JUDGMENT OF THE COURT
16 June 1998 *

In Case C-162/96,

REFERENCE to the Court under Article 177 of the EC Treaty by the Bundesfinanzhof for a preliminary ruling in the proceedings pending before that court between

A. Racke GmbH&Co.

and

Hauptzollamt Mainz

on the validity of Council Regulation (EEC) No 3300/91 of 11 November 1991 suspending the trade concessions provided for by the Cooperation Agreement between the European Economic Community and the Socialist Federal Republic of Yugoslavia (OJ 1991 L 315, p. 1),

THE COURT,

composed of: G. C. Rodríguez Iglesias, President, C. Gulmann, H. Ragnemalm and M. Wathelet (Presidents of Chambers), J. C. Moitinho de Almeida, P. J. G. Kapteyn (Rapporteur), J. L. Murray, D. A. O. Edward, G. Hirsch, P. Jann and L. Sevón, Judges,

* Language of the case: German.

Advocate General: F. G. Jacobs,
Registrar: D. Louterman-Hubeau, Principal Administrator,

after considering the written observations submitted on behalf of:

— A. Racke GmbH&Co., by Dietrich Ehle, Rechtsanwalt, Cologne,

— the Council of the European Union, by Jürgen Huber and Micail Vitsentzatos, Legal Advisers, and by Antonio Tanca, of its Legal Service, acting as Agents,

— the Commission of the European Communities, by Jörn Sack, Legal Adviser, and Barbara Brandtner, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of A. Racke GmbH&Co., the Council and the Commission at the hearing on 15 July 1997,

after hearing the Opinion of the Advocate General at the sitting on 4 December 1997,

gives the following

Judgment

1 By order of 7 March 1996, received at the Court on 13 May 1996, the Bundesfinanzhof (Federal Finance Court) referred to the Court for a preliminary ruling under Article 177 of the EC Treaty two questions concerning the validity of Council Regulation (EEC) No 3300/91 of 11 November 1991 suspending the trade concessions provided for by the Cooperation Agreement between the European Economic Community and the Socialist Federal Republic of Yugoslavia (OJ 1991 L 315, p. 1; 'the disputed regulation').

2 The questions were raised in proceedings between A. Racke GmbH&Co. ('Racke') and the Hauptzollamt Mainz (Principal Customs Office, Mainz) concerning a customs debt arising on the importation into Germany of certain quantities of wine originating in the Socialist Federal Republic of Yugoslavia.

Legal background

3 The Cooperation Agreement between the European Economic Community and the Socialist Federal Republic of Yugoslavia ('the Cooperation Agreement') was signed in Belgrade on 2 April 1980 by the Member States of the European

Economic Community and the Socialist Federal Republic of Yugoslavia ('Yugoslavia') and approved on behalf of the Community by Council Regulation (EEC) No 314/83 of 24 January 1983 (OJ 1983 L 41, p. 1).

4 Article 22 of the Cooperation Agreement, as amended by Article 4 of the Additional Protocol to that Agreement establishing new trade arrangements (the 'Additional Protocol'), approved on behalf of the Community by Council Decision 87/605/EEC of 21 December 1987 (OJ 1987 L 389, p. 72), is worded as follows:

'1. Customs duties on imports into the Community of wine of fresh grapes falling within subheadings 22.05 C ex I or ex II of the Common Customs Tariff presented in containers holding two litres or less, originating in Yugoslavia, shall be reduced by 30% within the limits of an annual Community tariff quota of 12 000 hectolitres. The Community shall apply the customs duties resulting from the provisions of paragraph 4 to imports in excess of the quota.

...

3. Paragraphs 1 and 2 shall remain in force until, under the progressive dismantling of customs duties referred to in paragraph 4, the levels of customs duties provided for in respect of wines referred to in paragraph 1 have been reduced by 30% as provided for in paragraph 1.

4. Customs duties on imports into the Community of wine of fresh grapes falling within subheadings 22.05 C I or C II of the Common Customs Tariff, originating in Yugoslavia, shall be dismantled in accordance with the rules laid down in Article 2(1) and (2) of the Additional Protocol establishing new trade arrangements. This provision shall apply within the limits of an annual Community tariff quota of 545 000 hectolitres. The Community shall apply the duties of the Common Customs Tariff to imports in excess of the quota.

...'

5 Under Article 2(1) of the Additional Protocol, customs duties applicable under the Agreement to imports into the Community were to be progressively dismantled over the same periods and at the same rates as provided in the Act concerning the conditions of accession of the Kingdom of Spain and the Portuguese Republic and the adjustments to the Treaties (OJ 1985 L 302, p. 23) in respect of imports into the Community as constituted on 31 December 1985 of the same products from those countries. Where the level of customs duties in force for imports from Spain into the Community as constituted on 31 December 1985 differed from that for imports from Portugal, products originating in Yugoslavia were to be subject to the higher of the two rates. Under Article 2(2), where customs duty was lower for Yugoslavia than for Spain, Portugal or both, the process of dismantling was to commence once the duties on the same products from Spain and Portugal had fallen below those applying to products originating in Yugoslavia.

6 Under Article 1 of Council Regulation (EEC) No 3413/90 of 19 November 1990 opening and providing for the administration of Community tariff quotas for certain products originating in Yugoslavia (1991) (OJ 1990 L 335, p. 26), the customs duties applicable to imports into the Community of wine of fresh grapes falling

within CN codes ex 2204 21 and 2204 29 originating in Yugoslavia were suspended from 1 January until 31 December 1991 at the levels of 3.6, 4.4, 4.8 or 5.6 ECU/hl within the limit of a tariff quota of 545 000 hl. Articles 2 to 4 of Regulation No 3413/90 went on to lay down detailed rules for importers of the products in question to have access to the quota.

7 The Cooperation Agreement was concluded, according to Article 60 thereof, for an unlimited period. However, either party may denounce the Agreement by notice to the other, the agreement ceasing to apply six months after such notification.

8 By Decision 91/586/ECSC, EEC of 11 November 1991 suspending the application of the Agreements between the European Community, its Member States and the Socialist Federal Republic of Yugoslavia (OJ 1991 L 315, p. 47), the Council and the representatives of the Governments of the Member States, meeting within the Council, suspended the application of the Cooperation Agreement with immediate effect, for the following reasons as set out in the second, third, fourth and fifth recitals in the preamble to the decision:

'Whereas, in their declarations of 5 and 28 October 1991, the European Community and its Member States, meeting within the framework of European Political Cooperation, took note of the crisis in Yugoslavia; whereas the United Nations Security Council expressed, in resolution 713 (1991), the concern that the prolongation of this situation constituted a threat to international peace and security;

Whereas the pursuit of hostilities and their consequences on economic and trade relations, both between the Republics of Yugoslavia and with the Community, constitute a radical change in the conditions under which the Cooperation Agree-

ment between the European Economic Community and the Socialist Federal Republic of Yugoslavia and its Protocols, as well as the Agreement concerning the European Coal and Steel Community, were concluded; whereas they call into question the application of such Agreements and Protocols;

Whereas the appeal launched by the European Community and its Member States, meeting within the framework of European Political Cooperation on 6 October 1991 at Haarzuilens, calling for compliance with the cease-fire agreement reached in the Hague on 4 October 1991, has not been heeded;

Whereas, in the declaration of 6 October 1991, the European Community and its Member States, meeting within the framework of European Political Cooperation, announced their decision to terminate the Agreements between the Community and Yugoslavia should the agreement reached in the Hague on 4 October 1991 between the parties to the conflict, in the presence of the President of the Council of the European Communities and the President of the Conference on Yugoslavia, not be observed'.

9 Under Article 1 of the disputed regulation, the trade concessions granted by or pursuant to the Cooperation Agreement were suspended. Under Article 3 thereof, it entered into force on the day of its publication in the *Official Journal of the European Communities*, 15 November 1991.

10 The first, second, third and fourth recitals in the preamble to the regulation repeated the reasons set out in the preamble to Decision 91/586, set out above.

11 In accordance with Article 60 of the Cooperation Agreement, the Council adopted Decision 91/602/EEC of 25 November 1991 denouncing the Cooperation Agreement between the European Economic Community and the Socialist Federal Republic of Yugoslavia (OJ 1991 L 325, p. 23). Under Article 2 thereof, that decision, denouncing the Agreement and all related protocols and instruments, took effect on the day of its publication, 27 November 1991.

12 By Regulation (EEC) No 3567/91 of 2 December 1991 concerning the arrangements applicable to the import of products originating in the Republics of Bosnia-Herzegovina, Croatia, Macedonia and Slovenia (OJ 1991 L 342, p. 1), the Council granted to those republics in respect of certain products, amongst which wines were not, however, included, the benefit of trading arrangements essentially equivalent to those in the Cooperation Agreement suspended by the Community.

13 Council Regulation (EEC) No 545/92 of 3 February 1992 concerning the arrangements applicable to the import into the Community of products originating in the Republics of Croatia and Slovenia and the Yugoslav Republics of Bosnia-Herzegovina, Macedonia and Montenegro (OJ 1992 L 63, p. 1) maintained those measures for the year 1992 and extended them to certain agricultural products, including wines of fresh grapes falling within CN codes ex 2204 21 or 2204 29 originating in the republics concerned. Thus, Article 6 of Regulation No 545/92 provided that, in respect of those wines, customs duties on importation were to be reduced to the rate of 3.2 ECU/hl, within the limit of an annual quota of 545 000 hl.

14 Under Article 1 of Council Regulation (EEC) No 547/92 of 3 February 1992 opening and providing for the administration of Community tariff quotas for certain products originating in the Republics of Croatia and Slovenia and the Yugoslav Republics of Bosnia-Herzegovina, Macedonia and Montenegro (OJ 1992 L 63, p. 41), the customs duties applicable to imports into the Community of wine of fresh grapes falling within CN codes ex 2204 21 and 2204 29 originating in those

republics were suspended from 1 January until 31 December 1992 at the levels of 2.4, 2.9, 3.2 or 3.7 ECU/hl and within the limit of a quota of 545 000 hl. Articles 2 to 4 of that regulation laid down detailed rules for importers of the products in question to have access to the quota.

The main proceedings

15 Between 6 November 1990 and 27 April 1992, Racke had wines it imported from the Kosovo wine-growing region cleared by customs in Germany for warehousing in its private customs warehouse. On 7 May 1992, it declared the consignments released into free circulation under the scheme of preferential rates of customs duties provided for in the Cooperation Agreement.

16 Nevertheless, by a decision of 27 May 1992, the Hauptzollamt Mainz demanded the difference between the third-country rate of customs duty and the preferential rate, since the wines had been imported from Serbia.

17 Racke then brought an action challenging that decision before the Finanzgericht (Finance Court), which upheld it in respect of wines imported before 15 November 1991, but dismissed it as to the remainder on the ground that the suspension by the disputed regulation of the trade concessions granted by the Cooperation Agreement was justified by the occurrence of a fundamental change in the situation, namely the war in Yugoslavia.

18 Racke has appealed on a point of law against that decision to the Bundesfinanzhof, which first considers the question whether unilateral suspension of the Cooperation Agreement complies with the conditions laid down in Article 62(1) of the Vienna Convention on the Law of Treaties of 23 May 1969 (the 'Vienna Convention').

19 Article 62 of the Vienna Convention provides:

'1. A fundamental change of circumstances which has occurred with regard to those existing at the time of the conclusion of a treaty, and which was not foreseen by the parties, may not be invoked as a ground for terminating or withdrawing from the treaty unless:

(a) the existence of those circumstances constituted an essential basis of the consent of the parties to be bound by the treaty; and

(b) the effect of the change is radically to transform the extent of obligations still to be performed under the treaty.

...

3. If, under the foregoing paragraphs, a party may invoke a fundamental change of circumstances as a ground for terminating or withdrawing from a treaty

it may also invoke the change as a ground for suspending the operation of the treaty.'

20 In the view of the national court, the break-up of Yugoslavia into several new States and the hostilities within Yugoslavia, which were factors to be regarded as a political change, involved a fundamental change in the material circumstances underlying the consent of the contracting parties bound by the Cooperation Agreement. On the other hand, the change did not appear radically to have altered the extent of the obligations under the Cooperation Agreement, which was essentially an economic agreement.

21 The Bundesfinanzhof then considers whether, having regard to Article 65 of the Vienna Convention, it was permissible to proceed with the suspension of the Cooperation Agreement with no prior notification or waiting period, if there was especial urgency and the lapse of time before payment of the customs duties in question was sufficient to compensate for any procedural defects.

22 Article 65(1) of the Vienna Convention provides that a party which, under the provisions of the Convention, invokes a reason for terminating, withdrawing from or suspending the operation of a treaty must notify the other parties. That notification is to indicate the measure proposed to be taken with respect to the treaty and the reasons therefor. Article 65(2) of the Vienna Convention further provides that if, after the expiry of a period which, except in cases of special urgency, is to be not less than three months after the receipt of the notification, no party has raised any objection, the party making the notification may carry out in the manner provided in Article 67 the measure which it has proposed. Article 65(3) of the Vienna Convention provides that, if an objection has been raised by another party, the parties must seek a solution through the means indicated in Article 33 of the Charter of the United Nations.

23 In the light of those considerations, the Bundesfinanzhof decided to stay the proceedings and refer the following questions to the Court of Justice for a preliminary ruling:

'1. Is Council Regulation (EEC) No 3300/91 of 11 November 1991 suspending the trade concessions provided for by the Cooperation Agreement between the European Economic Community and the Socialist Federal Republic of Yugoslavia (OJ 1991 L 315, p. 1) valid?

2. If not, what are the consequences of invalidity as regards customs duty charged in early May 1992 on wines originating in Serbia which were imported between mid-November 1991 and April 1992 and cleared for warehousing in a customs warehouse?

Are the quota-related preferential customs duties granted in 1992 for wines from the territory of the former Yugoslavia other than Serbia applicable in that respect?'

Question 1

24 By way of a preliminary observation, it should be noted that even though the Vienna Convention does not bind either the Community or all its Member States, a series of its provisions, including Article 62, reflect the rules of international law which lay down, subject to certain conditions, the principle that a change of circumstances may entail the lapse or suspension of a treaty. Thus the International Court of Justice held that '[t]his principle, and the conditions and exceptions to

which it is subject, have been embodied in Article 62 of the Vienna Convention on the Law of Treaties, which may in many respects be considered as a codification of existing customary law on the subject of the termination of a treaty relationship on account of change of circumstances' (judgment of 2 February 1973, *Fisheries Jurisdiction* (*United Kingdom* v *Iceland*), ICJ Reports 1973, p. 3, paragraph 36).

The jurisdiction of the Court

25 The Commission has expressed doubts as to the jurisdiction of the Court to rule on the first question because it relates to the validity of the disputed regulation under rules of customary international law. Even though the regulation constitutes an act of the Community within the meaning of subparagraph (b) of the first paragraph of Article 177 of the Treaty, the preliminary rulings procedure does not permit the development of an argument based on international law alone, and in particular on the principles governing the termination of treaties and the suspension of their operation.

26 As the Court has already held in Joined Cases 21/72 to 24/72 *International Fruit Company* v *Produktschap voor Groenten en Fruit* [1972] ECR 1219, paragraph 5, the jurisdiction of the Court to give preliminary rulings under Article 177 of the Treaty concerning the validity of acts of the Community institutions cannot be limited by the grounds on which the validity of those measures may be contested.

27 Since such jurisdiction extends to all grounds capable of invalidating those measures, the Court is obliged to examine whether their validity may be affected by reason of the fact that they are contrary to a rule of international law (*International Fruit Company*, paragraph 6).

28 The Court therefore has jurisdiction to rule on the first question.

The validity of the disputed regulation

29 It should be noted that the question whether the disputed regulation is valid having regard to customary international law has arisen incidentally in a dispute in which Racke claims that the preferential rates of customs duty provided for in Article 22 of the Cooperation Agreement should be applied.

30 It therefore needs to be examined first whether Article 22(4), which, as the purpose of the quota regulations cited in the order for reference demonstrates, applies to the main proceedings in this case, is capable of conferring rights to preferential customs treatment directly upon individuals.

31 The Court has consistently held that a provision of an agreement concluded by the Community with non-member countries must be regarded as being directly applicable when, regard being had to its wording and the purpose and nature of the agreement itself, the provision contains a clear and precise obligation which is not subject, in its implementation or effects, to the adoption of any subsequent measure (see, in particular, Case 12/86 *Demirel* v *Stadt Schwäbisch Gmünd* [1987] ECR 3719, paragraph 14).

32 In order to determine whether the provision contained in Article 22(4) of the Cooperation Agreement meets those criteria, it is necessary first to examine its wording.

33 By its very wording, that provision requires Community measures to implement it in order to enable the annual Community tariff quota to be opened in accordance with the detailed rules laid down by Article 2(1) and (2) of the Additional Protocol, the Community having no discretion as to the adoption of those measures. The Community is obliged to carry out, within a certain period, an exact calculation of customs duties in accordance with those provisions.

34 It follows that, as regards the preferential customs treatment for which it makes provision, Article 22(4) of the Cooperation Agreement is capable of conferring rights upon which individuals may rely before national courts.

35 That finding is, moreover, borne out by examination of the purpose and nature of the agreement of which Article 22(4) forms part.

36 The aim of the Cooperation Agreement is to promote the development of trade between the contracting parties and progressively to remove barriers affecting the bulk of their trade. After the end of the first stage of that liberalisation, on 30 June 1985, the Additional Protocol established the further trade arrangements. It is in that context that Article 22(4), as amended by Article 4 of the Additional Protocol, lays down in respect of certain wines a Community tariff quota within which dismantling of customs duties on importation into the Community is to take place.

37 It next needs to be examined whether, when invoking in legal proceedings the preferential customs treatment granted to him by Article 22(4) of the Cooperation Agreement, an individual may challenge the validity under customary international law rules of the disputed regulation, suspending the trade concessions granted under that Agreement as from 15 November 1991.

38 In that respect, the Council maintains that the adoption of the disputed regulation was preceded, logically and legally, by the adoption of Decision 91/586, suspending the application of the Cooperation Agreement on the international level. Adoption of the disputed regulation became necessary in its turn, since the trade concessions provided for in the Agreement had been implemented in the past by an internal Community regulation.

39 The Council submits that, since international law does not prescribe the remedies for breach of its rules, the possible breach of those rules by Decision 91/586 does not necessarily lead to the restoration in force of the Cooperation Agreement and hence, at the Community level, to the invalidity of the disputed regulation by reason of its being contrary to the restored Agreement. Breach of international law might for instance also be penalised by means of damages, leaving the Cooperation Agreement suspended. The Council therefore argues that, in assessing the validity of the disputed regulation, the Court does not need to examine whether suspension of the Cooperation Agreement by Decision 91/586 infringed rules of international law.

40 It is important to note at the outset that the question referred by the national court concerns only the validity of the disputed regulation under rules of customary international law.

41 As far as the Community is concerned, an agreement concluded by the Council with a non-member country in accordance with the provisions of the EC Treaty is an act of a Community institution, and the provisions of such an agreement form an integral part of Community law (see *Demirel*, cited above, paragraph 7).

42 If, therefore, the disputed regulation had to be declared invalid, the trade concessions granted by the Cooperation Agreement would remain applicable in Commu-

nity law until the Community brought that Agreement to an end in accordance with the relevant rules of international law.

43 It follows that a declaration of the invalidity of the disputed regulation by reason of its being contrary to rules of customary international law would allow individuals to rely directly on the rights to preferential treatment granted to them by the Cooperation Agreement.

44 For its part, the Commission doubts whether, in the absence of an express clause in the EC Treaty, the international law rules referred to in the order for reference may be regarded as forming part of the Community legal order. Thus, in order to challenge the validity of a regulation, an individual might rely on grounds based on the relationship between him and the Community, but does not, the Commission argues, have the right to rely on grounds deriving from the legal relationship between the Community and a non-member country, which fall within the scope of international law.

45 It should be noted in that respect that, as is demonstrated by the Court's judgment in Case C-286/90 *Poulsen and Diva Navigation* [1992] ECR I-6019, paragraph 9, the European Community must respect international law in the exercise of its powers. It is therefore required to comply with the rules of customary international law when adopting a regulation suspending the trade concessions granted by, or by virtue of, an agreement which it has concluded with a non-member country.

46 It follows that the rules of customary international law concerning the termination and the suspension of treaty relations by reason of a fundamental change of circumstances are binding upon the Community institutions and form part of the Community legal order.

47 In this case, however, the plaintiff is incidentally challenging the validity of a Community regulation under those rules in order to rely upon rights which it derives directly from an agreement of the Community with a non-member country. This case does not therefore concern the direct effect of those rules.

48 Racke is invoking fundamental rules of customary international law against the disputed regulation, which was taken pursuant to those rules and deprives Racke of the rights to preferential treatment granted to it by the Cooperation Agreement (for a comparable situation in relation to basic rules of a contractual nature, see Case C-69/89 *Nakajima* v *Council* [1991] I-2069, paragraph 31).

49 The rules invoked by Racke form an exception to the *pacta sunt servanda* principle, which constitutes a fundamental principle of any legal order and, in particular, the international legal order. Applied to international law, that principle requires that every treaty be binding upon the parties to it and be performed by them in good faith (see Article 26 of the Vienna Convention).

50 The importance of that principle has been further underlined by the International Court of Justice, which has held that 'the stability of treaty relations requires that the plea of fundamental change of circumstances be applied only in exceptional cases' (judgment of 25 September 1997, *Gabcíkovo-Nagymaros Project* (*Hungary* v *Slovakia*), at paragraph 104, not yet published in the ICJ Reports).

51 In those circumstances, an individual relying in legal proceedings on rights which he derives directly from an agreement with a non-member country may not be denied the possibility of challenging the validity of a regulation which, by suspending the trade concessions granted by that agreement, prevents him from

relying on it, and of invoking, in order to challenge the validity of the suspending regulation, obligations deriving from rules of customary international law which govern the termination and suspension of treaty relations.

52 However, because of the complexity of the rules in question and the imprecision of some of the concepts to which they refer, judicial review must necessarily, and in particular in the context of a preliminary reference for an assessment of validity, be limited to the question whether, by adopting the suspending regulation, the Council made manifest errors of assessment concerning the conditions for applying those rules.

53 For it to be possible to contemplate the termination or suspension of an agreement by reason of a fundamental change of circumstances, customary international law, as codified in Article 62(1) of the Vienna Convention, lays down two conditions. First, the existence of those circumstances must have constituted an essential basis of the consent of the parties to be bound by the treaty; secondly, that change must have had the effect of radically transforming the extent of the obligations still to be performed under the treaty.

54 Concerning the first condition, the preamble to the Cooperation Agreement states that the contracting parties are resolved 'to promote the development and diversification of economic, financial and trade cooperation in order to foster a better balance and an improvement in the structure of their trade and expand its volume and to improve the welfare of their populations' and that they are conscious 'of the need to take into account the significance of the new situation created by the enlargement of the Community for the organisation of more harmonious economic and trade relations between the Community and the Socialist Federal Republic of Yugoslavia'. Pursuant to those considerations, Article 1 of the Agreement provides that its object 'is to promote overall cooperation between the contracting parties with a view to contributing to the economic and social development of the Socialist Federal Republic of Yugoslavia and helping to strengthen relations between the parties'.

55 In view of such a wide-ranging objective, the maintenance of a situation of peace in Yugoslavia, indispensable for neighbourly relations, and the existence of institutions capable of ensuring implementation of the cooperation envisaged by the Agreement throughout the territory of Yugoslavia constituted an essential condition for initiating and pursuing that cooperation.

56 Regarding the second condition, it does not appear that, by holding in the second recital in the preamble to the disputed regulation that 'the pursuit of hostilities and their consequences on economic and trade relations, both between the Republics of Yugoslavia and with the Community, constitute a radical change in the conditions under which the Cooperation Agreement between the European Economic Community and the Socialist Federal Republic of Yugoslavia and its Protocols ... were concluded' and that 'they call into question the application of such Agreements and Protocols', the Council made a manifest error of assessment.

57 Whilst it is true, as Racke argues, that a certain volume of trade had to continue with Yugoslavia and that the Community could have continued to grant tariff concessions, the fact remains, as the Advocate General has pointed out in paragraph 93 of his Opinion, that application of the customary international law rules in question does not require an impossibility to perform obligations, and that there was no point in continuing to grant preferences, with a view to stimulating trade, in circumstances where Yugoslavia was breaking up.

58 As for the question raised in the order for reference whether, having regard to Article 65 of the Vienna Convention, it was permissible to proceed with the suspension of the Cooperation Agreement with no prior notification or waiting period, this Court observes that, in the joint statements of 5, 6 and 28 October 1991, the Community and the Member States announced that they would adopt restrictive measures against those parties which did not observe the ceasefire agreement of 4 October 1991 which they had signed in the presence of the President of the Council and the President of the Conference on Yugoslavia; moreover, the

Community had made known during the conclusion of that agreement that it would bring the Cooperation Agreement to an end in the event of the ceasefire not being observed (*Bull. EC* 10-1991, paragraphs 1.4.6, 1.4.7 and 1.4.16).

59 Even if such declarations do not satisfy the formal requirements laid down by Article 65 of the Vienna Convention, it should be noted that the specific procedural requirements there laid down do not form part of customary international law.

60 Examination of the first question has thus disclosed no factor of such a kind as to affect the validity of the suspending regulation.

61 Given the reply to the first question referred, there is no need to adjudicate on the second.

Costs

62 The costs incurred by the Council and the Commission, which have 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,

in answer to the questions referred to it by the Bundesfinanzhof by order of 7 March 1996, hereby rules:

Examination of the questions referred has disclosed no factor of such a kind as to affect the validity of Council Regulation (EEC) No 3300/91 of 11 November 1991 suspending the trade concessions provided for by the Cooperation Agreement between the European Economic Community and the Socialist Federal Republic of Yugoslavia.

Rodríguez Iglesias Gulmann Ragnemalm Wathelet

Moitinho de Almeida Kapteyn Murray Edward

Hirsch Jann Sevón

Delivered in open court in Luxembourg on 16 June 1998.

R. Grass G. C. Rodríguez Iglesias

Registrar President