

Case C-29/99

Commission of the European Communities

v

Council of the European Union

(International agreements — Convention on Nuclear Safety —
Accession decision — Compatibility with the Euratom Treaty —
External competence of the Community —
Articles 30 to 39 of the Euratom Treaty)

Opinion of Advocate General Jacobs delivered on 13 December 2001 . . . I-11225
Judgment of the Court, 10 December 2002 I-11281

Summary of the Judgment

1. *Actions for annulment — Subject-matter — Partial annulment — Condition — Whether contested provisions can be severed — Declaration attached to the Council decision approving the accession of the European Atomic Energy Community to the Nuclear Safety Convention (Euratom Treaty, Art. 146)*

2. *Actions for annulment — Actionable measures — Council decision approving the accession of the European Atomic Energy Community to an international agreement — Absence in the Euratom Treaty of a procedure for seeking a preliminary opinion from the Court — Not relevant (Euratom Treaty, Art. 146)*
3. *International agreements — Council Decision approving the accession of the European Atomic Energy Community to the Nuclear Safety Convention — Obligation for the Council to communicate a complete declaration of its competences (Euratom Treaty, Art. 101(2))*
4. *EAEC — Community competences in the area of nuclear safety — Definition on the basis of a distinction between protection of the health of the general public and the safety of sources of ionising radiation — Excluded*
5. *EAEC — Health protection — Community competences in the fields covered by the Nuclear Safety Convention (Euratom Treaty, Arts 30 to 32, 33, second para., and 37)*

1. It follows from the Court's case-law that partial annulment of a decision is possible if the elements whose annulment is sought may be severed from the remainder of the decision.

legal scope of the provisions on which the Council has already taken a view and therefore would not alter the substance of the contested decision.

As regards the declaration attached to the Council Decision approving the accession of the European Atomic Energy Community to the Nuclear Safety Convention, the elements whose omission would render it unlawful are not, by definition, set out therein and are accordingly separable from its provisions. The annulment of the third paragraph of that declaration for failure to refer to certain articles of the Convention would in no way affect the

In those circumstances, the fact that the declaration is an integral part of the contested decision does not preclude annulment of that declaration in so far as it fails to refer to the Community's competences in the fields covered by the Convention.

(see paras 45-47)

2. The fact that the Euratom Treaty does not provide that the Court may rule by way of an opinion on the compatibility with that Treaty of international agreements which the Community is planning to conclude does not preclude the Court from being asked to review the legality of an act approving a decision to accede to an international convention in an action for annulment under Article 146 of the Euratom Treaty.

(see para. 54)

Article 30(4)(iii) of the Nuclear Safety Convention, under which, when becoming party to the Convention, an organisation which has the right is to communicate to the depositary a declaration indicating which States are its members, which articles of the convention apply to it, and the extent of its competence in the field covered by those articles must, in the interest of the other contracting parties, be interpreted to mean that the declaration of competences under that provision must be complete. It follows that the Council was, under Community law, required to attach a complete declaration of competences to its decision approving accession to the Convention.

3. The legal effect of approval by the Council of accession by the European Atomic Energy Community to an international convention, in accordance with the second paragraph of Article 101 of the Euratom Treaty, is to authorise the Commission to conclude that convention within the framework established by the Council decision. When it approves accession to an international convention without any reservation, the Council must respect the conditions for accession laid down by that convention, since an accession decision which did not comply with those conditions would be in breach of the Community's obligations from the moment it entered into force. In addition, it follows from the duty of sincere cooperation between the institutions that the Council decision must enable the Commission to comply with international law.

(see paras 67-71)

4. It is not appropriate, in order to define the Community's competences in the area of nuclear safety, to draw an artificial distinction between the protection of the health of the general public and the safety of sources of ionising radiation.

(see para. 82)

5. As regards the competences of the European Atomic Energy Community in the fields covered by Articles 7, 14, 16(1) and (3) and 17 to 19 of the Nuclear Safety Convention, it is clear from Articles 30 to 32 of the Euratom Treaty that that Community possesses legislative competence to establish, for the purpose of health protection, an authorisation system which must be applied by the Member States. Such a legislative act constitutes a measure supplementing the basic standards referred to in Article 30 of the Euratom Treaty. Under the first paragraph of Article 33 of that treaty, the Member States are required to lay down the appropriate provisions, whether by legislation, regulation or administrative action, to ensure compliance with the basic standards established. In accordance with the second paragraph of that article, the Commission has the competence to make 'appropriate recommendations for harmonising the provisions applicable in this field in the Member States'. The Member States are required to communicate those provisions to the Commission pursuant to the third paragraph of Article 33. Under Article 37 of the Euratom Treaty, the Community possesses competence as regards 'any plan for the disposal of radioactive waste in whatever form' if the implementation of that plan is liable to result in the

radioactive contamination of the water, soil or airspace of another Member State.

It follows that Article 7, which requires each contracting party to establish and maintain in force a legislative and regulatory framework to govern the safety of nuclear installations, Article 14, on the assessment and verification of the safety of nuclear installations, Article 16(1) and (3), on emergency preparedness, and Articles 17 to 19, on the siting, design and construction, and operation of nuclear installations, respectively, of the Nuclear Safety Convention should have been mentioned in the paragraph of the declaration indicating the Community's competences attached to the Council Decision approving the accession of the European Atomic Energy Community to the Nuclear Safety Convention.

(see paras 89, 93-94, 103)