

COMMISSION v COUNCIL

JUDGMENT OF THE COURT

10 December 2002 \*

In Case C-29/99,

**Commission of the European Communities**, represented by T.F. Cusack and L. Ström, acting as Agents, with an address for service in Luxembourg,

applicant,

v

**Council of the European Union**, represented by S. Marquardt, F. Anton and A.P. Feeney, acting as Agents, with an address for service in Luxembourg,

defendant,

APPLICATION for annulment in part of the Council Decision of 7 December 1998 approving the accession of the European Atomic Energy Community to the Nuclear Safety Convention,

\* Language of the case: English.

THE COURT,

composed of: G.C. Rodríguez Iglesias, President, J.-P. Puissochet, R. Schintgen, C.W.A. Timmermans (Presidents of Chambers), C. Gulmann, D.A.O. Edward, A. La Pergola, P. Jann, V. Skouris, F. Macken, N. Colneric (Rapporteur), S. von Bahr and J.N. Cunha Rodrigues, Judges,

Advocate General: F.G. Jacobs,

Registrar: D. Louterman-Hubeau, Head of Division,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 5 June 2001,

after hearing the Opinion of the Advocate General at the sitting on 13 December 2001,

gives the following

**Judgment**

- 1 By application lodged at the Court Registry on 5 February 1999, the Commission of the European Communities brought an action under Article 146 of the Euratom Treaty for partial annulment of the unpublished Council Decision of

7 December 1998 approving the accession of the European Atomic Energy Community to the Nuclear Safety Convention (hereinafter ‘the contested decision’).

- <sup>2</sup> Specifically, the Commission requests annulment of the third paragraph of the declaration (hereinafter ‘the declaration’) made by the European Atomic Energy Community (hereinafter ‘the Community’) according to the provisions of Article 30(4)(iii) of the Nuclear Safety Convention, which is attached to the decision, on the ground that, by limiting the scope of that paragraph, the Council sought to establish that the Community’s competence in the fields covered by the Convention is limited to Articles 15 and 16(2) thereof and does not extend to the fields covered by Articles 1 to 5, 7, 14, 16(1) and (3) and 17 to 19 of the Convention.

## **The Convention on Nuclear Safety**

- <sup>3</sup> The Convention on Nuclear Safety (hereinafter ‘the Convention’) was adopted on 17 June 1994 by a diplomatic conference convened by the International Atomic Energy Agency (hereinafter ‘the Agency’) and opened for signature on 20 September 1994. It entered into force on 24 October 1996. By 15 April 2002, 53 States, including all the Member States of the Community, had ratified it.

- <sup>4</sup> Article 1 of the Convention sets out its objectives as follows:

- ‘(i) to achieve and maintain a high level of nuclear safety worldwide through the enhancement of national measures and international cooperation including, where appropriate, safety-related technical cooperation;

(ii) to establish and maintain effective defences in nuclear installations against potential radiological hazards in order to protect individuals, society and the environment from harmful effects of ionising radiation from such installations;

(iii) to prevent accidents with radiological consequences and to mitigate such consequences should they occur.'

<sup>5</sup> Article 2 of the Convention defines the terms 'nuclear installation', 'regulatory body' and 'licence'. According to Article 3 of the Convention, it is to apply to the safety of nuclear installations.

<sup>6</sup> Article 4 of the Convention provides that each contracting party is to take, within the framework of its national law, the legislative, regulatory and administrative measures and other steps necessary for implementing its obligations under the Convention. Article 5 of the Convention requires each contracting party to submit, prior to each review meeting, a report on the measures it has taken to implement the obligations of the Convention.

<sup>7</sup> Article 7(1) of the Convention requires each contracting party to establish and maintain a legislative and regulatory framework to govern the safety of nuclear installations. Under Article 7(2) of the Convention, that framework is to provide for (i) the establishment of applicable national safety requirements and regulations, (ii) a system of licensing with regard to nuclear installations, (iii) a system of regulatory inspection and assessment of those installations, and (iv) the enforcement of applicable regulations and of the terms of licences.

8 Article 14 of the Convention states that the contracting parties are to take the appropriate steps to ensure that:

‘(i) ... safety assessments are carried out before the construction and commissioning of a nuclear installation and throughout its life....

(ii) verification... is carried out to ensure that the physical state and the operation of a nuclear installation continue to be in accordance with its design, applicable national safety requirements and operational limits and conditions.’

9 Article 15 of the Convention, entitled ‘Radiation protection’, is worded as follows:

‘Each contracting party shall take the appropriate steps to ensure that in all operational states, the radiation exposure to the workers and the public caused by a nuclear installation shall be kept as low as reasonably achievable and that no individual shall be exposed to radiation doses which exceed prescribed national dose limits.’

10 Article 16 of the Convention, entitled ‘Emergency preparedness’, provides:

‘1. Each contracting party shall take the appropriate steps to ensure that there are on-site and off-site emergency plans that are routinely tested for nuclear installations and cover the activities to be carried out in the event of an emergency.

For any new nuclear installation, such plans shall be prepared and tested before it commences operation above a low power level agreed by the regulatory body.

2. Each contracting party shall take the appropriate steps to ensure that, in so far as they are likely to be affected by a radiological emergency, its own population and the competent authorities of the States in the vicinity of the nuclear installation are provided with appropriate information for emergency planning and response.

3. Contracting parties which do not have a nuclear installation on their territory, in so far as they are likely to be affected in the event of a radiological emergency at a nuclear installation in the vicinity, shall take the appropriate steps for the preparation and testing of emergency plans for their territory that cover the activities to be carried out in the event of such an emergency.'

<sup>11</sup> Articles 17 to 19 of the Convention contain specific obligations concerning the safety of installations.

<sup>12</sup> Article 17 of the Convention, entitled 'Siting', provides that each contracting party is to take the appropriate steps to ensure that appropriate procedures are established and implemented:

'(i) for evaluating all relevant site-related factors likely to affect the safety of a nuclear installation for its projected lifetime;

- (ii) for evaluating the likely safety impact of a proposed nuclear installation on individuals, society and the environment;
- (iii) for re-evaluating as necessary all relevant factors referred to in subparagraphs (i) and (ii) so as to ensure the continued safety acceptability of the nuclear installation;
- (iv) for consulting contracting parties in the vicinity of a proposed nuclear installation, in so far as they are likely to be affected by that installation and, on request, providing the necessary information to such contracting parties, in order to enable them to evaluate and make their own assessment of the likely safety impact on their own territory of the nuclear installation.'

13 Under Article 18 of the Convention, entitled 'Design and construction', contracting parties are to take the appropriate steps to ensure that the design and construction of a nuclear installation provide for several reliable levels and methods of protection (defence in depth) against the release of radioactive materials, that the technologies incorporated are proven by experience or qualified by testing or analysis, and that the design allows for reliable, stable and easily manageable operation.

14 Under Article 19 of the Convention, entitled 'Operation', the contracting parties are to ensure that:

- '(i) the initial authorisation to operate a nuclear installation is based on an appropriate safety analysis and a commissioning programme...;

- (ii) operational limits and conditions... are defined and revised as necessary...;
- (iii) operation, maintenance, inspection and testing of a nuclear installation are conducted in accordance with approved procedures;
- (iv) procedures are established for responding to anticipated operational occurrences and to accidents;
- (v) necessary engineering and technical support in all safety-related fields is available...;
- (vi) incidents significant to safety are reported...;
- (vii) programmes to collect and analyse operating experience are established...;
- (viii) the generation of radioactive waste... is kept to the minimum practicable...’

15 Article 30(4) of the Convention states that:

- (i) This convention shall be open for signature or accession by regional organisations of an integration or other nature, provided that any such organisation is constituted by sovereign States and has competence in respect of the negotiation, conclusion and application of international agreements in matters covered by this convention.
- (ii) In matters within their competence, such organisations shall, on their own behalf, exercise the rights and fulfil the responsibilities which this convention attributes to States parties.
- (iii) When becoming party to this convention, such an organisation shall communicate to the depositary, referred to in Article 34, a declaration indicating which States are members thereof, which articles of this convention apply to it, and the extent of its competence in the field covered by those articles.
- (iv) Such an organisation shall not hold any vote additional to those of its Member States.'

### **Community law**

16 According to the preamble to the Euratom Treaty, its signatories were '[a]nxious to create the conditions of safety necessary to eliminate hazards to the life and health of the public'.

17 Under Article 2 of the Euratom Treaty:

'In order to perform its task, the Community shall, as provided in this Treaty:

...

(b) establish uniform safety standards to protect the health of workers and of the general public and ensure that they are applied;

...

(e) make certain, by appropriate supervision, that nuclear materials are not diverted to purposes other than those for which they are intended;

...

(h) establish with other countries and international organisations such relations as will foster progress in the peaceful uses of nuclear energy.'

18 Title II of the Euratom Treaty, entitled 'Provisions for the encouragement of progress in the field of nuclear energy', includes a Chapter 3 entitled 'Health and safety', which consists of Articles 30 to 39.

19 Article 30 of the Euratom Treaty is worded as follows:

'Basic standards shall be laid down within the Community for the protection of the health of workers and the general public against the dangers arising from ionising radiations.'

The expression "basic standards" means:

(a) maximum permissible doses compatible with adequate safety;

(b) maximum permissible levels of exposure and contamination;

(c) the fundamental principles governing the health surveillance of workers.'

20 Article 31 of the Euratom Treaty defines the procedure for working out and adopting those basic standards.

- 21 Article 32 of the Euratom Treaty provides that, at the request of the Commission or of a Member State, those basic standards may be revised or supplemented in accordance with the same procedure.
- 22 On the basis of Articles 31 and 32 of the Euratom Treaty, the Council adopted Directive 96/29/Euratom of 13 May 1996 laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionising radiation (OJ 1996 L 159, p. 1). That directive provides, *inter alia*, that the Member States are required to submit certain practices involving a hazard from ionising radiation to a system of reporting and prior authorisation and to ensure the radiation protection of the population in normal circumstances.
- 23 The first to third paragraphs of Article 33 of the Euratom Treaty state:

‘Each Member State shall lay down the appropriate provisions, whether by legislation, regulation or administrative action, to ensure compliance with the basic standards which have been established and shall take the necessary measures with regard to teaching, education and vocational training.

The Commission shall make appropriate recommendations for harmonising the provisions applicable in this field in the Member States.

To this end, the Member States shall communicate to the Commission the provisions applicable at the date of entry into force of this Treaty and any subsequent draft provisions of the same kind.’

24 Article 34 of the Euratom Treaty states:

'Any Member State in whose territories particularly dangerous experiments are to take place shall take additional health and safety measures, on which it shall first obtain the opinion of the Commission.

The assent of the Commission shall be required where the effects of such experiments are liable to affect the territories of other Member States.'

25 The first paragraph of Article 35 of the Euratom Treaty requires the Member States to establish 'the facilities necessary to carry out continuous monitoring of the level of radioactivity in the air, water and soil and to ensure compliance with the basic standards'. According to the second paragraph of that article, the Commission is to have the right of access to such facilities and may verify their operation and efficiency.

26 Article 36 of the Euratom Treaty requires the Member States periodically to communicate to the Commission information on the checks referred to in Article 35 of that Treaty.

27 Article 37 of the Euratom Treaty provides:

'Each Member State shall provide the Commission with such general data relating to any plan for the disposal of radioactive waste in whatever form as will

make it possible to determine whether the implementation of such plan is liable to result in the radioactive contamination of the water, soil or airspace of another Member State.

The Commission shall deliver its opinion within six months, after consulting the group of experts referred to in Article 31.'

- 28 The first and second paragraphs of Article 38 of the Euratom Treaty state:

'The Commission shall make recommendations to the Member States with regard to the level of radioactivity in the air, water and soil.

In cases of urgency, the Commission shall issue a directive requiring the Member State concerned to take, within a period laid down by the Commission, all necessary measures to prevent infringement of the basic standards and to ensure compliance with regulations.'

- 29 Article 39 of the Euratom Treaty requires the Commission to set up within the framework of the Joint Nuclear Research Centre a health and safety documentation and study section.

- 30 Title II of the Euratom Treaty includes a Chapter 7, entitled 'Safeguards', which confers on the Community certain powers relating to the objective laid down in Article 2(e) of that Treaty.

- 31 The first and second paragraphs of Article 101 of the Euratom Treaty state:

'The Community may, within the limits of its powers and jurisdiction, enter into obligations by concluding agreements or contracts with a third State, an international organisation or a national of a third State.

Such agreements or contracts shall be negotiated by the Commission in accordance with the directives of the Council; they shall be concluded by the Commission with the approval of the Council, which shall act by a qualified majority.'

### **Accession of the Community to the Convention**

- 32 On 15 September 1994, the Commission submitted to the Council a proposal for a decision approving the Community's accession to the Convention. That document included a declaration to be made according to Article 30(4)(iii) of the Convention, whereby the Community declared, first, that Articles 1 to 5, 7 and 14 to 35 of the Convention apply to the Community and, second, that the Community possesses competences in the fields covered by Articles 1 to 5, 7 and 14 to 19 of the Convention.

- 33 On 7 December 1998, the Council adopted the contested decision. The sole Article of that decision provides:

'1. The accession of the European Atomic Energy Community to the Nuclear Safety Convention is hereby approved.

2. The text of the declaration by the European Atomic Energy Community according to the provisions of Article 30(4)(iii) of the Nuclear Safety Convention is attached to this decision.'

<sup>34</sup> The declaration is worded as follows:

'The following States are presently members of the European Atomic Energy Community: the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, the Portuguese Republic, the Republic of Finland, the Kingdom of Sweden, the United Kingdom of Great Britain and Northern Ireland.

The Community declares that Articles 15 and 16(2) of the Convention apply to it. Articles 1 to 5, Article 7(1), Article 14(ii) and Articles 20 to 35 also apply to it only in so far as the fields covered by Articles 15 and 16(2) are concerned.

The Community possesses competence, shared with the abovementioned Member States, in the fields covered by Articles 15 and 16(2) of the Convention as provided for by the Treaty establishing the European Atomic Energy Community in Article 2(b) and the relevant articles of Title II, Chapter 3 "Health and safety".'

- 35 By Commission Decision 1999/819/Euratom of 16 November 1999 concerning the accession to the 1994 Convention on Nuclear Safety by the European Atomic Energy Community (Euratom) (OJ 1999 L 318, p. 20), accession to the Convention was approved on behalf of the Community. The text of the declaration, as set out in the preceding paragraph, is attached to that decision. On 31 January 2000, the instrument of acceptance was deposited with the depositary of the Convention, the Director-General of the Agency. On 30 April 2000 the Convention entered into force for the Community pursuant to Article 31(2) of the Convention.

## **Admissibility**

- 36 By separate document lodged at the Court Registry on 9 April 1999, the Council raised an objection to admissibility under Article 91(1) of the Rules of Procedure. By decision of 8 February 2000, the Court reserved its decision on that objection for the final judgment.

- 37 The Council contends that the application is inadmissible on the following grounds:

- it is without purpose;
- it is directed against an indissociable provision of the contested decision, which cannot be considered separately from the rest of the decision, and the Commission does not ask for the annulment of the entire decision;

- the Commission is in fact seeking an opinion on the extent of the Community's competences.

*The first plea of inadmissibility alleging lack of purpose*

Arguments of the Council

- <sup>38</sup> The Council contends that the annulment of the third paragraph of the declaration annexed to the contested decision would remove from it the only two useful pieces of information notified to the depositary of the Convention, namely, that the Community has competences which it shares with the Member States and that those competences stem from the relevant articles of Title II, Chapter 3, of the Euratom Treaty.
- <sup>39</sup> The Council adds that the Commission does not dispute either of those points. The Commission does not claim that the Community has exclusive competence in the fields referred to, but merely asserts that the Community possesses, in the fields covered by the Convention, other competences which are not covered by the declaration. Nor does it dispute that the Community's competence to accede to the Convention is based on the relevant articles of Title II, Chapter 3, of the Euratom Treaty. Since those two pieces of information are the only ones to appear in the paragraph of the declaration which the Commission seeks to have annulled, the Council maintains that the present application is devoid of purpose.

## Findings of the Court

- 40 The declaration which the Commission seeks to have annulled in part is an integral part of the contested decision which, as an act producing legal effects, can be annulled by the Court.
- 41 The present application must be understood to mean that the Commission is seeking the annulment of the contested decision to the extent that it fails to specify that the Community is competent in fields other than those referred to in the declaration. It must be held that an application for such an annulment is not devoid of purpose.
- 42 The first plea of inadmissibility must therefore be rejected.

*The second plea of inadmissibility alleging that the contested decision is indivisible*

## Arguments of the Council

- 43 The Council contends that the declaration cannot be dissociated from the contested decision and that a request for annulment of the declaration alone is, accordingly, inadmissible. The Council would not have approved that decision without a complete declaration of competences. It considers that the declaration was an indispensable condition of the adoption of the contested decision. It

would therefore not be possible to maintain that decision while annulling the declaration or parts thereof. The Court cannot annul the decision itself, because it has not been requested to do so, and it cannot annul only one part of an indivisible legal act.

- 44 The Council also maintains that the Commission is requesting only the annulment of the third paragraph of the declaration, although it forms an inseparable whole with the paragraph which precedes it. That third paragraph flows directly and necessarily from the second: the Community first declares that Articles 15 and 16(2) of the Convention apply to it and then goes on to declare that it has competences in the fields covered by those provisions. If the Court were to hold that the Community's fields of competence are not set out in full in the declaration and that this inadequacy constitutes a breach of the Euratom Treaty, it should annul either the second paragraph of the declaration, inasmuch as it fails to indicate all the Community's competences, or the second and third paragraphs of the declaration, which the Commission is not requesting and could therefore only be decided *ultra petita*. The second paragraph of the declaration in fact constitutes its central point and its only necessary provision. There is an indissociable link between the indication of the applicable articles of the Convention and the question of the scope of the Community's competence regarding those articles. In addition, the third paragraph of the declaration does not address the question of competence as such, but rather the scope of the competence, since the Community indicated in that paragraph that it did not possess exclusive competence in the fields concerned.

## Findings of the Court

- 45 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 (see, to that effect, Case 17/74 *Transocean Marine Paint v Commission* [1974] ECR 1063, paragraph 21, and Joined Cases C-68/94 and C-30/95 *France and Others v Commission* [1998] ECR I-1375, paragraph 256). That is the situation in the present case.

- 46 The elements whose omission would render the decision unlawful are not, by definition, set out therein and are accordingly separable from its provisions. The annulment of the third paragraph of the declaration for failure to refer to certain articles of the Convention would in no way affect the legal scope of the provisions on which the Council has already taken a view. Such an annulment therefore would not alter the substance of the contested decision. Accordingly, those elements may be severed from the remainder of the contested decision.
- 47 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.
- 48 As regards the relationship between the second and third paragraphs of the declaration, these correspond to the second and third types of information to be declared under Article 30(4)(iii) of the Convention.
- 49 By the words 'which articles... apply', that provision refers to all the articles which are legally binding on a contracting party, including articles which do not create either rights or obligations and in respect of which the question of the competence of the regional organisation therefore does not arise. On the other hand, by requiring that organisation to indicate 'the extent of its competence', Article 30(4)(iii) of the Convention seeks to ensure that it communicates to the depositary, and thus to the other parties to the Convention, both the fields covered by the Convention in which it has competence to fulfil the obligations and exercise the rights which flow from it and the extent of that competence.
- 50 If consideration of the present application were to indicate that the Council failed to mention in the third paragraph of the declaration certain articles which are also not mentioned in the second paragraph thereof, it would imply that the

second paragraph is also incomplete. Nevertheless, the relationship between the two paragraphs is not such as to preclude the legality of the two elements from being reviewed independently of one another.

51 Accordingly, the second plea of inadmissibility must also be rejected.

*The third plea of inadmissibility alleging that the Commission is seeking an opinion*

#### Arguments of the Council

52 The Council contends that the Commission is not really seeking a genuine annulment of part of the declaration but is seeking to obtain from the Court an opinion on the extent of the Community's competence in the context of its accession to the Convention. The Council states, in that regard, that the Euratom Treaty does not, in contrast to Article 228(6) of the EC Treaty (now, after amendment, Article 300(6) EC), provide for a possibility to request from the Court an opinion on the compatibility of an envisaged international agreement with the Treaty, that is to say, on the Community's competence to conclude such an agreement.

#### Findings of the Court

53 There is no indication that the Commission has brought the present action with any purpose other than partial annulment of the contested decision.

- 54 In addition, 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, to that effect, concerning the relationship between an action for annulment and a request for an opinion under the EC Treaty, Opinion 2/00 [2001] ECR I-9713, paragraph 12).
- 55 The third plea of inadmissibility therefore cannot be upheld.
- 56 It follows from the foregoing that the plea of inadmissibility must be rejected.

## Substance

### *Arguments of the parties*

- 57 The Commission claims that the third paragraph of the declaration infringes Community law in that it does not refer to all the competences of the Community in the fields covered by the Convention and that that provision should therefore be annulled pursuant to Article 146 of the Euratom Treaty.
- 58 In support of its claim, the Commission points out that the second paragraph of Article 1 of the Euratom Treaty provides that it is to be the task of the

Community to contribute to the raising of the standard of living in the Member States and to the development of relations with other countries by creating the conditions necessary for the speedy establishment and growth of nuclear industries. Article 2(b) of the Euratom Treaty requires the Community to establish uniform safety standards to protect the health of workers and of the general public and to ensure that they are applied.

- 59 Article 30 of the Euratom Treaty provides for basic standards for the protection of the health of workers and the general public to be laid down. Article 31 of the Treaty provides for the consultative and legislative machinery for working out those standards, and then for adopting them by legislative act of the Council. Those provisions of Title II, Chapter 3, of the Euratom Treaty do not directly concern the siting, licensing, commissioning or operation of nuclear installations as such but relate to the protection of workers and the general public against the dangers arising from ionising radiation. That distinction is based on the technical truth that anything nuclear is radioactive but not all radiation has a nuclear source.
- 60 The Commission maintains that the existence of Directive 96/29 and the legislative acts adopted on the basis of that directive demonstrates that the relevant competences conferred by the Euratom Treaty are in fact being exercised.
- 61 The Commission concludes that competences and powers are thus conferred on the Community, which must be able to exercise them. It considers that its point of view is confirmed by Article 32 of the Euratom Treaty, which provides that the basic standards may be revised or supplemented at the request of the Commission or of a Member State.
- 62 It also maintains that, in addition to Articles 30 to 32 of the Euratom Treaty, Articles 33 and 35 to 38 thereof confer competences on the Community.

- 63 It accepts that the provisions of the Euratom Treaty do not give the Community the competence to regulate the opening and operation of nuclear installations. None the less, the risk resulting from the operation of such installations falls within the Community's competence.
- 64 For its part, the Council contends that the Commission does not explain how, if the statement of competences submitted in the context of the Community's accession to the Convention were too restrictive, that would constitute an infringement of the Euratom Treaty or could affect the common rules adopted by the Community. According to the Council, the Commission does not even allege that such a limitation of the Community's competences undermines the interests of the Community.
- 65 The Council contends that all the competences of the Community in the fields covered by the Convention are in fact referred to in the declaration and that the Community has accordingly 'exhausted' its competences by acceding to that convention. The Council maintains that no article of the Euratom Treaty bestows on the Community the competence to regulate the opening and operation of nuclear facilities. That competence was retained by the Member States. The Community has competence only as regards protection of the general public, and all the articles of the Convention which concern that protection are referred to in the declaration.
- 66 In reply to the Commission's argument that the Community has already legislated as regards the safety of nuclear installations, the Council contends that the competence of the Community cannot be deduced from a provision of Directive 96/29 because, under Article 2 thereof, relating to scope, that directive taken as a whole is to apply to 'practices' and not to 'installations'.

*The obligation, under Community law, to communicate to the depositary of the Convention a complete declaration of competences*

- 67 The legal effect of approval by the Council of accession 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.
- 68 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.
- 69 In addition, it follows from the duty of sincere cooperation between the institutions (see, *inter alia*, Case C-65/93 *Parliament v Council* [1995] ECR I-643, paragraph 23) that the Council decision approving accession to an international convention must enable the Commission to comply with international law.
- 70 In the present case, Article 30(4)(iii) of the Convention must, in the interest of the other contracting parties, be interpreted to mean that the declaration of competences under that provision must be complete.
- 71 It follows from the foregoing that the Council was, under Community law, required to attach a complete declaration of competences to its decision approving accession to the Convention.

*General considerations with respect to the Community's competences concerning nuclear safety*

- 72 The parties to the dispute agree that the Community possesses competences, shared with the Member States, to take:
- pursuant to Article 15 of the Convention, the appropriate steps to ensure that in all operational states the radiation exposure to the workers and the public caused by a nuclear installation be kept as low as reasonably achievable and that no individual be exposed to radiation doses which exceed prescribed national dose limits;
  - pursuant to Article 16(2) of the Convention, the appropriate steps to ensure that, in so far as they are likely to be affected by a radiological emergency, its own population and the competent authorities of the States in the vicinity of the nuclear installation are provided with appropriate information for emergency planning and response.
- 73 The dispute relates to whether the Community possesses other competences in the fields covered by the Convention.
- 74 In that regard, the Euratom Treaty does not contain a title relating to installations for the production of nuclear energy, and the outcome of the proceedings depends on the interpretation of the provisions in Title II, Chapter 3, of that Treaty.

- 75 That interpretation must be carried out in the light of the objective, set out in the preamble to the Euratom Treaty, to 'create the conditions of safety necessary to eliminate hazards to the life and health of the public' (see, concerning the provisions of Chapter VII of the Euratom Treaty, Ruling 1/78 [1978] ECR 2151, paragraph 21).
- 76 It must also take into account the fact that Title II, Chapter 3, of the Euratom Treaty implements Article 2(b) of that Treaty, which instructs the Community to 'establish uniform safety standards to protect the health of workers and of the general public and [to] ensure that they are applied'. On the one hand, it is apparent that such protection cannot be achieved without controlling the sources of harmful radiation. On the other, the Community's activities in the field of health protection must observe the competences of the Member States defined, *inter alia*, in Title II, Chapter 3, of the Euratom Treaty itself.
- 77 It is from that point of view that the Council adopted the resolution of 22 July 1975 on the technological problems of nuclear safety (OJ 1975 C 185, p. 1). The fourth recital in the preamble to that resolution states that 'the technological problems relating to nuclear safety, particularly in view of their environmental and health implications, call for appropriate action at Community level which takes into account the prerogatives and responsibilities assumed by national authorities'.
- 78 In order to give practical effect to the provisions in Title II, Chapter 3, of the Euratom Treaty, the Court has interpreted them broadly on several occasions.
- 79 In its judgment in Case 187/87 *Saarland and Others* [1988] ECR 5013, paragraph 11, in a case where the main proceedings concerned the Cattenom nuclear power station (France), the Court held that the provisions of the chapter

of the Euratom Treaty entitled ‘Health and safety’ form a coherent whole conferring on the Commission powers of some considerable scope in order to protect the population and the environment against the risks of nuclear contamination. In the light of the purpose of Article 37 of the Euratom Treaty, which is to forestall any possibility of radioactive contamination, the Court drew attention to the importance of the role played in the matter by the Commission, which has a unique overview of developments in the nuclear power industry throughout the territory of the Community (*Saarland and Others*, cited above, paragraphs 12 and 13). On the basis of that consideration, it rejected the argument that general data relating to any plan for the disposal of radioactive waste could be provided to the Commission only after such disposal had been authorised by the competent authorities of the Member State concerned (*Saarland and Others*, cited above, paragraph 20).

- <sup>80</sup> In its judgment in Case C-70/88 *Parliament v Council* [1991] ECR I-4529, paragraph 14, which concerned Council Regulation (Euratom) No 3954/87 of 22 December 1987 laying down maximum permitted levels of radioactive contamination of foodstuffs and of feedingstuffs following a nuclear accident or any other case of radiological emergency (OJ 1987 L 371, p. 11), the Court refused to uphold the restrictive interpretation of Article 30 et seq. of the Euratom Treaty proposed by the Parliament. It held that the purpose of those articles was to ensure consistent and effective protection of the health of the general public against the dangers arising from ionising radiations, ‘whatever their source’.
- <sup>81</sup> Directive 96/29 follows the same line. As stated in the sixth recital in the preamble thereto, it takes into account the development of scientific knowledge concerning radiation protection, development which is described in detail by the Advocate General in paragraphs 123 to 132 of his Opinion.
- <sup>82</sup> In the light of paragraphs 75 to 82 of the present judgment, it is not appropriate, in order to define the Community’s competences, to draw an artificial distinction between the protection of the health of the general public and the safety of sources of ionising radiation.

- 83 Those considerations should inform the determination as to whether the Community possesses competences in the fields covered by articles of the Convention other than Articles 15 and 16(2).

*Community competences in the fields covered by the Convention articles at issue*

Articles 1 ('Objectives'), 2 ('Definitions') and 3 ('Scope of application') of the Convention

- 84 As the Council rightly submits, Articles 1 to 3 of the Convention create neither rights nor obligations, so that the question of the Community's competence does not arise in their regard.
- 85 The Council was therefore justified in not referring to those articles in the paragraph of the declaration which states the Community's competences.

Articles 4 ('Implementing measures') and 5 ('Reporting')

- 86 It is apparent that Article 30(4)(iii) of the Convention must be interpreted to mean that the declaration of competence which it requires must relate to specific obligations, that is to say, only those in respect of which Articles 4 and 5 of the Convention lay down implementing and reporting obligations.

87 Therefore, it was not necessary to refer to Articles 4 and 5 of the Convention in the paragraph of the declaration stating the Community's competences.

### Article 7 ('Legislation and regulatory framework') of the Convention

- 88 Article 7 of the Convention is part of Chapter 2(b) thereof, entitled 'Legislation and regulation'. It requires the establishment of a legislative and regulatory framework to govern the safety of nuclear installations.
- 89 Even though the Euratom Treaty does not grant the Community competence to authorise the construction or operation of nuclear installations, under Articles 30 to 32 of the Euratom Treaty the 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 that article.
- 90 As regards the argument of the Council that Article 7(2)(i) of the Convention is inapplicable to the Community since it refers to 'national' requirements and regulations and therefore concerns only the Member States, it is sufficient to note that, under Article 30(4)(ii) of the Convention, regional organisations must, in matters within their competence, fulfil the responsibilities which the Convention attributes to the Member States.
- 91 Article 7 of the Convention should therefore have been mentioned in the paragraph of the declaration which indicates the competences of the Community.

## Article 14 ('Assessment and verification of safety') of the Convention

- <sup>92</sup> In the field covered by Article 14(ii) of the Convention, the Community's competence is based on Article 35 of the Euratom Treaty.
- <sup>93</sup> As regards the field covered by Article 14(i) of the Convention, it should be recalled that, under the first paragraph of Article 33 of the Euratom 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 which have been established. To that end, they may, for example, require safety assessments such as those prescribed in Article 14(i) of the Convention.
- <sup>94</sup> The second paragraph of Article 33 of the Euratom Treaty provides that '[t]he Commission shall 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 of the Euratom Treaty.
- <sup>95</sup> Article 4 of the Convention provides that the obligations which it imposes on the contracting parties may be implemented not only by means of legislative and regulatory measures, but also by administrative measures and other steps. The application of the Convention may therefore call for measures which are not mandatory for those to whom they are addressed, such as recommendations. In those circumstances, the competence transferred to the Commission to make recommendations to the Member States in the field covered by Article 14(i) of the Convention should have been taken into account and that provision should have been referred to in the declaration indicating the Community's competences.

- <sup>96</sup> Therefore, without there being any need to examine whether the Community possesses other competences in the field covered by Article 14 of the Convention, it must be concluded that that provision should have been mentioned in the paragraph of the declaration indicating the Community's competences.

#### Article 16 ('Emergency preparedness') (1) and (3) of the Convention

- <sup>97</sup> As regards Article 16(1) of the Convention, Articles 30 and 32 of the Euratom Treaty confer on the Community competence to lay down basic standards for emergency measures, which includes the power to require Member States to draw up plans laying down such measures in respect of nuclear installations.
- <sup>98</sup> As regards Article 16(3) of the Convention, the Council cannot reasonably maintain that the Community is not affected by that provision on the ground that it is a contracting party which in fact has nuclear installations on the territory of its Member States.
- <sup>99</sup> The interpretation of Article 16 of the Convention must take into account the possibility that a regional organisation referred to in Article 30(4)(i) of the Convention may be composed of Member States, both with and without nuclear installations on their territory. The purpose of Article 16 of the Convention could be undermined if such an organisation did not fulfil the responsibilities flowing from Article 16(3) of the Convention as regards its Member States without nuclear installations on their territory. Therefore, in the case described in the first sentence of this paragraph, not only Article 16(1) of the Convention, but also Article 16(3), are applicable to the regional organisation concerned.

- 100 Given that certain Member States of the Community do not have nuclear installations on their territory and that, as stated in paragraph 97 of the present judgment, the Community may lay down in their regard basic standards for emergency measures, the Community possesses competence in the field covered by Article 16(3) of the Convention.
- 101 Article 16(1) and (3) of the Convention should therefore have been mentioned in the paragraph of the declaration indicating the competences of the Community.

#### Article 17 ('Siting') of the Convention

- 102 The siting of a nuclear installation, dealt with in Article 17 of the Convention, necessarily includes taking into account factors relating to radiation protection, such as the demographic characteristics of the site. It is apparent that Article 17(ii) of the Convention relates to those factors.
- 103 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. That fact provides sufficient grounds to conclude that the Community possesses competence in the field covered by Article 17 of the Convention.

104 That Article of the Convention should therefore have been mentioned in the paragraph of the declaration stating the Community's competences.

Articles 18 ('Design and construction') and 19 ('Operation') of the Convention

105 The measures required by Articles 18 and 19 of the Convention concerning the design, construction and operation of nuclear installations can be the subject of the provisions which the Member States lay down to ensure, in accordance with the first paragraph of Article 33 of the Euratom Treaty, compliance with the basic standards. However, the Commission has competence to make recommendations for harmonising those provisions, as is clear from the second paragraph of Article 33 of the Euratom Treaty, interpreted in the light of the considerations set out in paragraphs 75 to 83 of the present judgment. The Member States are required to assist in drawing up those recommendations through the communications referred to in the third paragraph of Article 33 of the Euratom Treaty.

106 Consequently, for the same reasons as those stated in paragraph 95 of the present judgment, Articles 18 and 19 of the Convention should have been mentioned in the paragraph of the declaration indicating the Community's competences.

107 In the light of all the foregoing considerations, the third paragraph of the declaration must be annulled in so far as Articles 7, 14, 16(1) and (3) and 17 to 19 of the Convention are not referred to therein.

## Costs

- <sup>108</sup> 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. According to the first subparagraph of Article 69(3), however, where each party succeeds on some and fails on other heads, the Court may order that the costs be shared or that the parties bear their own costs. Since the Commission and the Council have been unsuccessful in part, it is appropriate to order the parties to bear their own costs.

On those grounds,

THE COURT,

hereby:

1. Annuls the third paragraph of the declaration made by the European Atomic Energy Community according to the provisions of Article 30(4)(iii) of the Nuclear Safety Convention, which is attached to the Council Decision of 7 December 1998 approving the accession of the European Atomic Energy Community to the Nuclear Safety Convention, in so far as Articles 7, 14, 16(1) and (3) and 17 to 19 of that convention are not referred to therein;

2. Dismisses the remainder of the application;
3. Orders the Commission of the European Communities and the Council of the European Union to bear their own costs.

Rodríguez Iglesias

Puissochet

Schintgen

Timmermans

Gulmann

Edward

La Pergola

Jann

Skouris

Macken

Colneric

von Bahr

Cunha Rodrigues

Delivered in open court in Luxembourg on 10 December 2002.

R. Grass

G.C. Rodríguez Iglesias

Registrar

President