JUDGMENT OF THE COURT (Sixth Chamber)

10 February 2000 *

In Joined Cases C-234/96 and C-235/96,

REFERENCES to the Court under Article 177 of the EC Treaty (now Article 234 EC) by the Landesarbeitsgericht Hamburg, Germany, for a preliminary ruling in the proceedings pending before that court between

Deutsche Telekom AG

and

Agnes Vick (C-234/96),

Ute Conze (C-235/96),

on the interpretation of Article 119 of the EC Treaty (Articles 117 to 120 of the EC Treaty have been replaced by Articles 136 EC to 143 EC) and of the Protocol on Article 119 of the Treaty establishing the European Community, annex to the EC Treaty,

* Language of the case: German.

THE COURT (Sixth Chamber),

composed of: R. Schintgen (Rapporteur), President of the Second Chamber, acting for the President of the Sixth Chamber, G. Hirsch and H. Ragnemalm, Judges,

Advocate General: G. Cosmas,
Registrar: H.A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

— Deutsche Telekom AG, by G. Engelbrecht, Rechtsanwalt, Hamburg,

— A. Vick, by K. Neumann-Silkow, Rechtsanwalt, Wedel,

— the Commission of the European Communities, by P. Hillenkamp and M. Wolfcarius, of its Legal Service, acting as Agents, assisted by K. Bertelsmann, Rechtsanwalt, Hamburg,

having regard to the Report for the Hearing,

after hearing the oral observations of Deutsche Telekom AG and the Commission at the hearing on 1 July 1998,

after hearing the Opinion of the Advocate General at the sitting on 8 October 1998,

gives the following

Judgment

1 By two orders of 12 December 1995, received at the Court on 9 July 1996, the Landesarbeitsgericht (Regional Labour Court) Hamburg referred to the Court for a preliminary ruling, in each case, under Article 177 of the EC Treaty (now article 234 EC) two questions on the interpretation of Article 119 of the EC Treaty (Articles 117 to 120 of the EC Treaty have been replaced by Articles 136 EC to 143 EC) and of the Protocol on Article 119 of the Treaty establishing the European Community (hereinafter 'the Protocol'), annexed to the EC Treaty.

2 Those questions were raised in two sets of proceedings between Deutsche Telekom AG (formerly Deutsche Bundespost Telekom, hereinafter 'Deutsche Telekom') and Agnes Vick (C-234/96) and Ute Conze (C-235/96) concerning the conditions for membership of a supplementary occupational retirement pension scheme and the grant of a pension under it.

The national legislative background

3 Article 3(1) to (3) of the Grundgesetz für die Bundesrepublik Deutschland (Basic Law for the Federal Republic of Germany, hereinafter 'the GG') provides:

'1. All persons shall be equal before the law.

2. Men and women shall have equal rights. The State shall encourage effective attainment of equal rights for men and women and shall take action to remove existing disadvantages.

3. No one may be prejudiced or favoured because of his sex, his parentage, his race, his language, his homeland and origin, his faith, or his religious or political opinions. No one may be prejudiced by reason of being handicapped.'

4 Article 1 of the Gesetz über die Gleichbehandlung von Männern und Frauen am Arbeitsplatz (Law of 1980 on equal treatment for men and women in the workplace) inserted in Article 612 of the Bürgerliches Gesetzbuch (German Civil Code) a new paragraph 3, worded as follows:

'In an employment relationship, it may not be stipulated that, for the same work or work of the same value, the remuneration of an employee is, by reason of the

sex of that employee, to be lower than that paid to an employee of the opposite sex. A lower level of pay may not be agreed on the basis that, because of the employee's sex, special rules of protection are applicable ...'

5 In 1985, the Gesetz über arbeitsrechtliche Vorschriften zur Beschäftigungsförderung (Law laying down provisions of employment law designed to promote employment, hereinafter 'the BeschFG'), Articles 2 to 6 of which govern part-time work, was enacted. Article 2(1) prohibits an employer from treating a part-time worker differently from full-time workers, unless there is objective justification for a difference of treatment. Article 6 provides, however, that exceptions may be made to the provisions of the section in which that article appears, even to the detriment of the employee, by means of a collective agreement.

6 Under Article 24 of the Tarifvertrag für Arbeiter der Deutschen Bundespost (Collective agreement for German Post Office workers), workers must be affiliated to the Versorgungsanstalt der Deutschen Bundespost (German Post Office Pensions Institution, 'the VAP') under the conditions laid down in the current version of the Tarifvertrag über die Versorgung der Arbeitnehmer der Deutschen Bundespost (Collective Agreement concerning Pensions for Employees of the German Post Office, hereinafter 'the collective pensions agreement').

7 Until 31 December 1987, Article 3 of the collective pensions agreement provided:

'An employee shall be insured with the VAP as provided for in its statute and implementing provisions where ... his average weekly working hours under his

contract of employment are equivalent to at least half of the weekly hours required ... to be regularly worked by a corresponding full-time employee ...'

8 That article was amended as follows with effect from 1 January 1988:

'An employee shall be insured with the VAP as provided for in its statute and implementing provisions where... his average weekly working hours under his contract of employment are not less than 18 hours.'

9 By a collective agreement of 22 September 1992, Article 3 of the collective pensions agreement was again amended with retroactive effect from 21 April 1991, and now has the following wording:

'An employee shall be insured with the VAP as provided for in its statute and implementing provisions where... he is employed in an activity which is not simply negligible within the meaning of Article 8(1) of Book IV of the Sozialgesetzbuch [Social Security Code].'

The disputes in the main proceedings

10 Mrs Vick was employed on a part-time basis by Deutsche Telekom, first for 24 hours a week between 1 July 1971 and 30 September 1972, then for 16 hours a week between 1 October 1972 and 30 June 1991, on which date she retired. Since 1 July 1991 she has received an old-age pension under the statutory scheme.

11 Mrs Vick was affiliated to the VAP from 1 July 1971 to 30 September 1972. Following the reduction in her weekly working hours on 1 October 1972, her membership was terminated and her part of the contributions paid to the VAP was reimbursed to her.

12 Mrs Conze was employed on a part-time basis by Deutsche Telekom, first for 24 hours a week between 13 September 1971 and 30 April 1972, then for 16 hours a week as from 1 May 1972. She is still working for Deutsche Telekom.

13 Mrs Conze was affiliated to the VAP from 13 September 1971 to 30 April 1972. Following the reduction in her weekly working hours on 1 May 1972, her membership was terminated. After amendment of Article 3 of the collective pensions agreement with effect from 1 April 1991, she was re-affiliated to the VAP as from that date.

14 Mrs Vick instituted proceedings before the Arbeitsgericht Hamburg, seeking an order that Deutsche Telekom pay her, with effect from 1 July 1991, a supplementary retirement pension of an amount equivalent to that which she would have received if she had been affiliated to the VAP since 1 July 1971, together with interest. Mrs Conze also instituted proceedings before the Arbeitsgericht Hamburg for an order that she be placed in the situation as regards entitlement to a supplementary pension in which she would have been if she had been affiliated to the VAP between 1 January 1983 and 31 March 1991.

15 Both claimed that the exclusion of employees who worked less than 18 hours a week from the right to a supplementary pension constituted discrimination prohibited by Article 119 of the Treaty, Article 3 of the GG and Article 2(1) of the BeschFG.

16 Deutsche Telekom contended that the claims should be rejected, submitting in particular that the rights claimed by Mrs Vick and Mrs Conze could at best be upheld only as from 17 May 1990, the date of the judgment in Case C-262/88 *Barber* v *Guardian Royal Exchange* [1990] ECR I-1889.

17 By judgments of 7 December 1993 and 21 March 1995 respectively, the Arbeitsgericht upheld Mrs Vick's and Mrs Conze's claims in their entirety. In the second of those judgments, it stated that the general principle of equal treatment embodied in Article 3(2) of the GG, of itself, required that solution and that, therefore, in accordance with the case-law of the Bundesarbeitsgericht, the limitation in time of the effects of Article 119 of the Treaty was irrelevant.

18 Deutsche Telekom appealed against those judgments to the Landesarbeitsgericht Hamburg, contending in particular that the Protocol takes precedence over Article 3 of the GG and that the limitation in time of the effects of Article 119 of the Treaty must therefore apply in all cases of discrimination based on sex in relation to occupational social security schemes.

19 Mrs Vick and Mrs Conze replied that the entitlement they claimed to a company pension derived from the general principle of equal treatment forming part of social law and from Article 2(1) of the BeschFG. In those circumstances, the limitation in time of the effects of Article 119 of the Treaty concerned a legal basis other than the one relied on by Mrs Vick and Mrs Conze in pursuit of their claims and did not preclude their relying on national provisions concerning equal treatment.

20 At the hearing before the Landesarbeitsgericht all the parties recognised that the exclusion of part-time workers working less than a specified number of hours from entitlement to a company pension constituted indirect discrimination on grounds of sex within the meaning of Article 119 of the Treaty. A substantially higher percentage of women than men were affected by that exclusion, for which there was no objective justification.

The questions referred to the Court

21 The Landesarbeitsgericht, following the case-law of the Bundesarbeitsgericht, considers that the exclusion of part-time workers from a company pension scheme infringes not only Article 119 of the Treaty but also constitutes, under national provisions, unlawful discrimination against part-time workers. There is no provision of domestic law which limits in time the possibility of relying on the relevant national provisions but the question arises whether the rule of non-retroactivity laid down by the Protocol extends to rights based on national law.

22 The national court considers that the purpose of Article 119 of the Treaty is not to regulate the participation of part-time workers in company pension schemes

but to eliminate discrimination based on sex in matters of remuneration. Consequently, even where discrimination against part-time workers also constitutes an infringement of Article 119, the Protocol cannot be superimposed on national provisions whose object is to prohibit discrimination other than that based on sex.

23 Nevertheless, since the plea concerning the limitation in time of the effects of Article 119 of the Treaty did not appear to be manifestly unfounded, the Landesarbeitsgericht Hamburg stayed proceedings pending a preliminary ruling from the Court, in each of the two cases before it, on the following questions:

'1. Do Article 119 of the EC Treaty, the Barber Protocol No 2 and the relevant case-law of the Court of Justice of the European Communities as primary Community law have priority over the constitutional law (Article 3 of the Grundgesetz (Basic Law)) and ordinary law (Article 2(1) of the Beschäftigungsförderungsgesetz (Employment Promotion Law) and the general principle of equal treatment in labour law) in force in Germany, with the consequence that, where the factual requirements are fulfilled for a claim under Article 119 of the EC Treaty on the ground of indirect sex discrimination in connection with an occupational old-age pension scheme because of unfavourable treatment of part-time workers, benefits can be claimed even under constitutional or ordinary rules of national law, only on the same restrictive conditions as apply to a coincident Community law claim under Article 119 of the EC Treaty, so that, in divergence from the legal assessment otherwise applicable under national law, even on the basis of grounds of claim under national law benefits are owed only for periods of employment after 17 May 1990, subject to the exception for employees who have initiated legal proceedings or introduced an equivalent claim before that date?

2. Is the answer to the preceding question the same if, on the basis of concurrent national law, entitlement to equal treatment already exists for the simple reason that there is objectively unjustified unfavourable treatment owing to part-time employment, without it being relevant whether there is also indirect sex discrimination because a numerically greater proportion of women workers are treated unfavourably?'

24 By order of the President of the Court of 25 September 1996, the two cases were joined for the purposes of the written procedure and judgment.

The request that the oral procedure be re-opened

25 By letter dated 10 November 1998, Deutsche Telekom asked for the oral procedure to be re-opened. It contended, first, that the Opinion of the Advocate General had not been delivered in the prescribed manner since the operative part thereof had been read at a sitting of the Fifth Chamber, not of the Sixth Chamber, which is to give judgment in this case. Second, it applied, in relation to its request that the oral procedure be re-opened, for leave to submit observations on the content of that Opinion, in particular in the light of an order made by the Bundesverfassungsgericht on 5 August 1998, that is to say after the hearing in the present case. According to Deutsche Telekom, the refusal to accept that, after delivery of the Opinion of the Advocate General, which, under Article 59(2) of the Rules of Procedure of the Court, brings the oral procedure to a close, the oral procedure may exceptionally be re-opened to allow the parties to draw attention to any manifest errors or omissions in the account of the facts or the findings of law, or indeed to reply to the Advocate General's Opinion, might amount to an infringement of the right to a fair hearing within the meaning of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 ('the EHRC').

26 As far as that request is concerned, it must be pointed out, first, that the manner in which the Opinion was delivered in this case involved no infringement of the rules applicable to the Court or any infringement of rights enjoyed by the parties in the main proceedings.

27 The Judges of the Sixth Chamber hearing this case were apprised of the Opinion of the Advocate General through the deposit thereof at the Registry of the Court and that Opinion was made public *inter alia* by the reading of the operative part thereof at a public sitting and the deposit thereof at the Registry.

28 Also, it is clear from the order of the Court of 4 February 2000 in Case C-17/98 *Emesa Sugar* v *Aruba* [2000] ECR I-665, paragraph 18) that it is precisely in deference to Article 6 of the EHRC and to the very purpose of every individual's right to adversarial proceedings and to a fair hearing within the meaning of that provision that the Court may of its own motion, on a proposal from the Advocate General or at the request of the parties, order that the oral procedure be re-opened, in accordance with Article 61 of its Rules of Procedure, if it considers that it lacks sufficient information, or that the case must be dealt with on the basis of an argument which has not been debated between the parties.

29 However, in this case the Court, after hearing the views of the Advocate General, considers that Deutsche Telekom's application contains nothing to indicate that it would be useful or necessary to re-open the oral procedure.

30 Deutsche Telekom's request must therefore be rejected.

The first question

31 By the first part of its first question, the national court seeks essentially to ascertain whether the limitation in time of the possibility of relying on the direct effect of Article 119 of the Treaty precludes national provisions which lay down a principle of equal treatment by virtue of which, in circumstances like those of the main proceedings, all part-time workers are entitled to retroactive membership of an occupational pension scheme and to a pension under that scheme. If so, the national court asks, in the second part of the first question, whether the national court responsible for applying the provisions of Community law, within the limits of its jurisdiction, is under an obligation to ensure that those provisions are given full effect, if need be declining to apply any contrary provision of national law.

The first part of the first question

32 First, it must be borne in mind that, according to settled case-law, a pension scheme of the type at issue in the main proceedings, which essentially relates to the employment of the person concerned, forms part of the pay received by that person and comes within the scope of Article 119 of the Treaty (to that effect, see Case 170/84 *Bilka* v *Weber von Hartz* [1986] ECR 1607, paragraph 22, *Barber*, cited above, paragraph 28, and Case C-7/93 *Beune* [1994] ECR I-4471, paragraph 46). Accordingly, the exclusion of part-time workers from such a pension scheme may be found to be contrary to Article 119 (to that effect, see *Bilka*, cited above, paragraph 29).

33 As regards the limitation in time of the effects of Article 119 of the Treaty, it should be recalled first that, in Case 43/75 *Defrenne* v *Sabena* [1976] ECR 455 *('Defrenne II')*, paragraph 40, the Court held that the principle of equal pay contained in Article 119 may be relied upon before the national courts and that those courts have a duty to ensure protection of the rights which that provision vests in individuals. However, in paragraphs 74 and 75 of the same judgment, the Court made it clear that, by virtue of overriding considerations of legal certainty affecting all the interests involved, both public and private, the direct effect of Article 119 could not be relied on in order to support claims relating to pay periods prior to the date of that judgment, namely 8 April 1976, except as regards those workers who had already brought legal proceedings or made an equivalent claim.

34 Second, as far as occupational pension schemes are concerned, the Court held in paragraphs 44 and 45 of *Barber*, cited above, that by reason of overriding considerations of legal certainty, the direct effect of Article 119 of the Treaty could not be relied upon in order to claim entitlement to a pension with effect from a date prior to that of that judgment, namely 17 May 1990, except in the case of claimants who had before that date initiated legal proceedings or raised an equivalent claim.

35 As the Court made clear in Case C-109/91 *Ten Oever* [1993] ECR I-4879, paragraph 20, by virtue of the judgment in *Barber*, cited above, the direct effect of Article 119 of the Treaty may be relied upon, for the purpose of claiming equal treatment in the matter of occupational pensions, only in relation to benefits payable in respect of periods of employment subsequent to 17 May 1990, subject to the exception in favour of workers or those claiming under them who had, before that date, initiated legal proceedings or raised an equivalent claim under the applicable national law.

36 That limitation is also embodied in the Protocol, pursuant to which, for the purposes of Article 119, benefits under occupational social security schemes are not to be considered as remuneration if and in so far as they are attributable to periods of employment prior to 17 May 1990, except in the case of workers or

those claiming under them who have before that date initiated legal proceedings or introduced an equivalent claim under the applicable national law.

37 It is clear, however, from the judgments in Case C-57/93 *Vroege* [1994] ECR I-4541, paragraphs 20 to 27, Case C-128/93 *Fisscher* [1994] ECR I-4583, paragraphs 17 to 24, and Case C-246/96 *Magorrian and Cunningham* v *EHSSB and DHSS* [1997] ECR I-7153, paragraphs 27 to 35, that the limitation in time of the effects of Article 119 resulting from both the *Barber* judgment and the Protocol concerns only those kinds of discrimination which employers and pension schemes could reasonably have considered to be permissible owing to the transitional derogations for which Community law provided and which were capable of being applied to occupational pensions (see Case C-435/93 *Dietz* v *Stichting Thuiszorg Rotterdam* [1996] ECR I-5223, paragraph 19).

38 As far as the right to join an occupational scheme is concerned, the Court has stated that there was no reason to suppose that those concerned could have been mistaken as to the applicability of Article 119 (*Magorrian and Cunningham*, cited above, paragraph 28).

39 In fact, it has been clear since the judgment in *Bilka* that any discrimination, based on sex, in the recognition of that right infringes Article 119 of the Treaty (*Vroege*, paragraph 29, *Fisscher*, paragraph 26, *Dietz*, paragraph 20, and *Magorrian and Cunningham*, paragraph 29).

40 Therefore, as the judgment in *Bilka* included no limitation of its effects in time, the direct effect of Article 119 may be relied on as from 8 April 1976, the date of

the judgment in *Defrenne II*, in which that article was first held to have direct effect, in order retroactively to claim equal treatment in relation to the right to join an occupational pension scheme (*Dietz*, paragraph 21, and *Magorrian and Cunningham*, paragraph 30).

41 It must also be borne in mind that, at paragraph 23 of its judgment in *Dietz* and at paragraph 33 of its judgment in *Magorrian and Cunningham*, the Court has already stated that membership of an occupational pension scheme would be of no interest to employees if it did not confer entitlement to the benefits provided by the scheme in question. Accordingly, the Court took the view that entitlement to a retirement pension under an occupational scheme was indissolubly linked to the right to join such a scheme. It added, however, that the fact that a worker can claim retroactive membership of an occupational pension scheme does not enable him to avoid paying contributions for the period of membership concerned (*Fisscher*, paragraph 37, and *Dietz*, paragraph 34).

42 It is clear from the foregoing that the only limitation in time on the possibility of relying on the direct effect of Article 119 of the Treaty in relation to membership of an occupational pension scheme of the kind at issue in the main proceedings and the subsequent payment of a pension is that resulting from *Defrenne II*.

43 As to whether Community law precludes the taking into account, under national provisions, of periods of service prior to 8 April 1976, the date of the judgment in *Defrenne II*, it is appropriate to recall, first, that, according to settled case-law (see, in particular, Case 61/79 *Denkavit Italiana* v *Amministrazione delle Finanze dello Stato* [1980] ECR 1205, paragraphs 16 and 17, and Joined Cases 66/79, 127/79 and 128/79 *Salumi* v *Amministrazione delle Finanze* [1980] ECR 1237, paragraphs 9 and 10), the interpretation which, in the exercise of the jurisdiction

conferred on it by Article 177 of the Treaty, the Court of Justice gives to a rule of Community law clarifies and defines where necessary the meaning and scope of that rule as it must be or ought to have been understood and applied from the time of its coming into force. As the Court recognised in its judgment in *Defrenne II*, it is only exceptionally that the Court may, in application of the general principle of legal certainty inherent in the Community legal order and in taking account of the serious effects which its judgment might have, as regards the past, on legal relationships established in good faith, be moved to restrict for any person concerned the opportunity of relying upon the provision as thus interpreted with a view to calling in question those legal relationships.

44 Also, the Court indicated in paragraph 65 of *Defrenne II* that the application of Article 119 was to have been fully secured by the original Member States, including the Federal Republic of Germany, as from 1 January 1962, the beginning of the second stage of the transitional period. It is also clear from paragraph 68 of the same judgment that, even in the areas in which Article 119 has no direct effect, its implementation may if need be derive from a combination of Community and national measures.

45 Finally, when deciding, in *Defrenne II*, to limit in time the possibility of relying on the direct effect of Article 119 of the Treaty, the Court considered that, in the light of the conduct of several of the Member States and the views adopted by the Commission and repeatedly brought to the notice of the circles concerned, it was appropriate to take exceptionally into account the fact that, over a prolonged period, the parties concerned had been led to continue with practices which were contrary to Article 119, although not yet prohibited under their national law (*Defrenne II*, paragraph 72).

46 It follows that the limitation of the possibility of relying on the direct effect of Article 119 of the Treaty was not intended in any way to deprive the workers

concerned of the opportunity of relying on national provisions laying down a principle of equal treatment.

47 National provisions having the effect of ensuring application of the principle of equal pay for male and female workers contribute to the implementation of Article 119 of the Treaty, in compliance with the obligation which has been incumbent on the original Member States since 1 January 1962.

48 In such circumstances, the principle of legal certainty inherent in the Community legal order, which may move the Court, exceptionally, to limit the possibility of relying on a provision which it has interpreted, does not fall to be applied and does not preclude the application of national provisions which ensure a result which conforms with Community law.

49 It is immaterial, in that regard, that the national provisions at issue were not interpreted in a manner consonant with Article 119 of the Treaty until after the date of the judgment in *Defrenne II*, since that interpretation is capable of being applied, if necessary, to situations which arose and became established before that date. It is not for the Court to pronounce as to the application in time of rules of national law.

50 The answer to the first part of the first question must therefore be that the limitation in time of the possibility of relying on the direct effect of Article 119 of the Treaty, resulting from the judgment in *Defrenne II*, does not preclude national provisions which lay down a principle of equal treatment by virtue of which, in circumstances like those of the main proceedings, all part-time workers are entitled to retroactive membership of an occupational pension scheme and to receive a pension under that scheme.

The second part of the first question

51 In view of the answer given to the first part of the first question, it is unnecessary to answer the second part of that question.

The second question

52 By its second question, the national court essentially seeks to ascertain whether the fact that the relevant national provisions prohibit all discrimination against workers by reason of the fact that they work on a part-time basis, and not by reason of their sex, affects the answer to be given to the first question.

53 In answer to that question it need only be pointed out that provisions prohibiting other forms of discrimination may, in certain circumstances, contribute to ensuring that the principle of equal pay for men and women is applied in accordance with the obligations incumbent on the Member States.

54 That is so in particular where national provisions prohibit discrimination in relation to pay against part-time workers, who, as a group, often comprise a higher percentage of women than men.

55 Second, in view of the answer given to the first question, the fact that the relevant national provisions are based on a prohibition of other forms of discrimination cannot *a fortiori* lead to any limitation of their application in time solely because of the limitation in time of the possibility of relying on the direct effect of Article 119 of the Treaty resulting from *Defrenne II*.

56 The answer to the second question must therefore be that the fact that the relevant national provisions prohibit all discrimination against workers by reason of the fact that they work on a part-time basis, and not by reason of their sex, does not affect the answer to be given to the first question.

Costs

57 The costs incurred by the Commission, which has submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Sixth Chamber),

in answer to the questions referred to it by the Landesarbeitsgericht Hamburg by two orders of 12 December 1995, hereby rules:

1. **The limitation in time of the possibility of relying on the direct effect of Article 119 of the EC Treaty (Articles 117 to 120 of the EC Treaty have been**

replaced by Articles 136 EC to 143 EC), resulting from the judgment in Case 43/75 *Defrenne* v *Sabena* [1976] ECR 455, does not preclude national provisions which lay down a principle of equal treatment by virtue of which, in circumstances like those of the main proceedings, all part-time workers are entitled to retroactive membership of an occupational pension scheme and to receive a pension under that scheme.

2. The fact that the relevant national provisions prohibit all discrimination against workers by reason of the fact that they work on a part-time basis, and not by reason of their sex, does not affect the answer to the first question.

Schintgen Hirsch Ragnemalm

Delivered in open court in Luxembourg on 10 February 2000.

R. Grass
Registrar

J.C. Moitinho de Almeida
President of the Sixth Chamber