article 230 EC provides that the Court is to review, in particular, the legality of acts of the Parliament intended to produce legal effects

vis-à-vis third parties. The aim of that provision is to enable the Community courts to review the acts adopted by the Parliament in the context of the EC Treaty which could encroach on the powers of the Member States or the other institutions, or exceed the limits which have been set to the Parliament's powers (Case 294/83 *'Les Verts'* v *Parliament* [1986] ECR 1339, paragraph 25). On the other hand, acts concerned only with the internal organisation of the Parliament's work cannot be the subject of an application for annulment (orders in *Group of the European Right* v *Parliament*, cited above, paragraph 11, and *Yvan Blot and Front national* v *Parliament*, cited above, paragraph 11; judgment in Case C-314/91 *Weber* v *Parliament* [1993] ECR I-1093, paragraph 9). That class of measures includes measures of the Parliament which either do not have legal effects or have legal effects only within the Parliament as regards the organisation of its work and are subject to review procedures laid down in its Rules of Procedure (*Weber* v *Parliament*, cited above, paragraph 10).

44 As a preliminary point, it should be noted that the Framework Agreement was adopted on 5 July 2000 by the majority of the Members of Parliament and must therefore be regarded, for the purposes of admissibility, as an act of the Parliament.

45 It therefore falls to be considered whether the Framework Agreement may have legal effects beyond the internal organisation of Parliament's work.

46 To that end, the applicants contend that the Framework Agreement governs, in a general and definitive manner, the rights of access of the Parliament and its Members to all information in the Commission's possession which the Parliament or one of its Members has requested. Moreover, the main aim of the Framework Agreement and, more particularly, of Annex 3 thereto is not merely to control the exchange of information between the two institutions as such, but to restrict the individual right of Members of the Parliament to table questions and exercise

supervision under the third paragraph of Article 197 EC. The Framework Agreement places illegal restrictions on the status of the applicants as Members and, more specifically, on their powers of scrutiny over the Commission. Compliance by the applicants with the obligations thus imposed on them would entail a breach of the Treaty, the provisions of the Financial Regulation of the European Community and the Parliament's Rules of Procedure.

47 The abovementioned contentions are intended, in essence, to support the assertion that the Framework Agreement deprives Members of the Parliament, acting individually, of even the possibility of requesting the Commission, pursuant to the third paragraph of Article 197 EC, to forward confidential information to them, thereby altering their legal position.

48 However, it is apparent from the wording of the provisions of the Framework Agreement, in particular point 1 thereof and points 1.1, 1.3 and 1.4 of Annex 3 thereto, confirmed on that point by the circumstances in which it was concluded and which clarify its purpose, that the aim of the agreement is not to limit the right of Members of the Parliament individually to table questions, but merely to enable the Parliament to exercise wider powers of scrutiny over the Commission's activities by obtaining from that institution confidential information, the communication of which had not previously been regulated.

49 The fact that the Framework Agreement provides that certain information may be supplied only to the parliamentary bodies referred to in point 1.4 of Annex 3 thereto — namely the President of the European Parliament, the chairperson of the parliamentary committee concerned, the Bureau and the Conference of Presidents — does not deprive Members of the Parliament, acting individually, of their right to put questions to the Commission and receive from that institution replies involving, where necessary, the forwarding of confidential information, as

was the case before the adoption of the Framework Agreement. In that respect, it should be noted that the Commission's discretion in deciding whether to communicate confidential information in its reply to a question put by a Member of the Parliament acting individually, pursuant to the third paragraph of Article 197 EC and in accordance with the relevant provisions of the Parliament's Rules of Procedure, is not governed, even indirectly, by the Framework Agreement.

50 On the other hand, where a request for confidential information comes from the Parliament, that is to say from one of the parliamentary bodies referred to in point 1.4 of Annex 3 to the Framework Agreement, the forwarding of that information by the Commission is henceforth governed by the provisions of that agreement.

51 It follows that, prima facie, the Framework Agreement, which is limited to governing relations between the Commission and the Parliament, has not altered the legal position of Members of Parliament, acting individually, as regards their right under the third paragraph of Article 197 EC, does not impair that right, which is guaranteed by that provision, and therefore has no legal effect *vis-à-vis* Members of the Parliament acting individually.

52 It has thus been established that prima facie the Framework Agreement does not entail any limit of the right of Members of the Parliament, acting individually, to put questions to the Commission. Consequently, the applicants' allegation that the document entitled 'Practical Guide to the Framework Agreement' (cited above, paragraph 14) confirms 'their fear' that the Commission may take advantage of the Framework Agreement to limit the right in question is irrelevant.

53 Accordingly, in the absence of any reasonable grounds for considering that the application in the main proceedings may be admissible, the present application for interim measures must be declared inadmissible.

On those grounds,

THE PRESIDENT OF THE COURT OF FIRST INSTANCE

hereby orders:

1. **The application for interim measures is dismissed.**

2. **Costs are reserved.**

Luxembourg, 15 January 2001.

H. Jung

Registrar

B. Vesterdorf

President