extraneous to relations between the European Economic Community and Turkey in the context of the Association between Turkey and the Community; hence a submission based on the argument that the grant of aid by the Community within the framework of the aforesaid Association is in breach of that resolution owing to the fact that Turkey is in breach of the resolution cannot successfully be relied on before the Court.

REPORT FOR THE HEARING
delivered in Case 204/86 *

I — Facts

In May 1979 the Council adopted, with a view to reviving the EEC-Turkey Association, the Community's position on negotiations within the bodies established for promoting that association. In the field of financial cooperation, the Community was prepared to begin negotiating a Fourth Financial Protocol. For the transitional period prior to its entry into force, the Community was prepared to consider specific action — in the form of grants to Turkey amounting to ECU 75 million over a period of two years — to finance cooperation measures.

On 19 September 1980 the Association Council took formal note of the Community's offer to grant to Turkey exceptional aid amounting to ECU 75 million and laid down the conditions for carrying that offer into effect. In this regard it decided (Decision No 2/80 of the Association Council) that:

(1) Turkey and the Community shall cooperate within the Association Committee with regard to the implementation of the exceptional aid totalling 75 million European units of account made available to Turkey by the Community;

(2) Turkey shall refer directly to the Commission with regard to the submission of specific projects. The Commission shall examine such projects in the light of the criteria for the use of exceptional aid indicated to the Association Council by the Community delegation;

(3) The Community shall inform Turkey of the action taken on its requests;

(4) The Association Committee shall monitor the implementation of the aid. It shall meet to this effect at the request of either party;

(5) This decision shall enter into force on 1 July 1980.

* Language of the Case: Greek.

In view of the antidemocratic development in Turkey's internal policy, the Community decided, at the end of 1981, to freeze its relations with that country, especially as regards financial aid. For that reason, the Fourth Protocol, initialled in June 1981, was not concluded. The special aid was suspended after ECU 46 million had been disbursed; ECU 29 million therefore remained to be committed.

At the beginning of 1986 the Commission believed that developments in Turkey allowed relations to be resumed. At the Council meeting on 17 February 1986 there was a broad consensus on its proposal to normalize relations between the Community and Turkey in stages and in particular to resume financial cooperation by unfreezing the remainder of the special aid. However, the Hellenic Republic opposed that proposal, arguing that neither democratic liberties nor the protection of human rights were sufficiently re-established in Turkey to justify a resumption of relations.

In the 1986 budget no commitment appropriation was entered in respect of financial cooperation with Turkey under the appropriate headings in Chapter 96. However, an amount of ECU 10 million in commitment appropriations was provided for in Chapter 100 in respect of the Fourth Financial Protocol with Turkey (Item 9631). The Commission considered that the implementation of the Fourth Financial Protocol, blocked since 1981, could not take place, in the best of circumstances, until 1987. It deduced from that situation that the appropriations entered in Chapter 100 in the 1986 budget in respect of the Fourth Financial Protocol could not therefore be used as envisaged.

In those circumstances the Commission proposed to the budgetary authority, on the basis of the first subparagraph of Article 21 (2) of the Financial Regulation, to make a direct transfer of ECU 10 million from Chapter 100 (provisional appropriations), Item 9631 (Fourth Financial Protocol with Turkey), to Chapter 96 (Cooperation with Mediterranean countries), Item 9632 (Special aid for Turkey). After being consulted pursuant to the procedure laid down in the second subparagraph of Article 21 (2) of the Financial Regulation, the European Parliament declared on 29 May 1986 that it was in favour of rejecting the transfer proposal.

No formal decision was taken by the Council. Consequently, pursuant to the last sentence of the second subparagraph of Article 21 (2) of the Financial Regulation, the transfer proposal was deemed to be approved on 2 June 1986.

II — Legal background

The argument between the parties centres on Articles 203 and 205 of the EEC Treaty and on Article 15 (4) and Article 21 of the Financial Regulation. In Article 203 (9) of the EEC Treaty the various items of expenditure of the Community are divided into items of expenditure necessarily resulting from the Treaty or from acts adopted in accordance therewith and other expenditure. In 1982 the Presidents of the European Parliament, the Council and the Commission adopted the Joint Declaration of 30 June 1982 on various measures to improve the budgetary procedure. That Joint Declaration defines compulsory expenditure as 'such expenditure as the budgetary authority is obliged to enter in the budget to enable the Community to

meet its obligations, both internally and externally, under the Treaties and acts adopted in accordance therewith'.

As regards the procedure for transferring provisional appropriations, the third paragraph of Article 205 of the EEC Treaty provides that 'within the budget, the Commission may, subject to the limits and conditions laid down in the regulations made pursuant to Article 209, transfer appropriations from one chapter to another or from one sub-division to another'.

Article 15 (4) of the Financial Regulation provides more specifically: 'Each section of the budget may include a chapter in respect of provisional appropriations and a "contingency reserve" chapter. The appropriations entered in these chapters may be used only by means of transfer in accordance with the procedure laid down in Article 21.'

Article 21 (2) of the Financial Regulation, which provides that the budgetary authority is to authorize transfers, draws a distinction depending on whether it is a case of a transfer of compulsory expenditure to compulsory expenditure (CE-CE, second subparagraph), non-compulsory expenditure to non-compulsory expenditure (NCE-NCE, third subparagraph) or a 'mixed' transfer (CE-NCE, NCE-CE, fourth and fifth subparagraphs). In the case of a CE-CE transfer (second subparagraph), the Council acts after consulting the European Parliament. Where a NCE-NCE transfer (third subparagraph) is involved, the European Parliament acts after consulting the Council. 'Mixed' CE-NCE or CE-NCE transfers (fourth and fifth subparagraphhs) are deemed to be approved if neither the Council nor the European Parliament has taken a decision to the contrary within six weeks of the date on which the two institutions received the proposals.

III — Written procedure and conclusions of the parties

By an application lodged at the Court Registry on 4 August 1986 the Hellenic Republic brought this action for annulment against the Council pursuant to Article 173 of the EEC Treaty. The application is based on the assumption that the classification of Item 9632 as compulsory expenditure is wrong and that the Council therefore wrongly applied the transfer procedure relating to that type of expenditure. Upon its application lodged on 22 December 1986 the Commission was granted leave, by order of the Court of 28 January 1987, to intervene in support of the Council's conclusions.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General the Court decided to open the oral procedure without any preparatory inquiry. However, it requested the Council and the Commission to answer questions.

The *Hellenic Republic* claims that the Court should:

(i) declare the application admissible;

(ii) declare void the act whereby the Council of the European Communities tacitly approved on 2 June 1986 the proposal of the Commission concerning transfer No 4/86 of appropriations from Chapter 100, Item 9631, to Chapter 96, Item 9632, of the European Communities' budget for 1986;

(iii) order the Council to pay the costs.

The *Council* contends that the Court should:

(i) dismiss the application as unfounded;

(ii) order the applicant to pay the costs.

The *Commission* supports the Council's conclusions seeking:

(i) the dismissal of the application for annulment as unfounded, and

(ii) an order requiring the applicant to pay the costs.

IV — Submissions and arguments of the parties

The applicant advances three submissions in support of its application for the annulment of transfer No 4/86:

(1) lack of powers of the Council;

(2) misuse of powers by the Council;

(3) breach by the Community of its obligations under international law.

1. *Lack of powers of the Council*

(a) The applicant submits that the authorization for the contested transfer must be regarded as invalid because the Council has no power with regard to appropriations relating to non-compulsory expenditure (NCE). The transfer involved in this case is a 'mixed' transfer since the original item (Chapter 100, Item 9631 — Fourth Financial Protocol with Turkey) was compulsory expenditure (CE) and the new item (Chapter 96, Item 9632 — Special aid for Turkey) non-compulsory expenditure. Consequently, the fourth and fifth subparagraphs of Article 21 (2) of the Financial Regulation were applicable and not the second subparagraph of Article 21 (2).

(aa) In this regard the applicant observes that the special aid for Turkey was wrongly classified as compulsory expenditure in both the 1986 budget and the Joint Declaration of 30 June 1982 concerning the budgetary procedure.

That special aid does not concern expenditure necessarily resulting from the Treaty or from acts adopted in accordance therewith within the meaning of Article 21 (2) of the Financial Regulation and Article 203 (4) of the EEC Treaty and the first paragraph of the Joint Declaration. The aid is not based on any contractual obligation assumed with regard to Turkey on the basis of the Association Agreement or of any of the Financial Protocols which have been signed. On the contrary, the decision to grant it was taken unilaterally by the Council on 8 May 1979 when the Council adopted its position with regard to the development of the association with Turkey. Basically, it was therefore a 'gesture of goodwill' towards Turkey, as is shown, moreover, by the wording of Decision No 2/80 of the Association Council on the implementation of the special aid which refers to the Community's offer to Turkey.

When the two main tests for compulsory expenditure are applied, the special aid cannot be regarded as falling within the

category of compulsory expenditure. There is no legal instrument which is contractually binding on the Community and Turkey has no rights whatever under the offer of special financial aid. The correctness of that view is borne out by the fact that the special aid was suspended for political reasons without that suspension necessarily falling within any branch of international law, as would be the case with a legal obligation of the Community towards a non-member country.

(bb) The applicant therefore relies on Article 184 of the EEC Treaty in pleading that heading 9632 is inapplicable as compulsory expenditure. It is accepted by academic writers and by the Court that Article 184 applies not only to a 'regulation' but to any legal act of a general nature which forms the legal basis of the decision which is challenged. The part of the general decision which concerns the implementation of the Communities' budget for 1986 and in which the expenditure in question is wrongly classified as compulsory expenditure indisputably constitutes a general rule of law capable of having direct or indirect legal effects (for example, as regards the power to transfer appropriations) and therefore falls within the scope of the exception provided for in Article 184.

Moreover, to declare inapplicable (within the meaning of Article 184) and not void (within the meaning of Article 173) the classification of heading 9632 as compulsory expenditure would not disturb the balance of powers between the Community institutions.

(b) The Council disagrees with the applicant's view. It states that the classification of Item 9632 as compulsory expenditure has never hitherto been called in question by the three institutions (Parliament, Council and Commission). That heading has always been classified as compulsory expenditure, not only in the annex to the Joint Declaration of 30 June 1982 but also in the 1986 budget. If the Hellenic Republic considered that that budgetary heading ought to have been classified as non-compulsory expenditure, it ought to have raised the matter in the budgetary procedure or brought an action for the annulment of the 1986 budget within the relevant period laid down by the Treaties.

(aa) In the Council's view, the classification of Item 9632 raises two kinds of problems, namely the general criteria for classifying expenditure and their application in the instant case.

As regards the distinguishing criterion, the Council observes that in some respects the academic opinions cited by the applicant have been overtaken by the Joint Declaration of 30 June 1982 in which it is stated in Part I. 1. that: '... the three institutions consider compulsory expenditure such expenditure as the budgetary authority is obliged to enter in the budget to enable the Community to meet its obligations, both internally and externally, under the Treaties and acts adopted in accordance therewith'. It follows from that definition that the criterion adopted by the three institutions is wider than those referred to by the applicant: the question whether the budgetary authority is bound by an internal or external obligation of the Community must be appraised within the context of the budgetary procedure.

The present case involves an external obligation within the meaning of the Joint Declaration. Such an obligation may arise from either an autonomous commitment or a contractual commitment of the Community.

The special aid is certainly not based on the Financial Protocols concluded between the Community and Turkey. However, as soon as the Community made the commitment to grant that aid to finance cooperation measures in accordance with the criteria and conditions laid down in Decision No 1/80 of the Association Council for a specific amount of ECU 75 million and the conditions for that aid were accepted by Turkey, that aid had to be regarded as forming part of the contractual relations between the Contracting Parties to the Ankara Agreement and the legal obligations arising from that agreement.

The special aid was formally granted in Decision No 2/80 of the Association Council of 19 September 1980 which is binding on the Community by virtue of Article 22 of the Ankara Agreement. Despite its title, Decision No 2/80 has the character of an agreement concluded between the Contracting Parties (EEC-Turkey). Consequently, as far as the Community is concerned, it forms an integral part of Community law because of its direct connection with the Association Agreement concluded on the basis of Article 238 of the EEC Treaty.

If one wished to compare this to discretionary aid, one could cite by way of example the aid granted to unassociated developing countries (Item 930 of the 1986 budget classified as non-compulsory expenditure). The aid granted to those countries does not fall within any contractual relationship comparable to that existing between the Community and Turkey and the budgetary authority remains at liberty to assess the level of appropriations to be entered in the budget in this regard. The special aid to Turkey, however, constitutes a measure agreed with that country.

As regards the applicant's observation that it would have been necessary to ascribe the 'suspension' of the aid to a branch of international law had a legal obligation of the Community been involved, the Council replies that the *de facto* interruption in the implementation of the aid has not had the effect of removing the commitment undertaken by the Community which has never in fact manifested an intention to call it in question.

(bb) The Council expresses serious doubts as to the possibility for a Member State to invoke Article 184 of the EEC Treaty in order to plead the inapplicability of the budget in proceedings relating to the legality of a transfer authorization. If the applicant considered that Item 9632 had been classified incorrectly, it could have brought an action for the annulment of the 1986 budget itself. In its decisions the Court seems inclined to accept the theory that it would be contrary to the purpose of Article 184 to allow a Member State which has not challenged the basic act (in this case the budget) within the period stipulated to rely on that article, especially since a transfer authorization ('Beschluß') is not a measure implementing the budget adopted in its regard.

As regards the possible consequences of an objection of illegality in the present case, the Council points out that it is difficult to

accept that, in an action for the annulment of a transfer, one element of the budget, namely the classification of Item 9632, could be declared inapplicable whilst the various elements of a budget are, in many regards (assessment basis of non-obligatory expenditure, maximum rate of increase and so forth), 'inseparable'. The budgetary authority should take account of the possibility of this item being classified as non-obligatory expenditure, which would alter the basis of assessment of non-obligatory expenditure to which the maximum rate applies.

(c) The intervener submits, essentially for the same reasons as the Council, that the budgetary authority as well as the Commission were perfectly justified in considering the appropriations entered in Item 9632 as expenditure necessarily resulting from an act adopted in accordance with the Treaties.

It is undeniable that a commitment undertaken by a unilateral declaration of intention may give rise to obligations, especially where that commitment has been accepted by the party to whom it is made. Neither the provisions of the Treaties nor the Joint Declaration make any distinction according to whether the act creating the obligation is unilateral or consensual and therefore neither of those possibilities is excluded.

In the present case, the unilateral commitment consisting in offering exceptional aid to Turkey was clearly expressed by the Community and accepted by the recipient country, as is clear from the agreement reached in the Council on 10 May 1979 and from Decision No 2/80 of the Association Council of 19 September 1980.

2. *Misuse of powers by the Council*

(a) The applicant alternatively submits that the Council misused its powers in authorizing a transfer of appropriations from Chapter 100 (Provisional appropriations), Item 9631, to an operating heading other than that for which the appropriation in question had been provided (Chapter 96, Item 9632). This constitutes an objective misuse of powers since the Council exercised its power of assessment regarding transfers from Chapter 100 (Articles 15 (4) and 21 of the Financial Regulation) for a purpose other than that for which it was conferred.

(aa) In this context, the applicant makes the general point that the transfer of appropriations to a specific heading requires a legal act as its basis. According to the third paragraph of Article 205 of the EEC Treaty, which authorizes transfers in derogation from the speciality principle, transfers of appropriations are within the powers of the Commission to implement the budget. It is not because Article 21 of the Financial Regulation, in departing from the letter of the third paragraph of Article 205 for reasons relating to the balance between the two institutions, conferred a power of decision on the Council and/or the Parliament that such an act ceases in principle to be an implementing measure. Logically, the transfer is made to a heading on which there is an immediate analysis of the use of appropriations, that is to say a heading for which a legal basis exists permitting its use (implementation). In the present case, the existence of such a legal basis for heading 9632 is not called in question.

(bb) The applicant then submits that, because of their special character, transfers of provisional appropriations from Chapter 100 may only be made after the adoption of the act forming their legal basis and only to the corresponding operating heading, since those appropriations are linked. Provisional appropriations entered in Chapter 100 have their own correlative nature and since they are sufficiently identified by reason of the relevant remarks they are blocked as to their use by transfer to a specific operating heading. Otherwise it is difficult to see the purpose of Article 15 (4) of the Financial Regulation. There is absolutely no reason to create such a category of appropriations since the competent budgetary authority could directly enter those appropriations in the corresponding chapter, article or item.

(cc) Finally, the applicant alleges misuse of procedure. The Council deliberately chose the procedure for directly transferring an appropriation from Chapter 100 to a heading other than that required on the basis of the budget 'remarks' instead of the 'triangular' transfer procedure, that is to say via the corresponding operating heading. The correlative obligation regarding the individualization of provisional appropriations entered in Chapter 100 by the 'remarks' makes it necessary to 'route' the transfer via the corresponding operating heading.

(b) The Council disputes the applicant's arguments. Mere allegations are not sufficient to establish a misuse of power: it must be proved. The applicant is confusing 'objective' misuse of power with a technical question concerning the budget, namely the procedure for transferring provisional appropriations. It is also describing as a misuse of procedure that which, in the present case, was the application of an express rule in the Financial Regulation, namely the third sentence of the second subparagraph of Article 21 (2).

(aa) As regards the connection between Article 205 of the EEC Treaty and Article 21 (2) of the Financial Regulation relating to transfers from one chapter to another, a distinction must be made between:

(i) the prior authorization for the transfer which is given by the budgetary authority (Council, Parliament or Council and Parliament depending on the case) upon a proposal from the Commission, and

(ii) the actual transfer itself which is then effected by the Commission on the basis of Article 205.

The transfer authorization given by the budgetary authority has the same legal nature as an entry of an appropriation under a specific heading, namely a correction of the budget forecast. In order to do that, there is no legal requirement that a basic act should exist. It is only for effecting the expenditure that such a basic act forming the legal basis for the expenditure is necessary. It is for the Commission, on its own responsibility (Articles 205, 206a and 206b of the Treaty) to make sure that the conditions for effecting the expenditure are fulfilled.

(bb) As regards transfers of provisional appropriations entered in Chapter 100, the Council points out that under Article 15 (4) of the Financial Regulation it is impossible

to effect expenditure on the basis of Chapter 100 itself: it is first necessary to transfer the provisional appropriation in accordance with the procedure laid down in Article 21 of the Financial Regulation to an appropriate 'operating' heading. Chapter 100 may thus be regarded as a group of blocked and individualized appropriations. In this regard it is different from Chapter 101 (contingency reserve), which is in the nature of a general reserve.

Where it appears that the adoption of the basic legal act for the corresponding operating heading is not possible and that the provisional appropriation is likely to be annulled, the budgetary authority could quite easily authorize the transfer to another heading for which a need exists. It has a wide discretion in this regard. This is what is stated in the third subparagraph of Part IV (3) (c) of the Joint Declaration of 30 June 1982 which describes transfers as 'alternative proposals'.

(cc) The Council then makes some observations on the 'technical question' of the 'triangular' transfer or 'direct' transfer. The Commission has always proposed to the budgetary authority to authorize direct transfers of provisional appropriations to their final headings without transferring them via the corresponding operating headings. However, in many previous cases the Council has followed the 'triangular' transfer procedure consisting in authorizing two transfers in one (from Chapter 100 to the corresponding heading followed by an immediate 're-transfer' to another operating heading), the 'transit' in this case being instantaneous. That method is impracticable where the 'transit' heading and the final heading are classified differently (compulsory expenditure heading to non-compulsory expenditure heading and vice versa), because it is impossible to apply simultaneously two different procedures (second and third subparagraphs of Article 21 (2) of the Financial Regulation). In that case, the only possibility is either to authorize two separate transfers (which is too cumbersome) or to treat the transfer as a 'mixed' transfer (fourth subparagraph of Article 21 (2)) authorized directly from Chapter 100 to the final heading.

In view of the generality of Article 15 (4) of the Financial Regulation which refers in general to the 'procedure laid down in Article 21', a direct transfer is therefore perfectly in order.

There is no misuse of procedure. A 'triangular' transfer does not by itself provide any additional guarantee compared with a direct transfer since the result of the authorization given by the budgetary authority is exactly the same whatever the method used.

(c) The intervener states that the concept of misuse of power does not apply in the present case. The budgetary authority used its power for purposes for which it was granted to it by Article 21 of the Financial Regulation, namely to alter budgetary allocations within the budget owing to events which occurred after its adoption. The question of a breach of the Treaties or of a rule of law relating to their application does not arise either. The authorization of a transfer of an appropriation is not dependent in any way on the existence of a basic act with regard to the item from which the transfer is made.

At this stage it is necessary to point out that the usefulness of the transfer resides in altering initial budgetary authorizations in the light of the most recent circumstances,

that is to say, either where the initial forecast proves impossible or unlikely to be realized (no adoption of basic act) or the rate of implementation proves quicker or slower than forecast. The transfer is thus an instrument which is at the budgetary authority's disposal during a financial year for ensuring the optimum allocation of appropriations and preventing appropriations from remaining unused, or, in other words, preventing unnecessary calls upon Community resources. A transfer is therefore in order each time that it is judged necessary to strengthen an item to the detriment of another for which the prospects of being used appear more remote or of lower priority. That is to say that a transfer may be made from an item for which there is not necessarily a basic act.

As regards the question of a misuse of procedure, the intervener considers that there was no choice since the procedure laid down in Article 21 of the Financial Regulation was correctly used for the purpose for which it was established, namely a transfer from one chapter to another.

In conclusion, the intervener considers that the direct transfer does not infringe the law of budgetary procedure because that transfer is the only suitable form since the existence of a positive link between the appropriation entered in Chapter 100 and the 'remarks' thereon must be rejected.

3. *Breach by the Community of its obligations under international law*

By Resolution No 541 (1983) the Security Council of the United Nations 'called upon all States not to recognize any Cypriot State other than the Republic of Cyprus'.

(a) The applicant contends that in so far as Turkey has acted — as will be proved — in breach of Resolution No 541 (1983) of the Security Council, the Community, in granting 'special aid', has disregarded that breach and consequently has itself acted in breach of its obligations under international law.

The Community has a duty to safeguard or at any rate not to jeopardize the observance of an obligation arising under international law, namely the application of binding decisions of organs of the United Nations and, in the present case, the application of resolutions of the Security Council requiring States not to recognize 'the Turkish Republic of North Cyprus'.

(b) The Council first expresses doubts as to whether an authorization to make a transfer given to the Commission by the budgetary authority, which is 'internal' to the Community, may in itself be contrary to international law.

Furthermore, according to the case-law of the Court, the Court is not bound by an act of an organ of the United Nations addressed to the Member States of that organization where the Community has not assumed powers previously exercised by the Member States, as in the field of the recognition of States. As regards Resolution No 541 (1983), the Council points out that it does not impose any binding obligation and that the Member States of the United

Nations, and consequently the Community, are not in any event automatically obliged to adopt, on their own initiative, countermeasures for penalizing any breach of the resolution.

(c) The intervener states that, since a resolution is not binding by its nature and, in this case, by its wording, it cannot give rise to illegality.

It is difficult to see how the approval of a transfer intended to finance special aid for Turkey constitutes recognition of the kind referred to in the resolution.

V — Answers to questions asked by the Court

1. In reply to the Court's question whether Decision No 2/80 of the Association Council of 19 September 1980 relating to exceptional aid of ECU 75 million for Turkey has been the subject of an act of the Council within the meaning of Article 2 (1) of the Agreement on measures and procedures required for the implementation of the Agreement establishing an Association between the EEC and Turkey of 12 September 1963 *(Collection of the Agreements concluded by the European Communities,* Vol. 3, p. 571), the Council replied in the negative.

The Council did not consider it necessary to adopt such an act because Decision No 2/80 itself contained the essential details (amount of the aid, method of submission of projects by Turkey) for its implementation, and thus constituted a sufficient legal basis for implementing the corresponding appropriations entered in the budget of the Communities.

2. In reply to the question whether the special aid was suspended under a Community act and what were the legal effects of the suspension, the Council stated that at a meeting on 7 and 8 December 1981 at which this point did not appear on the agenda, the Council and the Commission agreed at the end of informal talks that, for reasons related to the situation then prevailing in Turkey, there should be a *de facto* suspension of the implementation of the financial commitments assumed by the Community towards Turkey, which included special aid. Since it was a *de facto* suspension, it did not, as a matter of law, involve an amendment of Decision No 2/80 of the Association Council. In view of the character of that decision, which remained legally binding, the classification of Item 9632 as compulsory expenditure could not be called in question, even with no entry of appropriations for commitment in that item in the budgets for the years 1982 to 1986.

In the Commission's view, it appears from the Joint Declaration of 30 June 1982 (see points I. 1. and 2. and II. 6) that the determining factor for the classification of expenditure is the examination of the act setting out the principle of the expenditure (basic act). In this regard the Commission points out that the basic act, namely Decision No 2/80, did not undergo any amendment following the suspension of the special aid. As a result, the suspension of the special aid did not amend as such the Community obligation arising from the basic act. The suspension is in fact an expression of the conditions (relating to the normalization process) placed on the performance, or rather on the continued performance, of the obligation. The aid thus remains a Community obligation *per se* but the resumption of its performance was modified by the conditions laid down by the Community.

The laying down of conditions with regard to the recipient for the implementation of the special aid has not in itself altered the classification of Item 9632 as compulsory expenditure since even when classified as compulsory expenditure, an item of expenditure does not give rise to an absolute right on the part of the recipient. The expenditure is frequently made subject to conditions and procedures, as is provided for in point 2 of Decision No 2/80.

Likewise, the Financial Protocols with the Mediterranean countries, classified as compulsory expenditure, generally provide that requests for finance submitted to the Community are to be appraised 'in accordance with the specific objectives of financial and technical cooperation established by mutual agreement'. In those cases, the conditions and procedures attached to the grant of financial aid for the various projects have never conferred a discretionary nature on the Community's obligation towards the recipient country; the obligation itself remains certain both as regards the principle and the amount.

3. In response to the question whether and when the suspensory act was formally annulled, the Council and the Commisson observe that, since there has been no formal act specifically suspending financial relations with Turkey, annulment was not necessary. In informal talks during the session held on 17 and 18 February 1986 the Council decided gradually to normalize the association relations with Turkey, particularly at the financial level, and no legal act of the Community was necessary for that purpose.

4. Finally, the Council and the Commission point out that, in view of the special nature of the talks in the Council and in particular the fact that they were not reflected in the minutes of the Council's meetings of 1981 and 1986, they are unable to produce any documents in this regard.

U. Everling
Judge-Rapporteur