

JUDGMENT OF THE COURT

8 July 1999 *

In Case C-189/97,

European Parliament, represented by Gregorio Garzón Clariana, Jurisconsult, Christian Pennera, Head of Division in its Legal Service, and Hans Krück, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the General Secretariat of the European Parliament, Kirchberg,

applicant,

v

Council of the European Union, represented by Jean-Paul Jacqué, Director in its Legal Service, and John Carbery and Félix van Craeynest, Legal Advisers in the same service, acting as Agents, with an address for service in Luxembourg at the office of Alessandro Morbilli, Manager of the Legal Affairs Directorate of the European Investment Bank, 100 Boulevard Konrad Adenauer,

defendant,

supported by

* Language of the case: French.

Kingdom of Spain, represented by Rosario Silva de Lapuerta, Abogado del Estado, acting as Agent, with an address for service in Luxembourg at the Spanish Embassy, 4-6 Boulevard E. Servais,

intervener,

APPLICATION for the annulment of Council Regulation (EC) No 408/97 of 24 February 1997 on the conclusion of an Agreement on cooperation in the sea fisheries sector between the European Community and the Islamic Republic of Mauritania and laying down provisions for its implementation (OJ 1997 L 62, p. 1),

THE COURT,

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

Advocate General: J. Mischo,

Registrar: L. Hewlett, Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 2 February 1999,

after hearing the Opinion of the Advocate General at the sitting on 11 March 1999,

gives the following

Judgment

- 1 By application lodged at the Court Registry on 16 May 1997, the European Parliament brought an action under Article 173 of the EC Treaty (now, after amendment, Article 230 EC) for the annulment of Council Regulation (EC) No 408/97 of 24 February 1997 on the conclusion of an Agreement on cooperation in the sea fisheries sector between the European Community and the Islamic Republic of Mauritania and laying down provisions for its implementation (OJ 1997 L 62, p. 1; 'the contested regulation').
- 2 By order of the President of the Court of 2 October 1997, the Kingdom of Spain was given leave to intervene in support of the form of order sought by the Council.
- 3 On 18 January 1996, the Islamic Republic of Mauritania withdrew from the agreement on fishing off the coast of Mauritania which bound it to the European Economic Community. The two parties then entered into negotiations, which culminated on 20 June 1996 in the signature of a new agreement ('the fisheries agreement with Mauritania').
- 4 That agreement, concluded for a period of five years from 1 August 1996, enables European Community fishermen to fish in waters under the sovereignty or jurisdiction of the Islamic Republic of Mauritania. Article 7 of the agreement provides for financial compensation for Mauritania and for financial support for

that country at the Community's expense. Under Article 2(1) of the Protocol setting out fishing opportunities and the financial compensation and financial contributions for the period from 1 August 1996 to 31 July 2001, annexed to the fisheries agreement with Mauritania:

‘The total financial compensation provided for in Article 7 of the Agreement shall be set for the period referred to in Article 1 of this Protocol at ECU 266.8 million. This financial compensation shall be payable in five annual instalments as follows:

— Year 1: ECU 55 160 000

— Year 2: ECU 54 360 000

— Year 3: ECU 53 560 000

— Year 4: ECU 52 160 000

— Year 5: ECU 51 560 000.’

5 On a proposal from the Commission, the Council adopted Decision 96/731/EC of 26 November 1996 on the conclusion of an Agreement in the form of an Exchange of Letters concerning the provisional application of the Agreement on

cooperation in the sea fisheries sector between the European Community and the Islamic Republic of Mauritania (OJ 1996 L 334, p. 16).

- 6 The Commission also sent to the Council, on 9 September 1996, a Proposal for a Council regulation on the conclusion of an Agreement on cooperation in the sea fisheries sector between the European Community and the Islamic Republic of Mauritania and laying down provisions for its implementation (OJ 1996 C 352, p. 5). That proposal, based on the EC Treaty 'and in particular Articles 43 and the second paragraph of Article 228(3) thereof', involved obtaining the Parliament's assent.
- 7 On 13 November 1996, the Council decided to consult the Parliament on that proposal for a regulation. However, by basing that request for consultation on Article 43 of the Treaty (now, after amendment, Article 37 EC) in conjunction with Article 228(2) and the first subparagraph of Article 228(3) (now, after amendment, Article 300(2) EC and the first subparagraph of Article 300(3) EC), the Council showed that it did not consider itself bound to obtain anything more than the Parliament's opinion.
- 8 The relevant committee of the Parliament approved the proposal for a regulation, subject to a return to the legal basis proposed by the Commission. It maintained, in particular, that the fisheries agreement with Mauritania had important budgetary implications within the meaning of the second subparagraph of Article 228(3) of the Treaty, and that its conclusion therefore required the Parliament's assent.
- 9 On 28 November 1996, the Parliament adopted its Decision on the proposal for a Council regulation on the conclusion of an Agreement on cooperation in the sea fisheries sector between the European Community and the Islamic Republic of Mauritania and laying down provisions for its implementation (OJ 1996 C 380, p. 19). Substituting the second subparagraph of Article 228(3) of the Treaty for the legal basis cited by the Council, the Parliament gave its assent to the adoption of the contested regulation.

- 10 On 24 February 1997, the Council adopted the contested regulation, which is based on the Treaty and in particular on Article 43 thereof, in conjunction with Article 228(2) and the first subparagraph of Article 228(3). It cites 'the opinion of the European Parliament'.
- 11 Claiming an infringement of its prerogatives, the Parliament raises two pleas in law in support of its action. The first alleges infringement of the second subparagraph of Article 228(3) of the Treaty in that, since the fisheries agreement with Mauritania had important budgetary implications for the Community, the contested regulation should have been concluded on the basis of that article, while the second alleges infringement of Article 190 of the EC Treaty (now Article 253 EC), in that the Council failed to state the reasons why it changed the legal basis proposed by the Commission.
- 12 The Council, supported by the Spanish Government, considers the action to be inadmissible in so far as it is based on infringement of Article 190 of the Treaty, since the Parliament has failed to provide any relevant indication as to how that infringement was such as to impair its prerogatives. It further argues that the first subparagraph of Article 228(3) of the Treaty constitutes the appropriate legal basis for the adoption of the contested regulation, since the fisheries agreement with Mauritania does not have important budgetary implications within the meaning of the second subparagraph of Article 228(3).

Admissibility

- 13 Pursuant to the third paragraph of Article 173 of the Treaty, the Parliament may bring an action before the Court for the annulment of an act of another institution provided that it does so in order to protect its prerogatives. The Court has held that that condition is satisfied where the Parliament indicates in an appropriate manner the substance of the prerogative to be safeguarded and how that prerogative is allegedly infringed (see, in particular, Case C-303/94 *Parliament v Council* [1996] ECR I-2943, paragraph 17).

- 14 By virtue of those criteria, the Court has hitherto declared actions by the Parliament inadmissible to the extent to which they were founded on infringement of Article 190 of the Treaty. In alleging that the contested provisions were inadequately or incorrectly reasoned for the purposes of that article, the Parliament failed to provide any relevant indication as to how that infringement, assuming that it had been committed, was such as to impair its own prerogatives (Case C-156/93 *Parliament v Commission* [1995] ECR I-2019, paragraph 11; *Parliament v Council*, cited above, paragraph 18).
- 15 In this case, however, the Parliament considers that it has explained in what way infringement of Article 190 of the Treaty is capable of infringing its prerogatives by arguing that the change of legal basis by the Council without giving reasons had the effect of altering the conditions of its involvement in the procedure for concluding the fisheries agreement with Mauritania.
- 16 The Parliament thus confines itself to arguing that the Council's amendment of the legal basis proposed by the Commission has affected its powers. It does not, however, state how the fact that the contested regulation does not contain any specific reasoning in that respect could in itself impair its prerogatives.
- 17 It follows that, in so far as it is based on infringement of Article 190 of the Treaty, the action is inadmissible.

Substance

- 18 Article 228(3) of the Treaty provides that:

‘The Council shall conclude agreements after consulting the European Parliament, except for the agreements referred to in Article 113(3), including cases where the agreement covers a field for which the procedure referred to in Article 189b or that referred to in Article 189c is required for the adoption of internal rules....

By way of derogation from the previous subparagraph, agreements referred to in Article 238, other agreements establishing a specific institutional framework by organising cooperation procedures, agreements having important budgetary implications for the Community and agreements entailing amendment of an act adopted under the procedure referred to in Article 189b shall be concluded after the assent of the European Parliament has been obtained.

...’

- 19 The Parliament argues first of all that the Treaty on European Union has substantially increased its involvement in the conclusion of international agreements, especially by enlarging the scope of the assent procedure. Its position is therefore closer to that of the parliaments of the Member States, whose powers in the matter should serve as a frame of reference for the interpretation of the second subparagraph of Article 228(3) of the Treaty.
- 20 The Parliament maintains, secondly, that by requiring its assent for the conclusion of agreements with important budgetary implications, that provision is intended to safeguard its internal powers as a constituent part of the budgetary authority.

In the light of that objective, it proposes that, in determining whether an agreement has important budgetary implications, the criteria to be taken into account should include the fact that expenditure under the agreement is spread over several years, the relative share of such expenditure in relation to expenditure of the same kind under the budget heading concerned, and the rate of increase in expenditure under the agreement in question in relation to the financial section of the previous agreement.

- 21 The Parliament goes on to state that the fisheries agreement with Mauritania undoubtedly satisfies those three criteria. First, it makes provision for financial compensation split into five annual tranches, the amounts of which vary between ECU 51 560 000 and ECU 55 160 000. Second, that financial compensation represents, for each of the years in question, more than 20% of the appropriations entered under the budget heading concerned (heading B7-8000, 'International fisheries agreements'). Finally, the financial outlay in favour of the Islamic Republic of Mauritania has increased more than fivefold in relation to the previous agreement, or has more than doubled if only the year 1995, which included exceptional supplementary compensation, is used as the point of reference.
- 22 The Council, supported by the Spanish Government, contends that the second subparagraph of Article 228(3) of the Treaty must be strictly interpreted, since it constitutes a derogation from the rule laid down by the first subparagraph, whereby the Council is to conclude agreements after consulting the Parliament.
- 23 The Council considers, in that respect, that the criteria put forward by the Parliament are inoperative. First, the fact that expenditure is spread over several years is not decisive, because the budget is, by definition, annual. Nor is the extent of the financial impact of the agreement in relation to expenditure of the same kind under the budget heading in question significant, given that budgetary nomenclature is capable of being altered under the budget procedure and that the amount of available appropriations may always be adapted by means of transfers or supplementary budgets. Finally, the rate of increase in expenditure is not very revealing, since a high rate may very well correspond to minimal expenditure.

- 24 The Council therefore maintains that, in order to assess whether an agreement has important budgetary implications, it is necessary to refer to the overall budget of the Community, and that it did not act in a manifestly erroneous and arbitrary manner in seeking merely an opinion of the Parliament for a fisheries agreement under which annual expenditure amounted to 0.07% of that budget.
- 25 In the context of the organisation of powers in the Community, the choice of a legal basis for a measure must be based on objective factors which are amenable to judicial review (see, in particular, Case 45/86 *Commission v Council* [1987] ECR 1493, paragraph 11; Case C-22/96 *Parliament v Council* [1998] ECR I-3231, paragraph 23; and Joined Cases C-164/97 and C-165/97 *Parliament v Council* [1999] ECR I-1139, paragraph 12).
- 26 In order to assess whether an agreement has important budgetary implications within the meaning of the second subparagraph of Article 228(3) of the Treaty, the Council has referred to the overall budget of the Community. It should be pointed out, however, that appropriations allocated to external operations of the Community traditionally account for a marginal fraction of the Community budget. Thus, in 1996 and 1997, those appropriations, grouped under subsection B7, 'External operations', barely exceeded 5% of the overall budget. In those circumstances, a comparison between the annual financial cost of an agreement and the overall Community budget scarcely appears significant, and to apply such a criterion might render the relevant wording of the second subparagraph of Article 228(3) of the Treaty wholly ineffective.
- 27 The Council maintains, however, that the criterion upon which it relies does not have the effect of excluding the use of that legal basis altogether. In support of that view, it cites the Agreement on cooperation in the sea fisheries sector between the European Community and the Kingdom of Morocco (OJ 1997 L 30, p. 5), the financial implications of which, amounting to 0.15% of the Community budget annually, it acknowledged were important.

- 28 The Council has not, however, explained in any way how such a small percentage could render the financial implications of an agreement important, when the scarcely more insignificant figure of 0.07% is said to be insufficient in that respect.
- 29 As regards the three criteria proposed by the Parliament, the Court finds that the first of them may indeed contribute towards characterising an agreement as having important budgetary implications. Relatively modest annual expenditure may, over a number of years, represent a significant budgetary outlay.
- 30 The second and third criteria put forward by the Parliament do not, however, appear to be relevant. In the first place, budget headings, which can moreover be altered, vary substantially in importance, so that the relative share of the expenditure under the agreement may be large in relation to appropriations of the same kind entered under the budget heading concerned, even though the expenditure in question is small. Moreover, the rate of increase in expenditure under the agreement may be high in comparison with that arising from the previous agreement, whilst the amounts involved may still be small.
- 31 As has been pointed out in paragraph 26 of this judgment, a comparison between the annual financial cost of an international agreement and the overall budget scarcely appears significant. However, comparison of the expenditure under an agreement with the amount of the appropriations designed to finance the Community's external operations, grouped under subsection B7 of the budget, enables that agreement to be set in the context of the budgetary outlay approved by the Community for its external policy. That comparison thus offers a more appropriate means of assessing the financial importance which the agreement actually has for the Community.
- 32 Where, as in this case, a sectoral agreement is involved, the above analysis may, in appropriate cases, and without excluding the possibility of taking other factors

into account, be complemented by a comparison between the expenditure entailed by the agreement and the whole of the budgetary appropriations for the sector in question, taking the internal and external aspects together. Such a comparison makes it possible to determine, from another angle and in an equally consistent context, the financial outlay approved by the Community in entering into that agreement. However, since the sectors vary substantially in terms of their budgetary importance, that examination cannot result in the financial implications of an agreement being found to be important where they do not represent a significant share of the appropriations designed to finance the Community's external operations.

- 33 In this case, the fisheries agreement with Mauritania was concluded for five years, which is not a particularly lengthy period. Moreover, the financial compensation for which it makes provision is split into annual tranches the amounts of which vary between ECU 51 560 000 and ECU 55 160 000. In respect of previous budgetary years, those amounts, whilst exceeding 5% of expenditure on fisheries, represent barely more than 1% of the whole of the payment appropriations allocated for external operations of the Community, a proportion which, whilst far from negligible, can scarcely be described as important. In those circumstances, if the Council had taken that comparison into account, it would also have been entitled to take the view that the fisheries agreement with Mauritania did not have important budgetary implications for the Community within the meaning of the second subparagraph of Article 228(3) of the Treaty.
- 34 Furthermore, the scope of that provision, as set out in the Treaty, cannot, despite what the Parliament suggests, be affected by the extent of the powers available to national parliaments when approving international agreements with financial implications.
- 35 It follows from all the foregoing considerations that the Council was right to conclude the fisheries agreement with Mauritania on the basis, *inter alia*, of the first subparagraph of Article 228(3) of the Treaty. This action must therefore be dismissed.

Costs

- ³⁶ Under Article 69(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 Council has applied for costs and the Parliament has been unsuccessful, the Parliament must be ordered to pay the costs. In accordance with the first subparagraph of Article 69(4) of the Rules of Procedure, the Spanish Government, which has intervened in the dispute, must bear its own costs.

On those grounds,

THE COURT

hereby:

1. Dismisses the application;
2. Orders the European Parliament to pay the costs;

3. Orders the Kingdom of Spain to bear its own costs.

Rodríguez Iglesias	Kapteyn	Puissochet
Hirsch		Jann
Moitinho de Almeida	Gulmann	Murray
Edward		Ragnemalm
Sevón	Wathelet	Schintgen

Delivered in open court in Luxembourg on 8 July 1999.

R. Grass

Registrar

G.C. Rodríguez Iglesias

President