

Case C-70/88

European Parliament v Council of the European Communities

(Capacity of the European Parliament to bring
an action for annulment)

Report for the Hearing	2042
Opinion of Advocate General Van Gerven delivered on 30 November 1989	2052
Judgment of the Court, 22 May 1990	2067

Summary of the Judgment

1. *European Communities — Institutional balance — Implications — Maintenance of the division of powers — Judicial review*
(EEC Treaty, Art. 164; EAEC Treaty, Art. 136)
2. *Action for annulment — Parliament's right to bring such an action restricted to defence of its prerogatives*
(EEC Treaty, Art. 173; EAEC Treaty, Art. 146)
3. *Parliament — Prerogatives — Participation in the legislative process — Restricted by the Council's choice of legal basis for an act of secondary law — Admissibility of Parliament's action for annulment*
(EEC Treaty, Arts 100a and 173; EAEC Treaty, Arts 31 and 146)

1. By setting up a system for distributing powers among the different Community institutions, assigning each institution to its own role in the institutional structure of the Community and the accomplishment of the tasks entrusted to the Community, the Treaties have created an institutional balance. Observance of that

balance means that each of the institutions must exercise its powers with due regard for the powers of the other institutions. It also requires that it should be possible to penalize any breach of that rule which may occur. The Court, which under the Treaties has the task of ensuring that in the interpretation and

application of the Treaties the law is observed, must therefore be able to maintain the institutional balance, and in order to do so must be able to review observance of the prerogatives of the various institutions by means of appropriate legal remedies.

2. Although the Treaties contain no provision giving the Parliament the right to bring an action for annulment, it would be incompatible with the fundamental interest in the maintenance and observance of the institutional balance which they establish for it to be possible to breach the Parliament's prerogatives without that institution being able, like the other institutions, to have recourse to one of the legal remedies provided for by the Treaties which may be exercised in a certain and effective manner.

Consequently, an action for annulment brought by the Parliament against an act of the Council or the Commission is admissible provided that the action seeks only to safeguard its prerogatives and

that it is founded only on submissions alleging breach of them. Provided that condition is met, the Parliament's action for annulment is subject to the rules laid down in the Treaties for actions for annulment brought by the other institutions.

3. In accordance with the Treaties, the Parliament's prerogatives include participation in the drafting of legislative measures, in particular participation in the cooperation procedure laid down in the EEC Treaty. Since the compulsory initiation of that procedure, which enables the Parliament to participate in the legislative process more closely and actively than it could in the consultation procedure, depends on the legal basis on which the measure to be adopted will be based, an action for the annulment of an act adopted by the Council brought by the Parliament on the ground that the Council has breached the Parliament's prerogatives by choosing a legal basis other than that required by the Treaty must be held to be admissible.

REPORT FOR THE HEARING delivered in Case C-70/88 *

I — Facts

1. The present action, brought under Article 173 of the EEC Treaty and Article 146 of the Euratom Treaty, seeks the

annulment of 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 (Official Journal 1987, L 371, p. 11).

* Language of the case: French.