JUDGMENT OF THE COURT OF FIRST INSTANCE (Second Chamber) 27 February 1992 *

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BASF AG, whose registered office is in Ludwigshafen (Federal Republic of Germany), represented by F. Hermanns, Rechtsanwalt, Düsseldorf, with an address for service in Luxembourg at the Chambers of Messrs Loesch and Wolter, 8 Rue Zithe,

NV Limburgse Vinyl Maatschappij, whose registered office is in Tessenderlo (Belgium), represented by I. G. F. Cath, of the Hague Bar, with an address for service in Luxembourg at the Chambers of L. H. Dupong, 14a Rue des Bains,

NV DSM and DSM Kunststoffen BV, whose registered office is in Heerlen (Netherlands), represented by I. G. F. Cath, of The Hague Bar, with an address for service in Luxembourg at the Chambers of L. H. Dupong, 14a Rue des Bains,

Hüls AG, whose office is in Marl (Federal Republic of Germany), represented by A. Deringer, C. Tessin, H. Herrmann and J. Sedemund, Rechtsanwälte, Cologne, with an address for service in Luxembourg at the Chambers of J. Loesch, 8 Rue Zithe,

Atochem SA, whose registered office is in Puteaux (France), represented by X. de Roux and Ch.-H. Léger of the Paris Bar, with an address for service in Luxembourg at the Chambers of Messrs Hoss & Elvinger, 15 Côte d'Eich,

Société Artésienne de Vinyle SA, whose registered office is in Paris (France), represented by B. Van de Walle de Ghelcke of the Brussels Bar, with an address for service in Luxembourg at the Chambers of J. Wolter, 8 Rue Zithe,

Wacker Chemie GmbH, whose registered office is in Munich (Federal Republic of Germany), represented by H. Hellmann, Rechtsanwalt, Cologne, with an address for service in Luxembourg at the Chambers of Messrs Loesch and Wolter, 8 Rue Zithe,

Enichem SpA, whose registered office is in Milan (Italy), represented by M. Siragusa of the Rome Bar, G. Scassellati Sforzolini, of the Bologna Bar, and G. Arcidiacono, of the Milan Bar, with an address for service in Luxembourg at the Chambers of Messrs Arendt and Medernach, 4 Avenue Marie-Thérèse,

Hoechst AG, whose registered office is in Frankfurt am Main (Federal Republic of Germany), represented by H. Hellmann, Rechtsanwalt, Cologne, with an address for service in Luxembourg at the Chambers of Messrs Loesch and Wolter, 8 Rue Zithe,

Imperial Chemical Industries PLC, whose registered office is in London (United Kingdom), represented by D. Vaughan QC and D. Anderson, members of the Bar of England and Wales, instructed by V. O. White, R. J. Coles and A. M. Ransom, Solicitors, with an address for service in Luxembourg at the Chambers of L. H. Dupong, 14a Rue des Bains,

Shell International Chemical Company Ltd, whose registered office is in London (United Kingdom), represented by K. B. Parker, a member of the Bar of England and Wales, instructed by J. W. Osborne, Solicitor, London, with an address for service in Luxembourg at the Chambers of J. Hoss, 15 Côte d'Eich,

Montedison SpA, whose registered office is in Milan (Italy), represented by G. Aghina and G. Celona, of the Milan Bar, and by P. A. M. Ferrari of the Rome Bar, with an address for service at the Chambers of G. Margue, 20 Rue Philippe II,

applicants,

Commission of the European Communities, represented by B. J. Drijber, B. Jansen and J. Currall, members of its Legal Service, acting as Agents, assisted by E. Morgan de Rivery of the Paris Bar, R. M. Morresi, of the Bologna Bar (Italy), N. Forwood QC and David Lloyd-Jones, of the Bar of England and Wales, and Alberto Dal Ferro, of the Vicenza Bar (Italy), with an address for service in Luxembourg at the Chambers of R. Hayder, representative of the Commission's Legal Service, Wagner Centre, Kirchberg,

defendant,

APPLICATION for annulment of the Commission Decision of 21 December 1988 relating to a proceeding pursuant to Article 85 of the EEC Treaty (IV/31.865, PVC) (Official Journal 1989 L 74, p. 1),

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

composed of: D. Barrington, presiding, A. Saggio, C. Yeraris, C. P. Briët and J. Biancarelli, Judges,

Registrar: H. Jung,

having regard to the written procedure and further to the hearings on 18 to 22 November 1991 and 10 December 1991,

gives the following

Judgment

The factual background to the applications, the contested decision and the general course of the procedure

1 As a result of investigations carried out in the polypropylene sector on 13 and 14 October 1983, pursuant to Article 14 of Council Regulation No 17 of 6 February 1962 (First Regulation implementing Articles 85 and 86 of the Treaty, Official Journal, English Special Edition 1959-1962, p. 87), the Commission of the European Communities opened a file concerning polyvinylchloride (hereinafter referred to as 'PVC'). It subsequently undertook various investigations at the premises of the undertakings concerned and sent them several requests for information.

2 On 24 March 1988 the Commission instituted, on its own initiative, a proceeding under Article 3(1) of Regulation No 17 against 14 PVC producers, namely Atochem SA, BASF AG, NV DSM and DSM Kunststoffen BV, Enichem SpA., Hoechst AG, Hüls AG, Imperial Chemical Industries PLC, NV Limburgse Vinyl Maatschappij, Montedison SpA, Norsk Hydro AS, Société Artésienne de Vinyle SA, Solvay et Cie, Shell International Chemical Company Ltd and Wacker Chemie GmbH. On 5 April 1988 it sent each of those undertakings the statement of objections provided for in Article 2(1) of Regulation No 99/63/EEC of the Commission of 25 July 1963 on the hearings provided for in Article 19(1) and (2) of Council Regulation No 17 (Official Journal, English Special Edition 1963-1964, p. 47). All those undertakings submitted observations during June 1988. Except for Shell International Chemical Company Limited, which had not requested a hearing, the undertakings were heard during September 1988. On 1 December 1988 the Advisory Committee on Restrictive Practices and Dominant Positions delivered its opinion on the Commission's draft decision.

3 On 17 March 1989 Commission Decision 89/190/EEC of 21 December 1988 relating to a proceeding pursuant to Article 85 of the EEC Treaty (IV/31.865, PVC) was published in the *Official Journal of the European Communities.* The decision had been notified to the undertakings concerned in February 1989. The operative part of the decision as notified and published contains *inter alia* the following three articles:

'*Article 1*

Atochem SA, BASF AG, DSM NV, Enichem SpA, Hoechst AG, Hüls AG, Imperial Chemical Industries plc, Limburgse Vinyl Maatschappij, Montedison SpA, Norsk Hydro AS, Société Artésienne de Vinyl, Shell International Chemical Co. Ltd, Solvay et Cie and Wacker Chemie GmbH infringed Article 85 of the EEC Treaty, by participating (for the periods identified in this Decision) in an agreement and/or concerted practice originating in about August 1980 by which the producers supplying PVC in the Community took part in regular meetings in order to fix target prices and target quotas, plan concerted initiatives to raise price levels and monitor the operation of the said collusive arrangements.

Article 2

The undertakings named in Article 1 which are still involved in the PVC sector in the Community shall forthwith bring the said infringement to an end (if they have not already done so) and shall henceforth refrain in relation to their PVC operations from any agreement or concerted practice which may have the same or similar object or effect, including any exchange of information of the kind normally covered by business secrecy by which the participants are directly or indirectly informed of the output, deliveries, stock levels, selling prices, costs or investment plans of other individual producers, or by which they might be able to monitor adherence to any express or tacit agreement or to any concerted practice covering price or market-sharing inside the Community. Any scheme for the exchange of general information to which the producers subscribe concerning the PVC sector shall be so conducted as to exclude any information from which the behaviour of individual producers can be identified, and in particular the undertakings shall refrain from exchanging between themselves any additional information of competitive significance not covered by such a system.

Article 3

The following fines are hereby imposed on the undertakings named herein in respect of the infringement found in Article 1:

(i) Atochem SA: a fine of ECU 3 200 000;

(ii) BASF AG: a fine of ECU 1 500 000;

(iii) DSM NV: a fine of ECU 600 000;

(iv) Enichem SpA: a fine of ECU 2 500 000;

(v) Hoechst AG: a fine of ECU 1 500 000;

(vi) Hüls AG: a fine of ECU 2 200 000;

(vii) Imperial Chemical Industries plc: a fine of ECU 2 500 000;

(viii) Limburgse Vinyl Maatschappij: a fine of ECU 750 000;

(ix) Montedison SpA: a fine of ECU 1 750 000;

(x) Norsk Hydro AS: a fine of ECU 750 000;

(xi) Société Artésienne de Vinyl: a fine of ECU 400 000;

(xii) Shell International Chemical Company Ltd: a fine of ECU 850 000;

(xiii) Solvay et Cie: a fine of ECU 3 500 000;

(xiv) Wacker Chemie GmbH: a fine of ECU 1 500 000.'

4 All the undertakings concerned by the decision, except for Solvay et Cie, brought actions before the Court of Justice. The applications were lodged at the Court Registry between 30 March 1989, the date on which BASF's application was received, and 25 April 1989, the date on which Norsk Hydro's application was received. Pursuant to Article 3(1) and Article 14 of the Council Decision of 24 October 1988 establishing a Court of First Instance of the European Communities, the Court referred the cases to the Court of First Instance by orders of 15 November 1989.

5 By order of 19 June 1990 the Court of First Instance (Second Chamber) declared Norsk Hydro's application inadmissible on the ground that it was lodged out of time. That order was the subject of an appeal to the Court of Justice. Norsk Hydro subsequently withdrew the appeal, and an order was made for its removal from the register.

6 On completion of the written procedure, which ended with the submission by the Commission of its rejoinders between 29 June and 5 November 1990, Cases T-79/89, T-84/89, T-85/89, T-86/89, T-89/89, T-91/89, T-92/89, T-94/89, T-96/89, T-98/89, T-102/89 and T-104/89 were joined for the purposes of the oral procedure by order of 11 July 1991 of the President of the Second Chamber of the Court. On 11 July 1991 a preparatory meeting was held prior to the hearing pursuant to Article 64(3) of the Court's Rules of Procedure. Upon hearing the Report of the Judge-Rapporteur the Court (Second Chamber) decided to open the oral procedure and to order certain measures of organization of procedure.

7 The hearing took place on 18 to 22 November 1991 and on 10 December 1991. During the hearing the Court, by order of 19 November 1991, required the

Commission to produce certain documents before 22 November 1991. By a further order of 22 November 1991 the time-limit initially prescribed was extended to 5 December 1991.

8 After hearing the parties' submissions on this point at the hearing the Court considers that all the cases should be joined for the purposes of the judgment.

Forms of order sought by the parties

9 The applicants claim essentially that the Court should:

(i) primarily, annul the Commission decision of 21 December 1988 relating to a proceeding pursuant to Article 85 of the EEC Treaty (IV/31.865, PVC) and, in the alternative, cancel or reduce the fine imposed by Article 3 of that decision;

(ii) order the Commission to pay the costs;

(iii) in addition, Montedison SpA claims that the Commission should be ordered to reimburse it in full for the costs incurred during the administrative procedure and to repair all the damage which it sustained as a result of the implementation of the contested decision.

10 The Commission contends that the Court should:

(i) dismiss the application by Shell International Chemical Company Ltd as being out of time and hence inadmissible;

(ii) dismiss the applications as unfounded;

(iii) order the applicants to pay the costs.

The measures of organization of procedure and of inquiry ordered by the Court

A — *The written arguments of the parties which led the Court to adopt the measure of organization of procedure of 11 July 1991*

At point V of its application, entitled 'Infringement of the requirement to state reasons at the time when the contested decision is adopted', BASF refers to the judgment of the Court of Justice in Case 131/86 *United Kingdom* v *Council* [1988] ECR 905 (the 'laying hens' case) in support of the view that Article 190 of the Treaty requires the Commission, when making a decision, to adopt reasons which form an integral part of the decision. The applicant infers from this that a decision is void if it does not contain a statement of reasons or the reasons which it gives are inadequate or incomplete at the time of its adoption or where the reasons are changed after the adoption of the decision.

The applicant observes that in this case the notified decision is dated 21 December 1988 and is accompanied by a covering letter dated 5 January 1989 signed 'For the Commission, P. Sutherland, Member of the Commission'. However, it states that on 21 December 1988 the Commission sent it a telex message in which it claimed to have adopted a decision on 22 December 1988. Whilst not ruling out the possibility that this was a clerical error, the applicant argues that on 21 December 1988 the statement of reasons for the decision was either non-existent or different from that appearing in the notified decision. In support of its allegations the applicant claims that, in reply to its request that the decision be notified to it made between 21 December 1988 and 3 February 1989, the date of notification, Commission staff stated that the German text of the decision was not yet ready and that consequently such notification was not possible. According to the applicant, the time which elapsed between the adoption of the decision and its notification indicates that the statement of reasons contained in the decision was

re-drafted. In the applicant's view, it follows that the decision is void. In its reply it states that 'the Commission could produce the German text which it had in its possession on 21 December 1988. Both the Court and the applicant would then be in a position to compare [the two texts] and to determine whether the differences between that text and the one which was notified to the applicant on 3 February 1989 result from purely linguistic amendments'.

13 In its application Hüls states that it has grounds for believing that the decision notified to it differs in certain essential respects from the draft which formed the basis for the Commission Decision of 21 December 1988. According to Hüls, it is clearly apparent from the typographical presentation of the notified decision that certain essential passages were added or corrected. Hüls also asks the Court to order the Commission 'to produce the draft decision of 21 December 1988 and to make it available to the applicant in order to allow it to verify that the differences do not exceed what is lawful'.

14 The applicants Wacker Chemie GmbH and Hoechst AG state in their applications and replies that the statement of reasons for the decision provided for in Article 190 of the Treaty must set out clearly the main factual and legal considerations supporting the decision. Moreover, that statement must exist at the time when the decision is adopted. It is, in their view, incompatible with Article 190 of the Treaty to make subsequent amendments to that statement going beyond simple corrections of spelling and grammar (see the abovementioned judgment in *United Kingdom* v *Council*). The applicants consider that they have grounds for believing that those principles have been infringed in this case. They refer to rumours concerning the adoption of the decision prior to 21 December 1988. On that date they received a telex message from the Commission containing the operative part of the decision but not the statement of reasons for it and referring to a decision of 22 December 1988. They consider that, in view of the information which they have received from other undertakings which were also addressees of the contested decision, they are justified in expressing serious doubts as to whether the decision was adopted on the basis of a complete proposal containing the necessary statement of reasons in the authentic language. Consequently, the applicants claim that the Commission should be ordered to produce the proposal for a decision on the basis of which the contested decision was adopted on 21 December 1988. They infer from the Commission's defence that no decision was adopted in Dutch,

Italian or Spanish. According to the applicants, the decision should have been adopted in the languages of all the addressees. Consequently, they put to the Court 'the question whether the Commission decision did not have to be adopted on the basis of the relevant texts'. Moreover, having regard to the statement of the facts made by the Commission in its defence, they raise the question whether the Member of the Commission responsible for competition matters could validly adopt or validly adopted the decision in the other official languages, since his mandate expired on 5 January 1989, that is to say 11 days before the date on which the translations were submitted to the Secretariat-General of the Commission. They conclude that 'the decision, which should have been adopted in the form of a single decision with respect to all the addressees, is open to challenge in its entirety'.

Enichem SpA claims in its application that a considerable period elapsed between the adoption of the decision and its notification; consequently, the notified and published text may not correspond to the adopted text with the result that the decision notified to the parties is void. Enichem asks the Court to order the Commission to produce the text in the Commission's working language on the basis of which the latter adopted the decision of 21 December 1988. Enichem claims further that the decision was adopted before the final minutes relating to the hearing of the applicants by the Commission were drawn up on 13 February 1989. Neither the Advisory Committee, nor the full Commission, nor the Member of the Commission responsible for competition matters can therefore have had knowledge of the definitive text of the minutes of the hearing, with the result that the hearing by the Commission was rendered meaningless.

In reply to those arguments the Commission states in its defence and rejoinder that this plea is entirely unfounded and is not supported by any serious evidence; it claims that the proposals for a decision were submitted for deliberation by the full Commission in six languages (Dutch, English, French, German, Italian and Spanish). It is apparent from the minutes of meeting No 945 of the Commission that the decision was adopted in three languages, namely English, French and German, and that the Commission entrusted the Member responsible for competition matters with the task of adopting the decision in the other official languages. According to the Commission, the delegation of such authority is in conformity with Article 27 of the Commission's Rules of Procedure, as confirmed by the Court of Justice in its judgment in Case 5/85 *AKZO Chemie* v *Commission* [1986] ECR 2585 (at paragraph 40). According to the Commission, such authority neces-

sarily includes the requisite linguistic harmonization. Following the deliberations of the Commission the decision was translated into the three official languages in which it was not yet available (Danish, Greek and Portuguese). Those translations, it is said, were submitted to the Secretariat-General on 16 January 1989, the date on which the various versions of the decision, now available in all the official languages of the Community, were submitted to the lawyer-linguists in order to ensure their uniformity. The work of harmonizing the language versions was itself completed at the end of January 1989. The Commission states that it is in a position to produce to the Court, if the latter so desires, the documents referred to in its pleadings. It adds that the delegation of authority was not to Mr P. Sutherland, designated by name, but to the Member of the Commission responsible for matters of competition.

17 In the light of those conflicting written submissions the Court considered it necessary, in order to rule on the pleas put forward by the applicants, to compare the measure notified to the applicants and published in the *Official Journal of the European Communities* with the measure adopted. In view of this and also of the Commission's offer to produce evidence, the Court, exercising its power to adopt measures of inquiry (see judgment of the Court of Justice in *AKZO Chemie*, cited above), ordered the Commission on 11 July 1991, by way of measures of organization of procedure, to produce the minutes of the meeting of the Commission on 21 December 1988 and the text of the decision as adopted by the full Commission.

18 In Annexes 4 and 5 to its reply to the measure of organization of procedure, which was lodged at the Registry of the Court of First Instance on 12 September 1991, the Commission produced, first, pages 41 to 43 of the minutes, drawn up in French, of meeting No 945 of the full Commission of 21 December 1988 (Document COM(88) PV 945) (Annex 4 to the reply) and, secondly, three draft decisions dated 14 December 1988 drawn up in English, French and German (Document C(88) 2497) (Annex 5 to the reply).

19 Following the production of those documents BASF AG submitted to the Court, on 24 October 1991, a document in which it stated that it adhered to its written complaints and intended to make arrangements to simplify the proceedings at the

hearing. That document, which was served on the defendant on 29 October 1991, contained a comparative table summarizing certain discrepancies noted by BASF between the version of the decision notified to it and the German version of the draft decision of 14 December 1988, produced on 12 December 1991.

B — *The arguments of the parties at the hearing which led the Court to order the measure of inquiry of 19 November 1991*

20 In their joint oral submissions presented on 18 November 1991 all the applicant undertakings, except for Shell International Chemical Company Ltd and Montedison SpA, which were not party to the joint submissions, argued that it was necessary to distinguish between two 'types' of irregularities affecting the decision.

21 The applicants argued first that the notified measure had no legal basis in so far as it was notified in the Dutch and Italian language versions, since it appeared from the documents produced by the Commission on 12 September 1991 that those versions of the contested measure were adopted solely by the Member of the Commission responsible for competition matters. According to the applicants, Article 27 of the Commission's Rules of Procedure of 31 January 1963, provisionally maintained in force by Article 1 of the Decision of 6 July 1967 (Official Journal, English Special Edition, Second Series VII — Institutional Questions, p. 9, hereinafter referred to as 'the Commission's Rules of Procedure'), as amended by Commission Decision 75/461/Euratom, ECSC, EEC of 23 July 1975 (Official Journal 1975 L 199, p. 43), the first paragraph of which deals with the powers which may be delegated to Members of the Commission, provides no legal basis in this regard. At the hearing the applicants argued in particular that the practice adopted by the Commission was contrary to the first and second paragraphs of Article 12 of the Commission's Rules of Procedure because, in the absence of a decision adopted in Dutch and Italian, the measure was not 'authenticated' by the signatures of the President and the Executive Secretary. The applicants concluded that compliance with Article 12 of the Commission's Rules of Procedure constituted an essential procedural requirement whose infringement entailed the annulment of the decision under Articles 173 and 174 of the Treaty.

22 The undertakings claimed secondly that there were discrepancies between all the measures notified to the applicants and the documents which were produced by the Commission on 12 September 1991 and which it described as the decision adopted. Leaving aside corrections to grammar and spelling, the applicants identified important changes of three types. These consisted of additions made to page 6 of the notified measure concerning the German undertakings, the addition of a new paragraph on page 24 of the German-language version of the notified measure (page 22 the English-language version of the notified measure and page 23 of the French-language version thereof) and other amendments to the German-language version. Referring in particular to the abovementioned judgment in *United Kingdom* v *Council*, the undertakings argued that there was an absolute prohibition on making subsequent changes to legal measures decided upon by the competent authority. They added that confidence in the Community institutions would be shaken if the inviolability of those legal principles was not guaranteed unconditionally.

23 Replying to that argument on the same date the Commission, although not denying that a new paragraph had been added to point 27 of the statement of reasons contained in the notified measure, sought to demonstrate the lawfulness thereof by referring to the minutes of a special meeting of the Chefs de Cabinet of the Members of the Commission held on 19 December 1988. The Commission stated, however, that, in view of the confidential information contained in those minutes, it was not able to produce them. The Court suggested to the Commission that it should either refrain from making any reference to a document which was not available to the applicants or describe the document without producing it.

24 The Commission chose the latter solution; after the content of the document had been explained, the applicants stated that they were only partly satisfied with the Commission's reply since they had no knowledge of the document, which seemed to them to be of considerable importance. In addition, they first of all asked the Commission whether the decision had been authenticated in accordance with Article 12 of the Commission's Rules of Procedure; secondly, they stated that the extracts from the minutes produced did not constitute an appropriate reply to the Court's request; finally, they asked to see the text of the decision bearing the signatures of the President and the Secretary-General of the Commission.

25 In its oral submissions on 19 November 1991, the Commission stated that it could produce further documents in addition to those already made available to the Court only if the latter ordered it to do so. Accordingly, by order of 19 November 1991 the Court required the Commission to produce 'a certified copy of the original of the Commission decision of 21 December 1988 relating to a proceeding pursuant to Article 85 of the EEC Treaty (IV/31.865, PVC) (89/190/EEC), as it was adopted by the Members of the Commission at their meeting on 21 December 1988 and authenticated as provided for by the Rules of Procedure of the Commission, in the language versions in which the decision was adopted'. The Commission was ordered to produce the document to the Court 'by Friday 22 November 1991 at 12 noon at the latest'.

26 Pursuant to that order the Commission produced on 21 November 1991:

— pages 41 to 43 of the minutes of the meeting of the Commission already produced on 12 September 1991, certified to be true copies of the original by the Secretary-General of the Commission (pages 2 to 4);

— copies, certified by the Secretary-General, of the draft decisions of 14 December 1988 in English, French and German (pages 5 to 148);

— a document designated as SEC(88) OJ 945, point 15, dated 19 December 1988 and entitled 'Note for the attention of the Members of the Commission', certified to be a true copy of the original by the Secretary-General of the Commission (page 149);

— a document referred to as 'Annex III' entitled 'Modifications to be included in point 27 — PVC, in point 34 — LDPE' (page 150);

— a document signed by the Secretary-General of the Commission and worded as follows:

'I certify that the attached is a true copy of the decision of the Commission in Case IV/31.865-PVC, as adopted by the Commission at its meeting of 21 December 1988.

The text of the decision comprises the attached documents:

(1) pages 41 to 43 of the minutes of the Commission's meeting of 21 December 1988, COM(88) PV 945;

(2) the following documents which were before the Commission at that meeting:

(i) document C(88) 2497 of 14 December 1988, being a draft decision, in the three language versions (German, English, French) available to the Commission;

(ii) a document entitled "Modifications to be included in point 27 — PVC in point 34-LDPE" and bearing the reference "ANNEXE III", which was attached as Annexe III to document SEC(88) 2033 referred to in point 2 of the abovementioned Commission minutes, page 41, being the minutes of the special meeting of the Chefs de Cabinet held on 19 December 1988.'

7 The defendant informed the Court that, owing to the fact that the Commission was in the process of moving offices, it was unable to produce any further documents within the period laid down by the order of 19 November 1991 but would be able to do so by 5 December 1991. Consequently, the Court ordered that 'having regard to the special circumstances adduced by the Commission, the time-limit laid down in the order of 19 November 1991 for the production of a certified true copy of the decision of the Commission of 21 December 1988 [was] extended to 5 December 1991'.

8 On 5 December 1991 the Commission produced:

— pages 41 to 43 of the minutes of meeting No 945 of the Commission of 21 December 1988, accompanied by the covering page of the minutes. It is apparent from those documents, first, that pages 41 to 43 are included in Part 1 of the meeting, the minutes of which comprise 60 pages, and secondly that the minutes were approved by the Commission on 22 December 1988. The first page bears the signatures of the President and the Secretary-General of the Commission. The copy produced is certified as a true copy of the original

by the Secretary-General of the Commission and bears the Commission's official stamp.

— a certificate dated 5 December 1991 given by David F. Williamson, Secretary-General of the Commission, in the following terms:

'Pursuant to the Order of the Court of First Instance of 19 November 1991, I certify that the attached is a true copy of pages 41 to 43 of the authenticated minutes of the Commission's meeting of 19 December 1988, COM(88) PV 945, together with a copy of page 1 of those minutes, which bears the signatures of the President of the Commission and myself, in accordance with Article 10 of the Commission's Rules of Procedure. These pages record the adoption by the Commission of the decision in Case IV/31.865 — PVC, which comprises this entry in the minutes, together with the documents before the Commission on that occasion and listed on page 41, of which certified copies were furnished to the Court on 21 November 1991.'

— a covering letter dated 5 December 1991 signed by Mr J. Currall, a member of the Commission's Legal Service, acting as Agent, in the following terms:

'In compliance with the Court's Order of 19 November 1991, please find enclose a certified copy of the authenticated version of the minutes of the

Commission's meeting of 21 December 1988, to be read with the other documents of which certified copies have already been supplied to the Court, the whole constituting the Commission's decision as adopted that day.'

29 Finally, in its oral submissions on 10 December 1991 Montedison SpA argued that, in view of the new information which had come to light during the hearing, it was entitled to supplement its initial claims. It asked the Court to consider the question of the existence of the contested measure and hence the admissibility of its application. In the alternative, it stated that it adhered to its initial claims.

Substance

30 The Court notes that, in support of their claims, the applicants have put forward essentially three sets of pleas, namely breach of fundamental rights, infringement of essential procedural requirements and inadequate or incorrect appraisal and legal classification of the facts by the Commission with respect to Article 85(1) of the Treaty. One of those pleas concerns the existence of discrepancies between the decisions as adopted by the Commission and the measures notified to the applicants and published in the *Official Journal of the European Communities*. At the hearing the plea was supplemented, as a result of the Commission's oral submissions and the documents produced by it, by two further pleas; the first, already outlined in writing by certain applicants, concerned the lack of competence of the authority issuing the measure and the second concerned the non-existence of the measure.

31 The Court considers that it is necessary, in order to address precisely the pleas put forward by the applicants, to examine first the plea concerning a breach of the principle of the inalterability of the measure adopted, secondly the plea concerning the lack of competence of the authority issuing the measure and, finally, the plea concerning the non-existence of the contested measure. The Court points out that the pleas concerning lack of competence of the authority issuing the measure and the non-existence of the decision are, in any event, matters of public interest and as such must be raised by the Court of its own motion.

A — *The plea concerning a breach of the principle of the inalterability of the adopted measure*

32 A number of the applicants have maintained that there are discrepancies between the measure notified and published in the *Official Journal of the European Communities* and the measure adopted. According to the applicants, those discrepancies, which go beyond mere grammatical corrections, constitute a manifest breach of the principle of the inalterability of the measure adopted and render the decision void in its entirety (see paragraphs 11 to 15 above).

33 The Commission claims that the amendments either merely involved corrections to syntax or grammar or resulted from the proposals made by the special meeting of the Chefs de Cabinets on 19 December 1988. In support of its claims it has produced the various documents described above (see paragraphs 16, 23, 26 and 28 above).

34 The Court points out that in its abovementioned judgment in *United Kingdom* v *Council* the Court of Justice held, with regard to a directive adopted by the Council and subsequently amended by the staff of the Council's General Secretariat, that the statement of reasons is an essential part of a measure, since it makes possible a review by the Community judges and allows Member States and the nationals concerned to know the conditions under which the Community institutions have applied the Treaty; consequently 'neither the Secretary-General of the Council nor the staff of its General Secretariat has the power to alter the

statement of the reasons for a measure adopted by the Council' (paragraphs 37 and 38). That conclusion was also based on the Council's Rules of Procedure, which prohibited such amendments. On those grounds, the Court annulled the contested directive.

5 The principle that a measure may not be altered once it has been adopted by the competent authority constitutes an essential factor contributing to legal certainty and stability of legal situations in the Community legal order both for Community institutions and for persons whose legal or factual situation is affected by a decision adopted by those institutions. Only rigorous and absolute observance of that principle can guarantee that, subsequent to its adoption, a measure may be amended only in accordance with the rules on competence and procedure and, consequently, that the notified or published measure constitutes an exact copy of the measure adopted, thus reflecting faithfully the intention of the competent authority.

6 In this case the Court notes first that the documents produced by the Commission on 12 September 1991 in reply to the abovementioned measure of organization of procedure of 11 July 1991, and the documents produced at the hearings on 21 November 1991 and 5 December 1991 (described above at paragraphs 26 and 28) show that the three drafts dated 14 December 1988 submitted for deliberation by the Commission are different in certain respects from the measures notified to the applicants and published in the *Official Journal of the European Communities*. The defendant does not deny those differences as such but considers that some of them are very minor and that others may, as is apparent from the certificates given by Mr Williamson and Mr Currall produced on 21 November and 5 December 1991 (set out above at paragraphs 26 and 28), be explained by the fact that the decisions adopted by the Commission must be inferred from a combined reading of the three drafts, the minutes of meeting No 945 of the Commission and the minutes of the meeting of the Chefs de Cabinets of 19 December 1988, together with the proposal for amendment contained therein, and from the other documents produced by the Commission.

37 The Court notes secondly that, according to the minutes of meeting No 945 of the Commission, the latter, asked by Mr P. Sutherland, the Member responsible for matters of competition on 21 December 1988, to consider certain draft decisions designated as C(88) 2497, on that date:

— decided that the 14 undertakings concerned in the PVC case had infringed Article 85 of the Treaty, determined the amount of the fines which should be imposed on them and approved the principle that the undertakings should be ordered to put an end to the infringement;

— adopted a decision concerning Case IV 31.865 PVC in English, French and German (the authentic versions for certain applicants), those decisions being 'embodied' in documents C(88) 2497 mentioned above;

— authorized the Member of the Commission responsible for matters of competition to adopt the text of the decision in the other official languages of the Community;

— took note of the results of the examination of the matter by the Chefs de Cabinets of the Members of the Commission at their special meeting and weekly meeting on 19 December 1988.

38 It is in the light of those findings of fact that the Court must make a legal appraisal of the plea concerning a breach of the principle that the measure adopted may not be altered. In examining that plea it is necessary to distinguish between the text adopted in German and the text adopted in all the authentic languages.

1. *The amendments to the text of the decision adopted in German*

39 As regards the decision adopted by the Commission on 21 December 1988 in German, it appears from a comparative examination of the draft decision of 14 December 1988, as adopted by the Commission according to the terms of the minutes of meeting No 945, on the one hand, and the decision as notified and published, on the other, that the notified and published decision underwent numerous changes after its adoption. That comparative examination confirms the correctness of the table of discrepancies produced by BASF AG on 24 October 1991, discrepancies which the Commission does not deny but merely claims to be of a minor nature.

40 A comparison of the three drafts of 14 December 1988, drawn up in English, French and German and adopted, according to the minutes of meeting No 945, by the Commission on 21 December 1988, shows that there were significant differences not merely of grammar or syntax between the decision adopted in German and, on the one hand, the decision adopted in English and French and, on the other, the decision as notified and published. Even on the assumption that the changes made to the measure adopted by the Commission in German were intended to harmonize the text notified and published in the various authentic languages, those changes were none the less irregular since they were made after the adoption of the measure, in some cases go far beyond mere corrections to spelling or syntax and are therefore directly contrary to the principle that the measure adopted by the competent authority may not be altered.

41 Amongst the discrepancies noted in the comparative table prepared by BASF AG and in the applicants' joint oral submissions and in those of Counsel for Wacker Chemie GmbH and Hoechst AG, there are a number which cannot be regarded as mere corrections to spelling or grammar:

— page 6, point 7, fourth paragraph (the references given concern the version of the draft decision adopted in German, dated 14 December 1988 and produced by the Commission on 12 September 1991): The draft of 14 December 1988 contains neither Note 2 ('Jedenfalls wurden sowohl Hüls

als auch Hoechst von ICI und BASF als Sitzungsteilnehmer identifiziert' — 'In any case both Hüls and Hoechst are identified by ICI and BASF as participants in the meetings') nor the sentence 'Hoechst als der einzige andere in Frage kommende Hersteller war nur ein unbedeutender PVC-Produzent' ('Hoechst, the only other possibility, was only a minor producer of PVC'). Those passages were added in the notified and published measure;

— page 17, point 21, first paragraph: the phrase 'Die Unternehmen streiten offensichtlich nicht ab' ('the undertakings evidently do not deny') in the draft of 14 December 1988 was replaced in the notified and published measure by 'Die Unternehmen bestreiten zwar nicht' ('the undertakings admittedly do not deny');

— page 32, point 41, first paragraph: the reference to a process of 'rationalization', which appears in the draft of 14 December 1988, is not contained in the notified and published measure, as is apparent from a comparison of the adopted text ('Die europäische Petrochemie-Industrie einschließlich des PVC — Sektors hat in dem von dieser Entscheidung erfaßten Zeitraum einen grundlegenden Umstrukturierungs-und Rationalisierungsprozeß durchlaufen, der von der Kommission unterstützt worden ist' — 'Over the period covered by the present decision the Western European petro-chemical industry — including the PVC sector — has undergone a substantial restructuration rationalization [sic], a process which has received the support of the Commission') and the text notified and published ('Die europäische Petrochemie-Industrie einschließlich des PVC — Sektors hat in dem von dieser Entscheidung erfaßten Zeitraum einen grundlegenden Umstrukturierungsprozeß durchlaufen, der von der Kommission unterstützt worden ist' — 'Over the period covered by this Decision the Western European petro-chemical industry — including the PVC sector — has undergone substantial restructuring, a process which has received the support of the Commission').

42 Since those changes were made after the adoption of the measure on 21 December 1988 and do not merely relate to spelling or grammar, they must have been made by a person who was not empowered to do so and are therefore contrary to the principle that the measure adopted by the Commission may not be altered, there being no need to consider the scope, importance or substantial nature of those changes, as is apparent from the judgment of the Court of Justice in *United Kingdom* v *Council*, above.

2. *The changes concerning all the decisions adopted by the Commission on 21 December 1988 according to the minutes of meeting No 945*

43 It is apparent from the evidence before the Court that, in addition to the abovementioned changes confined solely to the measure notified and published in German, certain changes, which appear in the measures notified to the applicants and published in the *Official Journal of the European Communities*, concern all the language versions adopted on 21 December 1988 according to the minutes of meeting No 945, that is to say the English, French and German versions. The changes concern both the statement of reasons and the operative part of the measures.

(a) Changes to the statement of reasons contained in the notified and published measures

44 As regards first of all the changes to the statement of reasons contained in the measures adopted according to the minutes of meeting No 945, the Court notes that the fourth paragraph of point 27 of the statement of reasons appearing in the measures notified and published in the *Official Journal of the European Communities* is an entirely new paragraph, as is clearly apparent in certain authentic language versions from the fact that the passage in question has a different typographical presentation in the notified measure. That typographical difference is particularly clear, for example, in the Italian version and is not denied by the Commission, as became clear at the hearing. The new paragraph concerns the question whether, in a case such as the present where a proceeding instituted under Article 85 of the EEC Treaty concerns a number of undertakings, the Commission may accept, with regard to other undertakings concerned by the same proceeding, the waiver by one of the undertakings of confidentiality for information concerning it or whether, on the contrary, public policy considerations prevent the Commission in such circumstances from acceding to the request made by the undertaking benefiting from the confidentiality. That difficult and controversial issue was considered by the Commission at page 52 of its Eighteenth Report on Competition Policy.

45 According to the paragraph added in the notified decisions: 'It should be pointed out that any waiver by undertakings of confidentiality for their internal business documents is subject to the over-riding public interest in ensuring that competitors are not informed of each other's commercial activities and intentions in such a way

that competition between them is restricted'. However, the German text of the version published in the *Official Journal of the European Communities* does not contain the negative in the second part of the sentence and provides that public interest demands that competitors should be informed of each other's commercial activities and intentions.

46 The minutes of the meeting of the Commission on 21 December 1988, produced to the Court on 12 September, 21 November and 5 December 1991, show that, whilst it is clear from the minutes of meeting No 945 that the Commission adopted the drafts dated 14 December 1988, which as adopted in each of the three authentic language versions do not contain the paragraph in question, it is merely established that the Commission took note of the results of the examination of the case by the Chefs de Cabinet at their special meeting on 19 December 1988. Whilst the Commission produced on 21 November 1991 documents described as true copies of extracts from the original minutes of the special meeting of the Chefs de Cabinet on 19 December 1988 and whilst those documents include in Annex III a document reproducing in English and French the paragraph in question, the Court considers that the documents produced do not in any way show — as the Commission acknowledged at the hearing — that that amendment was adopted or proposed by the Chefs de Cabinet with a view to being submitted for deliberation by the Commission.

47 Even on the assumption that the amendment in question was submitted and proposed to the Commission at its meeting on 21 December 1988 — which cannot in any event have been the case as regards the German text of the decision since, as stated above and as Hüls AG pointed out at the hearing, Annex III is drafted only in English and French — it is apparent from the minutes of the meeting themselves (as described above at paragraph 37) that the Commission, in adopting the drafts of 14 December 1988 which did not contain that paragraph, by implication intended not to adopt the amendment. Consequently, the incorporation of the amendment in all the measures notified to the applicants and published in the *Official Journal of the European Communities* must necessarily have occurred after 21 December 1988 and constitutes a clear infringement of the principle that the measure adopted by the competent authority may not be altered. That addition to the statement of reasons for the decision, which relates neither to syntax nor

grammar, therefore affects the validity of all the measures notified and of the measure published in the *Official Journal of the European Communities*, by virtue of the judgment of the Court of Justice in *United Kingdom* v *Council*, above, and it is unnecessary to examine whether the amendment is of a substantial nature — a point which in any event is not in doubt.

(b) The amendment to the operative part of the notified and published measures

48 Secondly, as regards the amendments to the operative part of the decisions, the Court notes that, as claimed by BASF AG and by the undertakings in their joint oral submissions, in Article 1 of the operative part of the decisions as notified to all the applicants and published in the *Official Journal of the European Communities* the reference indicating that Société Artésienne de Vinyle SA belongs to the Entreprise Chimique et Minière group ('EMC group'), which appears in the drafts of 14 December 1988 adopted by the Commission on 21 December 1988 according to the minutes of meeting No 945, is not included in the measures notified to the applicants and published in the *Official Journal of the European Communities.*

49 Since amendments made to the statement of reasons for a decision constitute, as the Court of Justice has held, a defect of such a nature as to affect the legality of the amended decision in its entirety because they undermine the effectiveness of Article 190 of the Treaty and substantively alter the reasoning which forms the necessary foundation for the operative part of a decision, then *a fortiori* any amendment to the operative part of such a measure must be of such a nature. Amendments to the operative part of a decision directly affect the scope of the obligations which may be imposed on individuals by the amended measure or the scope of the rights which it confers upon them. In this case such an amendment may alter the manner in which the alleged infringement is attributed, and even shift the financial burden of the fine imposed. Such amendments to the operative part of the measure adopted must therefore be regarded as constituting a particularly serious and manifest infringement of the principle of the inalterability of the measure adopted, which constitutes one of the foundations of legal certainty in the Community legal order.

50 Consequently, there are even stronger grounds for applying the principles laid down by the Court in *United Kingdom* v *Council*, above, where, as in this case, the amended measure imposes fines and obligations on the addressees of the measure and where the amendment in question may alter the description of the legal person upon whom the obligations are imposed. That is the necessary consequence of the amendment to Article 1 of the operative part of the decisions, in which the Commission, on the basis of the considerations set out in the statement of reasons, forms a legal definition of the facts in terms of Article 85 of the EEC Treaty and designates the undertakings guilty of infringements. Consequently, such an amendment necessarily has a direct effect on the other articles of the operative part which, by issuing orders to the applicants and imposing fines on them and by determining the method by which the addressees of the measures may release themselves from their obligations, merely set out the consequences necessarily flowing from Article 1 of the operative part, the very article to which an amendment was made.

B — *The plea of lack of competence of the authority issuing the measure*

51 Some of the applicant undertakings expressly put forward a plea of lack of competence of the authority issuing the measures notified and published. Wacker Chemie GmbH and Hoechst AG maintained that the Commission's reply to the plea raised by the applicants concerning breach of the principle that the measure adopted is unalterable raised the question whether the Member of the Commission responsible for matters of competition could validly adopt decisions in certain authentic languages. The applicants also pointed out that Mr Sutherland's mandate expired on 5 January 1989, whereas according to the information supplied by the Commission the decision was not submitted to the Secretariat-General of the Commission in the various official languages until 16 January 1989, that is to say 11 days later. Similarly Hoechst AG observed at the hearing that on 16 January 1989 Mr Sutherland was no longer a Member of the Commission.

52 The Commission replied that the measures were duly adopted by the Commission in three authentic languages and that Article 27 of its Rules of Procedure constituted the legal basis for the decisions adopted in Dutch and Italian, which were adopted by the Member of the Commission responsible for competition matters within the limits of the powers duly conferred upon him by the Commission. The Commission added that the mandate given to Mr Sutherland

was not personal and that it was conferred upon the Member of the Commission responsible for matters of competition.

As already stated, consideration of the first plea has revealed that discrepancies existed between the measures adopted and the measures notified and published and that those amendments must have been made by someone other than the full Commission after the latter had adopted the contested measures. It is in the light of those findings that the Court must examine the applicants' plea concerning the lack of competence of the authority issuing the notified and published measures. This plea, which in any event involves a matter of public interest, comprises two parts. It is necessary to distinguish between the material competence and the temporal competence of the authority issuing the notified and published measures.

1. *The material competence of the Member of the Commission responsible for competition matters to adopt the measures notified and published in Dutch and Italian*

By virtue of Article 3 of Council Regulation No 1 of 15 April 1958 determining the languages to be used by the EEC (Official Journal, English Special Edition 1952-1958, p. 59), as last amended by Point XVII of Annex I to the Act concerning the conditions of accession of the Kingdom of Spain and the Portuguese Republic and the adjustments to the Treaties (Official Journal 1985 L 302, p. 242) (hereinafter referred to as 'Regulation No 1'), 'documents which an institution of the Community sends to . . . a person subject to the jurisdiction of a Member State shall be drafted in the language of such State'. Moreover, under the first paragraph of Article 12 of the Commission's Rules of Procedure a measure adopted by the Commission, at a meeting or by written procedure, is to be authenticated in the language or languages in which it is binding by the signatures of the President and the Executive Secretary.

It follows from those provisions taken together that, where as in this case the Commission intends to adopt by a single measure a decision which is binding on a

number of legal persons for whom different languages must be used, the decision must be adopted in each of the languages in which it is binding in order to avoid making authentification impossible. In this case it is apparent from the minutes of meeting No 945 of the Commission, approved by the Commission on 22 December 1988, that the contested decision was not adopted by the Commission in Dutch and Italian, which are the authentic texts as regards respectively NV Limburgse Vinyl Maatschappij and NV DSM and DSM Kunststoffen BV, on the one hand, and Enichem SpA and Montedison SpA on the other.

56 The first paragraph of Article 27 of the Commission's Rules of Procedure provides that: 'Subject to the principle of collegiate responsibility being respected in full the Commission may empower its members to take, in its name and subject to its control, clearly defined measures of management or administration'.

57 The Court considers that, unlike measures of inquiry and procedure which may be adopted during the preparatory administrative phase prior to the decision, such as the statement of objections (judgments of the Court of Justice in Case 48/69 *Imperial Chemical Industries* v *Commission* [1972] ECR 619, paragraphs 16 to 19; Case 8/72 *Cementhandelaren* v *Commission* [1972] ECR 977, paragraphs 10 to 14; Joined Cases 43 and 63/82 *VBVB* and *VBBB* v *Commission* [1984] ECR 19) or measures which may be adopted under the general powers of investigation conferred upon the Commission by Regulation No 17 (abovementioned judgment in *AKZO Chemie* v *Commission*, paragraphs 28 to 40, and judgment in Joined Cases 97 to 99/87 *Dow Chemical Iberica* v *Commission* [1989] ECR 3181, paragraphs 57 to 59), the adoption of a decision applying Article 85(1) of the Treaty does not constitute a measure of management or administration within the meaning of Article 27 of the Commission's Rules of Procedure.

58 It is apparent from the aforesaid first paragraph of Article 27 of the Commission's Rules of Procedure, in conjunction with the second paragraph thereof, concerning the powers which may be delegated to officials, that the Commission may delegate authority to one of its members to adopt the decision solely in those official

languages of the Community, as defined in Article 1 of Regulation No 1, in which the text is not authentic (namely in this case Danish, Greek, Portuguese and Spanish), since the decisions adopted in those four languages do not produce any legal effect and are not enforceable against any of the undertakings mentioned in the operative part of the decision.

The effects flowing from the adoption of a decision in its authentic language version are entirely different. A decision which establishes an infringement of Article 85 of the Treaty, issues orders to a number of undertakings, imposes large fines upon them and is directly enforceable for these purposes clearly affects the rights and obligations and the property of those undertakings. It cannot be regarded merely as a measure of management or administration whose adoption falls within the powers of a single Member of the Commission since this would be directly contrary to the principle of collegiate responsibility expressly referred to in Article 27.

It follows from the foregoing that the measure adopted in Dutch and Italian by the Member of the Commission responsible for matters of competition, in accordance with the terms of the mandate conferred upon him by the meeting of 21 December 1988, was in any event issued by an authority lacking the necessary powers.

2. *The temporal competence of the Member of the Commission responsible for competition matters to adopt the measures notified to the applicants and published in the Official Journal of the European Communities*

Whilst, as already stated, the Member of the Commission responsible for competition matters is not competent to adopt alone the authentic language versions of a decision applying Article 85(1) of the Treaty, he undoubtedly has authority to sign the copies of the measure adopted by the full Commission for the purposes of notification of the measure to its addressees under the third paragraph of Article 12 of the Commission's Rules of Procedure. However, in this case it appears from the Commission's pleadings and from the explanations given by it at the hearing that the various language versions of the measure (that is to say the five authentic

languages and the four other official languages) were not finalized and sent to the Secretariat-General of the Commission — which then sent it to the lawyer-linguists for revision in accordance with the abovementioned judgment in *United Kingdom* v *Council* — until 16 January 1989, the lawyer-linguists completing their work at the end of January 1989.

62 Consequently, the Court concludes that the defendant, in reply to the applicants' specific claims, has been unable to establish the existence of a finalized measure capable of being notified and published prior to a date falling between 16 January 1989 and 31 January 1989. The measures notified in the five authentic languages must therefore be regarded as having been adopted after 5 January 1989, the date on which Mr Sutherland's mandate expired.

63 Therefore, even on the assumption that the typed statement 'For the Commission, Peter Sutherland, Member of the Commission' at the foot of the notified measures may, in the absence of any handwritten mark by Mr Sutherland, qualify as the latter's signature, it must clearly have been added either after Mr Sutherland's mandate had expired or before 5 January 1989, that is to say at a date on which the measures, as notified and published, did not exist. The fact that on 5 January 1989 Mr Sutherland signed the covering letter sending measures not definitively adopted to the applicants has no legal significance, since that letter is not incorporated in the contested measure and does not produce any legal effect. Similarly, the Commission's claim that authority was conferred on the Member of the Commission responsible for competition matters and not on Mr Sutherland personally does not affect the reply to be given to this plea. Even if the defendant's argument is accepted, it would have been necessary for the Member of the Commission responsible for matters of competition who was appointed to replace Mr Sutherland and whose mandate commenced on 6 January 1989 to sign the measures, on the assumption that he was competent to do so. That did not happen in this case. Consequently, the Court concludes that the measures notified to the applicants and published in the *Official Journal of the European Communities* on 17 March 1989 were issued by an authority lacking the temporal competence to do so.

64 That defect might be remedied only if the defendant established that it concerned only the copy notified to the addressees or the copy sent, for the purposes of publication in the *Official Journal of the European Communities*, to the Office for Official Publications and that the original decision was duly signed by a properly authorized person. In such circumstances the suggestion of a lack of authority on the part of the signatory of the notified and published measures might be refuted. Only the production of such evidence confirming the presumption of validity attaching to Community measures, which is a corollary of the formal rigour characterizing their adoption, would in this case have been capable of remedying the defect of manifest lack of competence vitiating the contested decision as notified to the applicants and published in the *Official Journal of the European Communities*. For the reasons given below, the Court is obliged to conclude that such evidence has not been produced by the defendant, which has conceded that it is unable to produce an original and authenticated version of the contested measure.

65 It follows from the foregoing that the various defects mentioned above exhibited by the measure, namely the amendments to the statement of reasons and the operative part of the measure made after its adoption by the Commission according to the terms of the minutes of meeting No 945 and the lack of competence of the authority issuing the measure, should entail the annulment of the contested decision on grounds of lack of powers and infringement of essential procedural requirements. However, in this case the Court considers that, before annulling the measure, it should examine the last plea put forward by the applicants concerning the non-existence of the measure. If that plea is well founded, the applications should be dismissed as inadmissible (judgment in Joined Cases 1 and 14/57 *Société des Usines à Tubes de la Sarre* v *High Authority* [1957] ECR 105).

C — *The plea concerning the non-existence of the measure*

66 At the hearing the applicants argued in their joint oral submissions that Article 12 of the Commission's Rules of Procedure had been infringed and that consequently it was impossible to verify the authenticity of the contested measure (see paragraphs 21 and 24 above). Atochem SA asked the Court to consider whether a decision adopted in the required form existed in this case. BASF AG questioned the actual existence of the contested measure. Wacker Chemie GmbH and Hoechst AG argued in their final oral submissions, which were expressly endorsed by Imperial Chemical Industries plc and Société Artésienne de Vinyle SA, that the Commission did not adopt any decision on 21 December 1988 since the measure

was not signed or authenticated. Hüls AG argued first that it received notification of a decision which had never been adopted and which was therefore unenforceable and, secondly, that the decision merely bears a typewritten signature and not a genuine handwritten mark by Mr Sutherland. Montedison SpA argued that the contested decision never existed since it was adopted neither by the full Commission or by the Member of the Commission responsible for competition matters. Subsequently, Montedison SpA expressly stated that it wished to alter its claims in view of the new facts which had come to light as a result of the documents produced and the explanations given by the Commission. Primarily, it asks the Court to rule on the existence of the contested decision and on the admissibility of its application (see paragraph 29 above). Finally, NV Limburgse Vinyl Maatschappij and NV DSM and DSM Kunststoffen BV pleaded that the decision was void with respect to them on the ground that no Dutch version of the decision was presented to the meeting on 21 December 1988.

67 The Commission replied that, as is apparent from the certificates produced on 21 November and 5 December 1991 (described above at paragraphs 26 and 28), the decision of 21 December 1988 adopted by the Commission consisted jointly of the draft decisions dated 14 December 1988, the minutes of Commission meeting No 945 of the full Commission and the documents described as the minutes of the special meeting of the Chefs de Cabinet on 19 December 1988. The Commission also argued that the applicants' plea concerning a breach of Article 12 of the Commission's Rules of Procedure was inadmissible. In addition, it claimed that the measures notified to the applicants should in any event be regarded as originals of the measure adopted. Finally, it maintained at the hearing that at its meeting on 21 December 1988 the Commission adopted the 'substance' or 'essence' of the decision and that the measures notified should be regarded as being in conformity with the intention of the authority issuing the measure.

68 It should be pointed out first of all that the Community judges, guided by principles derived from national legal systems, will declare non-existent a measure which is vitiated by particularly serious and manifest defects (as regards the non-existence in law of Community measures, see the judgments of the Court of Justice in *Société des Usines à Tubes de la Sarre*, cited above; Joined Cases 15 to 33,

52, 53, 57 to 109, 116, 117, 123, 132 and 135 to 137/73 *Kortner and Others* v *Council, Commission and Parliament* [1974] ECR 177; Case 15/85 *Consorzio Cooperative d'Abruzzo* v *Commission* [1987] ECR 1005; Case 226/87 *Commission* v *Hellenic Republic* [1988] ECR 3611; and the judgment of this Court in Case T-156/89 *Valverde Mordt* v *Court of Justice* [1991] ECR II-412). This plea concerns a matter of public interest which may be relied upon by the parties at any time during the proceedings and must be raised by the Court of its own motion. As the Court held in *Consorzio Cooperative D'Abruzzo*, 'under Community law, as under the national laws of the various Member States, an administrative measure, even though it may be irregular, is presumed to be valid until it has been properly repealed or withdrawn by the institution which adopted it. If a measure is deemed to be non-existent, the finding may be made, even after the period for instituting proceedings has expired, that the measure has not produced any legal effects. For reasons of legal certainty which are evident, that classification must consequently be restricted . . . to measures which exhibit particularly serious and manifest defects'. It is necessary to consider whether in this case the contested measure exhibits particularly serious and manifest defects within the meaning of that judgment such as to lead the Court to declare it non-existent.

Confronted with pleas concerning discrepancies between the adopted measure and the notified and published measure and with sufficiently well-supported allegations by the applicants (see paragraphs 11 to 15 above), the Court asked the defendant, first by the measure of organization of procedure adopted on 11 July 1991 and later by the order of 19 November 1991, to produce the adopted decision in its original form duly authenticated in accordance with the Commission's Rules of Procedure (see paragraphs 17 and 25 above).

In reply to those measures of organization of procedure and of inquiry, the Commission produced three draft decisions dated 14 December 1988 drawn up in English, French and German and two extracts from minutes (described above at paragraphs 18, 26 and 28). An examination of those documents confirms that, as was revealed at the hearing, apart from the minutes produced to the Court, the covering letter dated 5 January 1989 attached to the copies of the decisions notified to the applicants constitutes the only document which was signed by a Member of the Commission. That finding is moreover acknowledged by the

defendant, since it stated itself that it was unable to produce an original decision duly signed and authenticated and that, as was apparent from the certificates given on 21 November and 5 December 1991 by the Secretary-General of the Commission and by a member of its Legal Service, acting as Agent (see paragraphs 26 and 28 above), the text of the contested decision was to be inferred from a combined reading of the various documents mentioned above.

1. *The infringement of Article 12 of the Commission's Rules of Procedure*

71 The first paragraph of Article 12 of the Commission's Rules of Procedure provides that: 'Acts adopted by the Commission, at a meeting . . . , shall be authenticated in the language or languages in which they are binding by the signatures of the President and the Executive Secretary'. In the light of the documents produced by the defendant the applicants argued in their oral submissions on 18 November 1991 that that provision had been infringed.

72 The procedure for authenticating measures provided for by that provision of the Commission's Rules of Procedure, which derive their legal basis directly from Articles 15 and 16 of the Merger Treaty of 8 April 1965, which in addition provide that the rules are to be published, constitutes an essential factor contributing to legal certainty and stability of legal situations in the Community legislative system. Only that procedure can guarantee that measures issued by an institution have been adopted by the competent authority in accordance with the procedural rules laid down by the Treaty and the provisions adopted in implementation thereof, in particular the requirement to provide a statement of reasons laid down by Article 190 of the Treaty. By guaranteeing the inalterability of the measure adopted, which may be amended or repealed only in accordance with those requirements, it allows those subject to the law, whether they be natural or legal persons, Member States or other Community institutions to know with certainty and at any given time the precise extent of their rights and their obligations and the reasons which led the Commission to adopt a decision with respect to them.

73 It is for that reason that the Court of Justice recently held that, in areas such as competition law where the Commission must make complex economic appraisals

and possesses a wide margin of discretion, 'observance of the guarantees afforded by the Community legal order in administrative procedures assumes even more fundamental importance. Those guarantees include *inter alia* ... the right of the person concerned ... to receive an adequate statement of reasons for the decision', since that requirement is itself one of the conditions necessary for effective judicial review (judgment in Case C-269/90 *Technische Universität München* [1991] ECR I-5469). Consequently, any administrative procedure for drawing up and adopting measures which allows subsequent amendments to be made to the statement of the reasons supporting the measure adopted is directly contrary to those fundamental guarantees.

That is the reason why the second paragraph of Article 12 of the Commission's Rules of Procedure provides that: 'the texts of such acts shall be annexed to the minutes in which their adoption is recorded'. That requirement is of essential importance since it guarantees that the authenticated measure is in conformity with the measure adopted and hence that the measure cannot be altered, since by virtue of Article 10 of the Rules of Procedure the minutes of the meeting must themselves be approved by the Commission at the next meeting. By virtue of the same provisions the approval of the minutes is itself guaranteed by their authentication by the signature and counter-signature of the President and Secretary-General of the Commission. It is only when the measure adopted by the full Commission duly authenticated by the signatures of the President and the Secretary-General is combined with the minutes of the meeting of the Commission recording the adoption of the measure deliberated upon that it is possible to be certain of the existence of the measure and its content and to be sure that the measure corresponds exactly to the intention of the Commission.

First, authentication of the measure certifies that it exists and that its terms correspond exactly to those of the measure adopted by the Commission. Secondly, since the measure is dated and bears the signatures of the President and the Secretary-General, authentication guarantees the competence of the authority issuing the measure. Thirdly, by rendering the measure enforceable, authentication ensures that it is fully incorporated into the Community legal order.

76 All those rigorous formal requirements governing the drawing up, adoption and authentication of measures are necessary in order to guarantee the stability of the legal order and legal certainty for those subject to measures adopted by Community institutions. Such formalism is strictly necessary for the maintenance of a legal system based on the hierarchy of rules. It guarantees observance of the principles of legality, legal certainty, and sound administration (judgment of the Court of Justice in Joined Cases 53 and 54/63 *Lemmerz and Others* v *High Authority* [1963] ECR 239 and in Joined Cases 23, 24 and 52/63 *Usines Henricot and Others* v *High Authority* [1963] ECR 217). Any infringement of those rules would create a system that was essentially precarious, in which the description of the persons subject to measures adopted by the institutions, the extent of their rights and obligations and the authority issuing the measures could be known only approximately, thereby jeopardizing the exercise of judicial review. That is why in Case 68/86 *United Kingdom* v *Council* [1988] ECR 855 (the 'hormonal substances' case), where, as in the judgment of the same date in the 'laying hens' case, it was emphasized that the Rules of Procedure of the Community institutions had binding force, the Court held that 'the rules regarding the manner in which the Community institutions arrive at their decisions are laid down in the Treaty and are not at the disposal of the Member States or of the institutions themselves'.

77 Those principles are fully borne out by a consistent line of decisions of the Court of Justice, which has held that it is admissible for natural and legal persons to plead an infringement of the Rules of Procedure of a Community institution in support of their claims against a measure adopted by that institution (see in that regard the numerous judgments concerning Community staff law, in particular Joined Cases 94 and 96/63 *Bernusset* v *Commission* [1964] ECR 297; Case 178/80 *Bellardi-Ricci and Others* v *Commission* [1981] ECR 3187; Case 324/85 *Bouteiller* v *Commission* [1987] ECR 529, as regards solely the Commission's Rules of Procedure; also see in other areas of Community law: Case 138/79 *Roquette Frères* v *Council* [1980] ECR 3333, at paragraph 36; Case 297/86 *CIDA* v *Council* [1988] ECR 3531; Case 200/89 *Funoc* v *Commission* [1990] ECR I-3669).

78 At the hearing the Commission sought to infer from the judgment of the Court of Justice in Case C-69/89 *Nakajima All Precision* v *Council* [1991]

ECR I-2074 (paragraphs 49 and 50) that the Rules of Procedure of the Community institutions do not have binding force and that it is not possible for natural or legal persons to rely upon an infringement of them. However, that argument cannot be accepted. The Court considers that that judgment must be interpreted as meaning that it is necessary to distinguish between those provisions of an institution's Rules of Procedure whose infringement may not be relied upon by natural and legal persons because they are concerned solely with the internal working arrangements of the institution and cannot affect their legal situation and those whose infringement may be relied upon because, as is the case with Article 12 of the Commission's Rules of Procedure, they create rights and are a factor contributing to legal certainty for such persons.

Moreover, in assessing the validity of the delegation of authority to the Member of the Commission responsible for matters of competition on 5 November 1980, the Court of Justice satisfied itself in its judgments of 23 September 1986 and 17 October 1979 that it fell within the scope of Article 27 of the Commission's Rules of Procedure. Furthermore, in this case the Commission itself relied in its written pleadings on Article 27 of its Rules of Procedure in support of its contention that the delegation of authority to the Member of the Commission responsible for competition matters was valid. Since the Commission's Rules of Procedure has been and may be pleaded against the applicants, the latter may rely upon it in support of their claims against the decision of the Commission.

Finally, the Court considers that, in the case of measures such as these which impose a fine, the concept of an enforceable measure assumes particular significance under Article 192 of the Treaty. By virtue of Article 189 of the Treaty a decision adopted by a Community institution is 'binding in its entirety upon those to whom it is addressed'. Secondly, as is expressly stated in the measures notified to the applicants and published in the *Official Journal of the European Communities*, the contested decisions are in themselves enforceable since they impose a pecuniary obligation. By virtue of the first paragraph of Article 192 of the Treaty, 'Decisions of . . . the Commission which impose a pecuniary obligation on persons other than States shall be enforceable'.

81 According to the second paragraph of Article 192: 'Enforcement shall be governed by the rules of civil procedure in force in the State in the territory of which it is carried out. The order for its enforcement shall be appended to the decision, without other formality than verification of the authenticity of the decision, by the national authority which the Government of each Member State shall designate for this purpose and shall make known to the Commission and to the Court of Justice'. It is therefore apparent from the wording of the Treaty itself that the applicants may put forward a plea concerning infringement of Article 12 of the Commission's Rules of Procedure, with a view to verifying the authenticity of a measure, in the course of proceedings brought before a national court against a decision adopted by the competent national authority under the second paragraph of Article 192 of the Treaty for the purpose of recovering a fine imposed by the Commission. The principles of procedural economy and proper administration of justice therefore demand that such a plea by the applicants should be admissible in proceedings brought before the Community judges under Article 173 of the Treaty challenging the legality of a decision imposing an enforceable fine. The Court concludes that, since it is apparent from the evidence before it that authentification of the measure in accordance with the first paragraph of Article 12 of the Commission's Rules of Procedure is impossible, the procedure for verifying the authenticity of the measure, that is to say the original authenticated measure, provided for in the second paragraph of Article 192 of the Treaty could not implemented in this case.

82 For all the above reasons the Commission's argument at the hearing that the applicants' plea concerning an infringement of Article 12 of the Commission's Rules of Procedure is inadmissible must be dismissed.

83 As regards the merits of the applicants' claims, it is sufficient to note that the Commission itself acknowledged that it was unable to produce to the Court a copy of the original measures authenticated in accordance with its Rules of Procedure.

2. *The question whether the contested measure may be considered a 'decision' for the purposes of Article 189 of the Treaty*

Since it is established that the measures which were notified to the applicants and published in the *Official Journal of the European Communities* cannot be authenticated in accordance with the procedures laid down and cannot therefore be regarded as enforceable measures in respect of which the procedure laid down by the second paragraph of Article 192 of the Treaty may be applied, the question arises by virtue of the terms of the first paragraph of that article whether those measures as submitted to the Court may in law be regarded as 'decisions'.

According to the Commission, which at the hearing expressly acknowledged that it was unable to produce a copy of the contested decisions authenticated in accordance with Article 12 of its Rules of Procedure, the decisions must, according to the terms of the abovementioned certificates given on 21 November and 5 December 1991, be taken to consist jointly of the draft decisions and the extracts of the minutes produced to the Court.

That view cannot be upheld both for reasons of principle and for reasons specific to the facts of this case.

First, the formal rigour which governs the adoption and authentication of measures of the Community institutions constitutes a guarantee which concerns the very foundations of the Community legal order. It guarantees the inalterability of any measure — regulation, directive or decision — incorporated into the Community legal order and ensures that it cannot, subsequent to its adoption, be amended or repealed unless the rules on competence and procedure, in particular the principle of collegiate responsibility, are observed. By providing for the authentication of the measures adopted and by requiring them to be annexed to the minutes of the meeting at which they were adopted, the formal rigour and precision provided for by Article 12 of the Commission's Rules of Procedure alone can make it possible to verify beyond doubt that the minutes of the meeting subsequently approved correspond exactly to the measure initially adopted and authenticated. Consequently, it is apparent from the very structure of Article 12 of

the Commission's Rules of Procedure that simple extracts of minutes, combined with unidentifiable draft decisions, cannot take the place of a decision.

88 Secondly, it should be remembered that, on a reading of the documents before the Court, it is impossible to accept the Commission's view that at its meeting on 21 December 1988 it adopted, in the form of an amendment to the draft of 14 December 1988, a paragraph such as that appearing at point 27, fourth paragraph, of the statement of reasons contained in the notified and published measure (see paragraph 47 above).

89 Consequently, only the production of measures authenticated in accordance with Article 12 of the Commission's Rules of Procedure would have made it possible to determine the precise intention of the Community legislature. That intention may be the source of obligations for the applicants only in so far as it is known and is capable of being ascertained precisely by the Court in the exercise of its powers of judicial review.

90 Moreover, even if the Court were to accept the defendant's view concerning the need to read together the various documents produced by it, the measures notified and published in the *Official Journal of the European Communities* would still not correspond to the 'measure' resulting from a combined reading of the minutes, as proposed by the abovementioned certificates given on 21 November and 5 December 1991, and the draft decisions in English, French and German, as adopted by the Commission on 21 November 1988 according to the minutes of meeting No 945. Even on the assumption — which cannot be the case — that the measures adopted by the Commission on 21 December 1988 comprise a number of separate documents which for the most part are neither signed nor authenticated, those 'measures' would not in any event take account of the abovementioned amendments which appeared in the text of the measure notified and published in German (see paragraphs 39 to 42 above). Nor would they take account of the abovementioned amendment to the operative part of the notified and published decisions (see paragraphs 48 to 50 above). Nor finally would they have any bearing on the measures notified and published in Dutch and Italian, which do not appear to have been adopted by any authority (see paragraphs 54 to 65).

Moreover, at the hearing one of the Commission's representatives stated that no definitive decision was adopted by the Commission on 21 December 1988 and that it was for this reason that on that date no text was annexed to the minutes of the Commission meeting, as required by Article 12 of the Rules of Procedure. The Court considers that, since the evidence shows that the institution issuing the contested measures was not itself certain of the definitive agreement actually reached within the Commission, it is clear that such 'measures' may not be relied upon as against third parties and hence do not constitute a decision for the purposes of Article 189 of the Treaty.

The argument concerning the practice of the institution, even on the assumption that it is correct, cannot alter that conclusion since, as the Court of Justice has held, a 'practice . . . cannot derogate from the rules laid down in the Treaty' (judgment in the 'laying hens' case).

In this case, the Court finds first that it is unable to date the measures precisely, even though they were adopted on a date close to the expiry of the mandate of the Member of the Commission responsible for matters of competition, to whom, it is established, the Commission granted at least in part such power of adoption. Thus the Court is unable to determine the date, between 21 December 1988 and 16 January 1989, on which the contested measures were actually adopted and incorporated into the Community legal order, thereby acquiring binding force.

Secondly, the Court finds that it is unable to ascertain the precise and certain content of the measures adopted owing to the amendments which were made to them, since the Commission completely disregarded the authentication procedure laid down by Article 12 of its Rules of Procedure; this would have been the only means of distinguishing, in a manner which was certain and accorded with the purpose of the measure of organization of procedure ordered on 11 July 1991 and the measure of inquiry of 19 November 1991, between the intention of the decision-making body and the subsequent amendments made by a person and at a date that are not identifiable.

95 The Court considers, finally, that it is unable, as a result of the two defects mentioned above, to identify with certainty the authority which adopted of the measures in their definitive version, when, first of all, this is a question of public interest and, secondly, the measures have lost, by virtue of the two defects mentioned above, the presumption of legality which it has on the face of it.

96 Where the Court can neither determine with sufficient certainty the precise date from which a measure was capable of producing legal effects and hence of being incorporated into the Community legal order nor, owing to the amendments made to it, ascertain with certainty the precise terms of the statement of reasons which it must contain under Article 190 of the Treaty nor define and verify clearly the extent of the obligations which it imposes on its addressees or the description of those addressees nor identify with certainty the authority which issued the definitive version, and where it is established that the authentication procedure provided for by the Community rules was completely disregarded and that the procedure laid down by the second paragraph of Article 192 cannot be implemented, such a measure cannot be regarded as a decision for the purposes of Article 189 of the Treaty. Such a measure is vitiated by particularly serious and manifest defects rendering it non-existent in law.

3. *The apparent existence of the notified and published measures*

97 Finally, the defendant cannot, as it did at the hearing, refer the applicants to the documents notified and maintain that it is those documents which constitute the original of the measure on the ground that they are certified as being in conformity with it. Whilst in principle the notified and published measure must be presumed to be in conformity with the original authentic measure, that presumption no longer applies in this case since the Commission, which did not produce any original authenticated document other than minutes accompanied by mere draft decisions which were neither signed nor authenticated and did not make it possible to ascertain the terms of the measure, is not able to refute the applicants' claims — which are sufficiently precise and coherent — concerning the discrepancies between the 'measure' adopted and the 'measure' notified and

published. Moreover, the documents produced by the defendant merely served to confirm the existence of discrepancies such as those initially alleged by the applicants and in addition revealed further discrepancies between the three versions discussed by the full Commission and the absence of any discussion of the decisions to be adopted in two of the five authentic languages.

98 Nor can the Commission argue, as it did at the hearing, that at its meeting on 21 December 1988 the Commission adopted the 'substance' or 'essence' of the contested measure and that consequently the notified measures must be presumed to be in conformity with the intention of the authority issuing the measure. Articles 189 and 190 of the Treaty and Article 12 of the Commission's Rules of Procedure refer, and may be applied, only to measures adopted by the Commission and not to informal statements of the intent of that institution expressed in an agreement on the 'substance' or 'essence' of a measure, since those concepts are unknown to the Community legal order.

99 The Court is thus led, through the production of evidence, to set aside a measure of which it should, in principle and by virtue of the doctrine of the apparent existence of measures, take cognizance by reason of the presumption of validity applicable to Community measures. The Court emphasizes in that regard that that doctrine and that presumption merely constitute the direct and necessary corollary of the precise and strict requirements laid down by Community law. It is only because a measure adopted by an institution is presumed to remain unaltered and to have been adopted in accordance with the prescribed procedure that it is possible to accept that copies which are notified and published are in principle in conformity therewith. In other words, and in any event, it is impossible, where it is established that the 'measure' has been modified subsequent to its adoption, to maintain that the 'measure' notified or published is in conformity with the 'measure' adopted of which it is said to be the original. The Commission cannot rely on the doctrine of the apparent existence of the measure where, far from refuting the applicants' claims concerning discrepancies between the notified or published measures and any authentic measure, it confirmed and added to them by the documents which it produced. Consequently, the apparent measure ceases to

be presumed valid and must be set aside by the Court. In this case, where the apparent measure, that is to say the measure as notified and published, has been set aside it must be concluded that it is impossible to replace it by an original measure authenticated in accordance with the procedure laid down and providing all the guarantees of an authentic measure.

100 On the basis of all the foregoing considerations the Court is obliged to conclude that, by reason of the particularly serious and manifest defects which it exhibits, the Commission 'measure' published in the *Official Journal of the European Communities* of 17 March 1979, entitled 'Commission Decision 89/190/EEC of 21 December 1988 relating to a proceeding pursuant to Article 85 of the EEC Treaty (IV/31.865, PVC)', and notified to the applicants during February 1989, is non-existent.

101 Actions against a non-existent measure must be dismissed on grounds of inadmissibility (see the abovementioned judgment of the Court of Justice in *Société des Usines à Tubes de la Sarre*); it is unnecessary for the Court either to examine the plea of inadmissibility raised against the application of Shell International Chemical Company Ltd on the ground that it was out of time, since non-existent measures may be challenged without regard to time-limits (see the abovementioned judgment of the Court of Justice in *Consorzio Cooperative d'Abruzzo*) and since the non-existence of the measure is a matter of public interest which the Community judges must raise of their own motion, or to rule on the admissibility of the new claims made by Montedison SpA at the hearing.

102 Consequently, all the applications must be dismissed as inadmissible, including the claims for damages made by Montedison SpA, which in any event did not put forward any argument in support of those claims or quantify, even on an approximate basis, the alleged damage.

Costs

93 The Court considers that, in the circumstances of the case, the Commission should be ordered to pay the costs under Article 87(3) of the Rules of Procedure.

On those grounds,

THE COURT OF FIRST INSTANCE (Second Chamber)

hereby declares:

1. The measure notified to the applicants, published in the *Official Journal of the European Communities* L 74 of 17 March 1989 (p. 1) and entitled 'Commission Decision 89/190/EEC of 21 December 1988 relating to a proceeding pursuant to Article 85 of the EEC Treaty (IV/31.865, PVC)', is non-existent;

2. The applications are dismissed as inadmissible;

3. The Commission is ordered to pay the costs.

Barrington Saggio

Yeraris Briët Biancarelli

Delivered in open court in Luxembourg on 27 February 1992.

H. Jung
Registrar

D. Barrington
President