

JUDGMENT OF THE COURT OF FIRST INSTANCE (Fourth Chamber)

9 July 1999 \*

In Case T-231/97,

**New Europe Consulting Ltd**, a company incorporated under Irish law,  
established in Dublin,

**Michael P. Brown**, manager of New Europe Consulting Ltd, residing in  
Ballinasloe, County Galway (Ireland),

represented by Alberic De Roeck and Benjamin De Roeck, of the Antwerp Bar, 2  
Lange Lozanastraat, Antwerp (Belgium),

applicants,

v

**Commission of the European Communities**, represented by Marie-José Jonczy,  
Legal Adviser, and Maurits Lugard, of its Legal Service, acting as Agents, with an  
address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of  
the same service, Wagner Centre, Kirchberg,

defendant,

\* Language of the case: Dutch.

APPLICATION for compensation for the damage allegedly caused to the applicants by the Commission's wrongful conduct towards them in the context of the PHARE programme,

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

composed of: R.M. Moura Ramos, President, V. Tiili and P. Mengozzi, Judges,  
Registrar: A. Mair, Administrator,

having regard to the written procedure and further to the hearing on 11 March 1999,

gives the following

**Judgment**

**Legal and factual background to the dispute**

1 The PHARE programme, based on Council Regulation (EEC) No 3906/89 of 18 December 1989 on economic aid to the Republic of Hungary and the Polish People's Republic (OJ 1989 L 375, p. 11), as amended, in order to extend economic aid to other countries of central and eastern Europe, by Council Regulations (EEC) No 2698/90 of 17 September 1990 (OJ 1990 L 257, p. 1),

No 3800/91 of 23 December 1991 (OJ 1991 L 357, p. 10), No 2334/92 of 7 August 1992 (OJ 1992 L 227, p. 1), No 1764/93 of 30 June 1993 (OJ 1993 L 162, p. 1), No 1366/95 of 12 June 1995 (OJ 1995 L 133, p. 1), No 463/96 of 11 March 1996 (OJ 1996 L 65, p. 3) and No 753/96 of 22 April 1996 (OJ 1996 L 103, p. 5), is the framework within which the European Community channels economic aid to the countries of central and eastern Europe in order to implement measures intended to support the process of economic and social reform under way in those countries.

- 2 New Europe Consulting Ltd ('NEC') has, since 1991, carried out several management advice projects in the context of the PHARE programme. The second applicant, Mr Brown, is the manager of NEC.
- 3 In 1994, NEC was chosen to carry out a training programme for board chairmen in Hungary ('the Board Chairmen Training Programme').
- 4 On 27 March 1995, the Commission received a report from Mr Szopko, an official of the Hungarian Government, and Ms Ravanel, the coordinator of the project in Hungary, setting out various problems which NEC had encountered in the general financial implementation of that programme.
- 5 On 12 April 1995, the Commission official responsible for the said programme sent a fax ('the fax at issue') to the programme coordinators in Poland, the Czech Republic, Hungary and Romania, telling them that 'although presenting very good proposals and providing satisfactory training programmes, this company [NEC] is not presenting the minimum level of financial guarantee to be consider [sic] as a reliable partner'. He made it clear to them that NEC had, in connection with the performance of a contract in Hungary, 'systematically forgot[ten] to pay its suppliers, forcing our [Commission] staff there to continuously face justified claims on behalf of the Hungarian authorities'. Since the Commission had heard that NEC was intending to offer its services to other eastern European countries, he strongly recommended them not to consider any proposal issued by that

company, in order to avoid problems which might harm the image of the PHARE programme. Finally, he asked them to pass his message on to any other person concerned by the management training activities.

- 6 As from that date, NEC has never again been chosen for any of the projects conducted in the context of the PHARE programme, except for an enterprise restructuring and private sector development programme in Romania, in which it participated as a sub-contractor and under the auspices of the University of Dublin.
  
- 7 On 29 January 1996, Mr Brown, who had in the interim learned of the fax at issue, after repeatedly requesting meetings with officials of the Commission and calling for an inquiry, finally met with the person responsible for horizontal programmes in Directorate-General IA of the Commission, External Relations: Europe and the Newly Independent States, Common Foreign and Security Policy, External Service (DG IA). On 11 April 1996, that person sent a second fax ('the rectifying fax') to all the European Union delegations in which he stated that, following an inquiry, no evidence had been found which justified the severe wording of the fax at issue which, according to him, represented 'a black listing' of NEC. Consequently, he wished to correct the Commission's view about NEC and recommended that any exclusion from shortlists be lifted. He added that it would be advisable that, 'before a contract is signed between "New Europe Consulting" or other small firms, cash flow issues are discussed as they arise and before they become detrimental to the success of a particular project'.
  
- 8 Since it still took the view that it had been unjustly excluded from projects conducted in the context of the programme, in spite of the rectification thus effected, NEC contacted the Commission again. The Commission replied, by fax of 16 April 1997, that, since NEC's difficulties in Hungary had been overcome, it had no reason to exclude that company from its programmes, and that there was no Commission black list.

## Procedure

- 9 By application lodged at the Registry of the Court of First Instance on 5 August 1997, the applicants brought the present action for damages.
- 10 Upon hearing the report of the Judge-Rapporteur, the Court of First Instance (Fourth Chamber) decided to open the oral procedure. In the context of measures of organisation of procedure, the parties were asked to reply in writing to certain questions and to produce certain documents before the hearing.
- 11 The parties presented oral argument at the hearing of 11 March 1999.

## Forms of order sought by the parties

- 12 The applicants claim that the Court should:

— declare the claim admissible and well-founded;

- order the Commission to pay them compensation totalling EUR 4 100 000, together with interest thereon as from the date of the event giving rise to the damage, namely 12 April 1995, and legal interest as from the date of the present judgment, of which:
  - EUR 1 000 000 to NEC in respect of the material damage it has suffered and EUR 3 000 000 in respect of the harm to its reputation;
  - EUR 100 000 to Mr Brown in respect of the non-material damage he has suffered;
- at the same time, order the defendant to restore the applicant's reputation by sending a letter to all responsible persons concerned within the Commission and the PHARE programme management units in central and eastern Europe, setting out the operative part of the present judgment;
- at the same time, order the defendant to pay all the costs.

13 The defendant contends that the Court should:

- dismiss the application as unfounded;
- order the applicants to pay the costs.

## The claim for damages

### *Arguments of the parties*

- 14 The applicants are applying, pursuant to the second paragraph of Article 215 of the EC Treaty (now the second paragraph of Article 288 EC) governing the non-contractual liability of the Community, to have the Community make good the damage caused by its institutions or by its servants in the performance of their duties.
- 15 They claim, first, that, by sending the fax at issue, on 12 April 1995, to all the persons responsible for management training in the PHARE programme, on the basis of mere allegations by Ms Ravanel, the Commission infringed several general principles of Community law including, in particular, the principle of proportionality. Furthermore, by sending that fax without either informing them of the accusations made against them or making further investigations, the Commission was in breach of their right to be heard, its duty to act with due care and its duty to give due weight to the interests concerned, and thus the principle of sound administration.
- 16 The fax at issue is alleged to have caused irreparable damage to NEC's business reputation, to its business and to its operating profits.
- 17 That damage is alleged to have been directly caused by the conduct of the Commission, since, after the fax at issue had been sent out, the applicants were excluded from all PHARE projects in which they showed an interest. The existence of a causal link between that unlawful conduct and the damage suffered by the applicants is said to be proved, in particular, by the fact that, after the fax at issue was sent, they were chosen for a project only when they submitted a tender under the auspices of the University of Dublin.

- 18 Second, the applicants contend that the Commission demonstrated a manifest lack of care. Although it was perfectly aware of the mistake it had made, it took more than a year to rectify it.
- 19 Third, the applicants claim that the Commission infringed the principle of the protection of legitimate expectations in so far as the rectification made never had any effect. Since the applicants entertained a legitimate expectation that the rectification would produce the desired effect, they waited a long time before going to law, which caused them additional damage.
- 20 The defendant contends that none of the three conditions for applying the second paragraph of Article 215 of the Treaty is fulfilled in this case.
- 21 First, neither the Commission nor any of its servants adopted any unlawful conduct. The Commission takes the view that, in the circumstances of the case, the fax at issue, which was based on a written complaint from an important Hungarian governmental authority and from the coordinator responsible for the project, was fully justified. Consequently, it acted responsibly and in accordance with its mission in the context of the PHARE programme by taking an immediate measure such as to prevent any possible harm to the image of the programme and to avoid financial difficulties for the other projects in central and eastern Europe. Since it was relying on statements from the project coordinator and the Hungarian Government official, it had no reason to conduct its own inquiry before sending the fax at issue.
- 22 Furthermore, the fax was not a disproportionate measure, since the doubts about the financial management of NEC were sufficiently serious to justify a general 'warning'.

- 23 The Commission contends, moreover, that, in this case, it had no obligation under any provision of the legislation applicable or under any principle of law to consult the applicants. Accordingly, they cannot claim a breach of their right to have their views heard.
- 24 Finally, it submits that it cannot be held liable, in any event, for the content of the letter sent to it by an independent governmental authority and by a project coordinator on site who was also independent.
- 25 Second, the applicants did not suffer any damage since, in a public tendering system such as the PHARE programme, undertakings cannot be sure of securing a particular contract. Consequently, the applicants can seek compensation only for specific contracts for which the tendering procedure was already well advanced and which they were sure to secure, which they have not proved.
- 26 In particular, the fact that the applicants were involved over two years in the preparation of a project in the Czech Republic did not entitle them to secure that contract. In this instance, the tenders relating to that project were evaluated in accordance with the rules applicable, and another undertaking's tender was judged to be more in line with the terms of reference.
- 27 Third, there is no causal link between the Commission's conduct and the alleged damage suffered by the applicants. The fact that they did not manage to secure contracts is a result either of the existence of tenders which were more competitive than theirs, or possibly of opinions given about them by local coordinators of PHARE projects and adopted quite independently.

- 28 In any event, the Commission withdrew its 'warning' on 11 April 1996. Consequently, it cannot be held liable for any damage which might have been suffered by the applicants after that date.

### *Findings of the Court*

- 29 According to settled case-law, in order for the Community to incur non-contractual liability, a number of conditions must be met: the conduct of the Community institutions in question must be unlawful; there must be real and certain damage; and a direct causal link must exist between the conduct of the institution concerned and the alleged damage (see Case T-54/96 *Oleifici Italiani and Fratelli Rubino v Commission* [1998] ECR II-3377, paragraph 66).

### The unlawfulness of the conduct

- 30 The applicants complain of two separate instances of conduct on the part of the Commission, namely, the sending of the fax at issue without an inquiry and without the applicants being heard and the delay in sending a rectification.
- 31 In connection with their complaints about the sending of the fax at issue, the applicants rely, first, on the lack of care shown generally by the Commission, in that it failed both to open an inquiry and to give them a hearing, and second, on a breach of the principle of proportionality, in that the Commission should not have reacted immediately to the report it received by sending, without the slightest check, a warning fax to coordinators of the PHARE programme. The

Court finds that, by those apparently separate claims, the applicants in substance are complaining about one single course of action amounting to a breach of the principle of sound administration.

32 Contracts financed by the PHARE Programme must be regarded as national contracts which are binding only on the beneficiary State and the economic operator (Case T-185/94 *Geotronics v Commission* [1995] ECR II-2795, paragraph 31; Case C-395/95 P *Geotronics v Commission* [1997] ECR I-2271, paragraph 12).

33 On the other hand, responsibility for funding projects is entrusted to the Commission. It would therefore be wrong to dismiss the possibility that acts or conduct on the part of the Commission, its services or individual servants in connection with the allocation or implementation of projects funded under the PHARE Programme might cause damage to third parties (judgment of the Court of First Instance in *Geotronics*, cited above, paragraph 39).

34 It is therefore necessary to establish whether the Commission has, in this case, committed a fault capable of giving rise to liability on the part of the Community under the second paragraph of Article 215 of the Treaty.

35 It is common ground that the Commission did not investigate the accusations contained in the report from Mr Szopko and Ms Ravel either before or after sending the fax at issue on 12 April 1995, and that the rectifying fax of 11 April 1996 was sent because of the investigations which Mr Brown himself repeatedly requested the Commission to undertake after accidentally discovering that the fax at issue had been sent.

36 The Commission justifies its conduct by reference to the fact that the complaint which prompted the sending of the fax at issue came from an important

Hungarian governmental authority and from the coordinator responsible for the project, whose reliability it could not question. During the oral procedure, the Commission added that to open an inquiry about the complaint would have compromised the relationship of cooperation with the authorities of the third countries which take part in the projects conducted in the context of the PHARE programme.

37 That argument cannot be accepted.

38 Although it is true that close collaboration between the Commission and the governments of third countries in the implementation of actions conducted in the context of the programme is provided for by Council Regulation (Euratom, ECSC, EEC) No 610/90 of 13 March 1990 amending the Financial Regulation of 21 December 1977 applicable to the general budget of the European Communities (OJ 1990 L 70, p. 1) and that it is essential for the successful completion of those actions, it cannot, however, go beyond the limits imposed by the obligations resulting from observance by the institution of the principle of sound administration.

39 In particular, the principle of sound administration requires the Commission to balance the interests in question, and in particular those of individuals. In the present case, observance of that principle required the Commission to conduct an inquiry into the alleged irregularities committed by NEC and the effects that its conduct might have on the image of the undertaking.

40 The Commission's argument that protection of the image of the PHARE programme obliged it to take an immediate measure without ordering an inquiry cannot be accepted either. Even if such protection required an immediate measure, the Commission could have sent to the programme coordinators in other countries a simple communication of provisional information and then made investigations. It is clear that the content of the fax at issue is particularly harsh with regard to an undertaking which had received no warning at all.

- 41 Furthermore, in Case T-73/95 *Oliveira v Commission* [1997] ECR II-381, the Court of First Instance held that ‘the Commission’s obligation to apply due diligence in the decision-making process and to adopt its decision on the basis of all information which might have a bearing on the result derives in particular from the principles of sound administration, legality and equal treatment’ (paragraph 32). The Court finds that, even if the present case is different from that at issue in *Oliveira*, the principle of sound administration imposed on the Commission the same duties to check information which might have a bearing on the result, in that the fax at issue accused the applicants of grave irregularities and could have had serious financial consequences for them (see also Case T-81/95 *Interhotel v Commission* [1997] ECR II-1265, paragraph 63).
- 42 Finally, even if the legislation applicable does not give tenderers the right to be heard by the Commission before it takes steps to ensure that the resources for PHARE projects are economically managed, it is settled case-law that respect for the rights of the defence in any proceeding initiated against a person and liable to culminate in a measure adversely affecting that person is a fundamental principle of Community law which must be guaranteed, even in the absence of any specific rules concerning the proceeding in question. That principle requires that any person who may be adversely affected by the adoption of a decision should be placed in a position in which he may effectively make known his views on the evidence against him which the Commission has taken as the basis for its decision (see, *inter alia*, Case T-450/93 *Lisrestal and Others v Commission* [1994] ECR II-1177, paragraph 42, confirmed by Case C-32/95 P *Commission v Lisrestal and Others* [1996] ECR I-5373, paragraph 21).
- 43 However, in this case, the fax at issue referred expressly to the applicants. Even if it does not formally constitute a decision against the applicants, it is clear that its content concerned them directly and accused them of irregularities, which, if confirmed, could have had serious financial consequences for them.

- 44 In order to guarantee respect for the principle of sound administration, the Commission, after sending a letter of information to the coordinators of the PHARE programme, should therefore have opened an inquiry into the content of the report from the representative of the Hungarian Government and the coordinator responsible for the project in Hungary, asking the applicants to submit their observations on the facts alleged.
- 45 It must therefore be concluded that the Commission was in breach of the principle of sound administration in sending the fax at issue.
- 46 The applicants also claim, in substance, that the Commission's delay in rectifying the fax at issue constitutes a breach of the principle of sound administration. They rely, in that regard, on the judgment of the Court of First Instance in Case T-514/93 *Cobrecaf and Others v Commission* [1995] ECR II-621, in which the Court considered that the Commission had committed an administrative fault of a kind for which it incurred non-contractual liability in failing to rectify, within a reasonable time, the manifest error which it had accepted that it had made (paragraph 70). However, in that case, the Commission had accepted that it had made an error and had formally rectified it only 15 months after discovering it, whereas, in the present case, the Commission immediately changed its opinion after finding that there was no reason to doubt NEC's sound financial position. It follows that, although the Commission was guilty of a manifest lack of care in not ordering an inquiry as soon as it received the report which prompted the fax at issue, the fact that it did not rectify that fax until one year after it was sent is not open to the same criticism, since the rectification was made as soon as the Commission realised its mistake.
- 47 It must therefore be concluded that the Commission was not in breach of its obligations under the principle of sound administration in not rectifying the fax at issue until one year after it was sent.

48 Furthermore, the applicants claim that that rectification, in that it ‘never had any effect’, constitutes a breach of the principle of the protection of legitimate expectations.

49 It is settled case-law that any economic operator to whom an institution has given justified hopes may rely on the principle of the protection of legitimate expectations (Joined Cases T-466/93, T-469/93, T-473/93, T-474/93 and T-477/93 *O’Dwyer and Others v Council* [1995] ECR II-2071, paragraph 48). It is clear that the desired ‘effect’ of the rectification made by the Commission could not be the securing of a contract in the context of the PHARE programme, since contracts are awarded after a comparative assessment of tenders by the recipient State and no tenderer is entitled to be awarded contracts automatically. It follows that the applicants cannot rely on the breach of the principle of the protection of legitimate expectations and that this argument of theirs must be dismissed as manifestly unfounded.

### Real and certain damage

50 Although the applicants claim that the damage suffered by NEC is threefold — the loss suffered, loss of profit and the harm caused to its image —, in quantifying that damage they only rely on the fact that NEC could have obtained contracts if the Commission had not adopted the unlawful conduct complained of, and thus the existence of a loss of profit and harm to its reputation. Where they refer to the contract of EUR 800 000 which NEC should have secured in the Czech Republic shortly after the fax at issue was sent, they state clearly that it was a contract which they believed they were very likely to secure but for which they had not yet submitted a tender. The Court must therefore consider only the loss of profit suffered by NEC and the harm to its image.

- 51 As regards the damage resulting from the loss of profit, it is sufficient to note that this presupposes that NEC was entitled to be awarded the PHARE project contracts in which it showed an interest. It must be observed in that regard that, in a public tendering system such as PHARE, the contracting authority has a broad discretion in deciding to award a contract. Consequently, the tenderer cannot be certain of securing the contract, even if he is proposed by the evaluation committee (Case T-13/96 *TEAM v Commission* [1998] ECR II-4073, paragraph 76). *A fortiori*, the tenderer is not certain of securing the contract merely because he has submitted his tender, or even because he has shown some interest. Furthermore, the applicants have not proved that they were excluded from any contract even if they were, as they claim, the tenderer who best met the terms of reference.
- 52 It follows that, in this case, the damage resulting from the loss of profit claimed by the applicants is neither real nor certain.
- 53 As regards the damage resulting from the harm to NEC's image, it is certain that a fax with the content of that of 12 April 1995 may, of itself, seriously harm the image of the company, which had clearly extended its business in the context of the PHARE programme over the years before the fax at issue was sent, thereby building up a reputation. It must be noted in that regard that NEC was created exclusively for the purpose of performing PHARE projects. It follows that the Commission, by stating that it was no longer in a position to satisfy the conditions of financial reliability required to be part of the programme, harmed its image so seriously that its entire business was affected.
- 54 Given the circumstances of this case, it is also necessary to acknowledge the non-material damage suffered by Mr Brown. First, it is common ground that Mr Brown, in his capacity as manager of NEC, tried many times to salvage the company's reputation in the eyes of the PHARE programme coordinators and of the Commission itself, without obtaining any clarification from the Commission until 29 January 1996, the date of his meeting with the person responsible for

horizontal programmes in DG IA. In those circumstances, the Commission placed him in a position of uncertainty and forced him to make fruitless efforts to change the situation brought about by the Commission<sup>e</sup> itself (see Case T-203/96 *Embassy Limousines and Services v Parliament* [1998] ECR II-4239, paragraph 108).

55 Second, given that Mr Brown owns 99% of the shares in NEC, the harm to the reputation of the company has necessarily had serious repercussions on his reputation as well. In that regard, it is important to point out that NEC had initially been registered as an individual firm in whose name Mr Brown carried out PHARE projects. The reputation of the second applicant is thus closely linked to that of NEC.

56 It follows that the fax at issue also harmed the reputation of Mr Brown.

#### Causal link

57 According to settled case-law, the burden of proving a causal link between a fault committed by an institution and the damage pleaded falls on the applicants (see Joined Cases C-363/88 and C-364/88 *Finsider and Others v Commission* [1992] ECR I-359, paragraph 25).

58 The applicants claim that the fact of no longer securing contracts can only be the result of an error of assessment of NEC's financial reliability.

- 59 There is no doubt that the message contained in the fax at issue could produce no other result than that of diminishing the company's reputation in the eyes of the PHARE programme coordinators. The repercussions for the image of NEC amongst the coordinators of that programme are, in fact, an inevitable and immediate consequence of such a message (see order of the President of the Court of First Instance of 10 February 1999 in Case T-211/98 R *Willeme v Commission* [1999] ECR-SC II-57, paragraph 42, confirmed by order of the President of the Court of Justice of 25 March 1999 in Case C-65/99 P(R) *Willeme v Commission* [1999] ECR I-1857, paragraph 60).
- 60 It is also apparent from the foregoing that it is the conduct of the Commission which caused damage to Mr Brown's reputation.
- 61 It follows that it is established that there was a causal link between the damage suffered by the applicants and the Commission's conduct.

### The amount of damages

- 62 In their application, the applicants submit that the damage suffered by NEC can be quantified at EUR 1 300 000, consisting of:
- EUR 1 000 000 for the contracts which it could have secured between 12 April 1995, the date when the fax at issue was sent, and the date when the present proceedings were initiated. The applicants explain, in that regard, that this estimate of the damage suffered by NEC was established on the basis

of the contracts that it had secured before that first date and of the contract for EUR 800 000 which it was certain of securing in the Czech Republic, including interest;

— EUR 300 000 for the harm to its reputation.

- 63 The second applicant seeks EUR 100 000 as compensation for non-material damage suffered.
- 64 In their reply, the applicants, besides confirming the evaluation of the non-material damage suffered by Mr Brown, claim payment of EUR 4 000 000 in damages to NEC, to take account of the long period which has elapsed between 12 April 1995, the date on which the fax at issue was sent, and 5 August 1997, the date on which the present proceedings were initiated, and of the fact that the rectification made by the Commission has been ineffective. They state, in that regard, that the damage suffered by NEC has worsened, since its loss in turnover over those years has risen to EUR 3 000 000. In the alternative, the applicants ask for a committee of experts to be appointed in order to evaluate the damage suffered.
- 65 The Commission contends that an estimate of the turnover which NEC could have achieved from PHARE programme contracts, based on turnover in the past, has no relevance in this case and that the only concrete element is the loss of the contract in the Czech Republic, to a total value of EUR 800 000.
- 66 However, since the value of a contract covers not only profits but also the costs relating to the project, and other expenses and fees, the final loss which NEC has suffered would, none the less, be less than its estimate.

67 Finally, in its rejoinder, the Commission questions the relevance of the applicants' considerations which lead them to raise the amount of damages sought for NEC to EUR 4 000 000, on the ground that it can on no account be held responsible for anything that happened after the date on which it withdrew its 'warning'.

### *Findings of the Court*

68 It has been established that the harm caused by the Commission to the image and reputation of the applicants, which amounted to a fault, is such as to give rise to non-contractual liability on the part of the Community. On the other hand, it has been established that the applicants are not justified in seeking compensation for the pecuniary damage resulting from loss of profit, whether before or after the date on which the rectifying fax was sent, namely 11 April 1996.

69 Moreover, given the circumstances of this case, the Court finds that it is not necessary to appoint a committee of experts to evaluate the non-material damage suffered by the applicants, consisting of harm to their image and reputation, and that payment of EUR 100 000 to NEC and payment of EUR 25 000 to Mr Brown represents fair compensation.

70 As the Court has consistently held, the amount of compensation due must be subject to default interest calculated as from the date of the judgment establishing

the obligation to make good the damage (Joined Cases C-104/89 and C-37/90 *Mulder and Others v Council and Commission* [1992] ECR I-3061, paragraph 35).

- 71 Since the application does not indicate any rate of interest, the rate which it is proper to apply is 4.5% per annum, as from the date of this judgment until actual payment.

### The claim for restoration of reputation

- 72 The applicants also claim that the Court should order the defendant to restore NEC's reputation by sending a letter to all relevant persons in the Commission and in the PHARE management units in central and eastern Europe, setting out the operative part of the present judgment.

- 73 It is an established fact that the Commission sent a rectifying fax to all European Union delegations on 11 April 1996. In those circumstances, this claim of the applicants does not fall to be considered.

## Costs

- 74 Pursuant to Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the defendant has failed in its submissions, it must be ordered to pay its own costs and those of the applicants, in accordance with the applicants' pleadings.

On those grounds,

THE COURT OF FIRST INSTANCE (Fourth Chamber)

hereby:

1. Orders the defendant to pay damages in the amount of EUR 100 000 to New Europe Consulting Ltd and damages in the amount of EUR 25 000 to Michael P. Brown;
2. Orders the amounts of damages to bear default interest at the annual rate of 4.5% from the date of this judgment until actual payment;

3. Orders the defendant to bear its own costs and to pay those of the applicants.

Moura Ramos

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Delivered in open court in Luxembourg on 9 July 1999.

H. Jung

Registrar

R. M. Moura Ramos

President