

JUDGMENT OF THE COURT

22 May 1990 *

In Case C-70/88

European Parliament, represented by Francesco Pasetti Bombardella and Jorge Campinos, Jurisconsults, assisted by Christian Pennera and Johann Schoo, members of its Legal Department, 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 Communities, represented by Raffaello Fornasier, Director-General of its Legal Department, and by Bernhard Schloh, Legal Adviser, acting as Agents, with an address for service in Luxembourg at the office of Jörg Käser, Manager of the Legal Directorate of the European Investment Bank, 100, boulevard Konrad-Adenauer,

defendant,

supported by

United Kingdom of Great Britain and Northern Ireland, represented by J. Gensmantel, of the Treasury Solicitor's Department, acting as Agent, with an address for service in Luxembourg at the British Embassy, 14, boulevard Roosevelt,

and by

Commission of the European Communities, represented by Michel Van Ackere-Pietri, Legal Adviser, and Jürgen Grünwald, a member of its Legal Department, acting as Agents, with an address for service in Luxembourg at the office of Georgios Kremlis, also a member of its Legal Department, Wagner Centre, Kirchberg,

interveners,

* Language of the case: French

concerning, at the present stage of the proceedings, the admissibility of an action under Article 173 of the EEC Treaty and Article 146 of the Euratom Treaty for 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),

THE COURT

composed of: O. Due, President, Sir Gordon Slynn, C. N. Kakouris, F. A. Schockweiler and M. Zuleeg (Presidents of Chambers), G. F. Mancini, R. Joliet, J. C. Moitinho de Almeida and G. C. Rodríguez Iglesias, Judges,

Advocate General: W. Van Gerven

Registrar: D. Louterman, Principal Administrator,

having regard to the Report for the Hearing,

after hearing the arguments of the parties at the hearing on 5 October 1989, at which the European Parliament was represented by Francesco Pasetti Bombardella, Christian Pennera and Johann Schoo, assisted by Michel Waelbroeck, of the Brussels Bar, the Council by Raffaello Fornasier and Bernhard Schloh, and the Commission by Jean-Louis Dewost, Director-General of its Legal Department, assisted by Denise Sorasio, Legal Adviser, acting as Agents,

after hearing the Opinion of the Advocate General delivered at the sitting on 30 November 1989,

gives the following

Judgment

- 1 By application lodged at the Court Registry on 4 March 1988, the European Parliament brought an action under Article 146 of the Euratom Treaty and Article 173 of the EEC Treaty for 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 a radiological emergency (Official Journal 1987, L 371, p. 11).
- 2 That regulation, which is based on Article 31 of the Euratom Treaty, lays down the procedure for determining the maximum permitted levels of radioactive contamination of foodstuffs and of feedingstuffs which may be placed on the market following a nuclear accident or any other radiological emergency which could lead or has led to significant radioactive contamination of foodstuffs or feedingstuffs. Foodstuffs or feedingstuffs with a level of contamination in excess of the maximum permitted levels laid down in any measure adopted in accordance with the provisions of the contested regulation may not be placed on the market.
- 3 During the drafting of the contested regulation, the European Parliament, which was consulted by the Council in accordance with Article 31 of the Euratom Treaty, stated that it did not agree with the legal basis adopted by the Commission and asked the Commission to submit to it a new proposal based on Article 100a of the EEC Treaty. Since the Commission did not comply with that request the Council adopted Regulation No 3954/87 on the basis of Article 31 of the Euratom Treaty. The Parliament then brought the present action for the annulment of that regulation.
- 4 The Council raised an objection of inadmissibility under the first subparagraph of Article 91(1) of the Rules of Procedure of the Court and asked the Court to rule on that objection without considering the substance of the case.
- 5 In the written procedure, before delivery of the judgment of 27 September 1988 in Case 302/87 *European Parliament v Council* [1988] ECR 5615 ('Comitology'), the Council put forward in support of its objection of inadmissibility arguments which

were similar to those which it had put forward in support of its objection of inadmissibility in Case 302/87. At the hearing, which took place on 5 October 1989, the Council claimed that the question of the European Parliament's capacity to bring an action for annulment had been clearly decided by the Court in its judgment in Case 302/87 and that the present action was therefore inadmissible.

6 The European Parliament asked the Court to dismiss the objection. It claimed that a new factor distinguished the present case from Case 302/87. According to the Parliament, in order to justify its refusal in that case to recognize the European Parliament's capacity to bring an action for annulment the Court pointed out that it was the responsibility of the Commission under Article 155 of the EEC Treaty to ensure that the Parliament's prerogatives were respected and to bring any actions for annulment which might be necessary for that purpose. However, the present case shows that the Commission cannot fulfil that responsibility since it chose a legal basis for its proposal which was different from the legal basis which the Parliament considered appropriate. Consequently, the Parliament cannot rely on the Commission to defend its prerogatives by bringing an action for annulment.

7 The European Parliament added that the Council's adoption of the contested measure cannot be regarded as an implied refusal to act which would enable the Parliament to bring an action for failure to act. Moreover, the defence of its prerogatives by actions brought by individuals would be completely fortuitous and therefore ineffective.

8 Therefore, according to the Parliament, there is a legal vacuum which the Court must fill by recognizing that the European Parliament has capacity to bring an action for annulment, but only to the extent necessary to safeguard its own prerogatives.

9 By order of 13 July 1988, the Commission of the European Communities was granted leave to intervene in support of the defendant's conclusions. Although the Commission concluded that the application should be dismissed on the merits, at the hearing it asked the Court to dismiss the Council's objection of inadmissibility. By order of 18 January 1989, the United Kingdom was granted leave to intervene in support of the defendant. The United Kingdom made no submission with regard to the admissibility of the action.

- 10 Reference is made to the Report for the Hearing for a fuller account of the facts, the course of the procedure and the submissions and arguments of the parties, which are mentioned hereinafter only in so far as is necessary for the reasoning of the Court.
- 11 It must be observed as a preliminary point that since the contested measure is based on a provision of the Euratom Treaty, the admissibility of the action for the annulment of that measure must be examined with regard to that Treaty.
- 12 As is evident from the judgment in Case 302/87, cited above, the Parliament does not have the right to bring an action for annulment under Article 173 of the EEC Treaty or under Article 146 of the Euratom Treaty, which are identical in content.
- 13 First of all, in the first paragraph of Article 173 or Article 146, the Parliament is not included among the institutions which, like the Member States, can bring an action for annulment against any measure of another institution.
- 14 Furthermore, since the Parliament is not a legal person it cannot bring an action before the Court under the second paragraph of the articles in question, the scheme of which would, in any event, be inappropriate to an action for annulment brought by the Parliament.
- 15 In the judgment in Case 302/87, after having stated the reasons why the Parliament did not have capacity to bring an action under Article 173 of the EEC Treaty, the Court pointed out that various legal remedies were available to ensure that the Parliament's prerogatives were defended. As was observed in that judgment, not only does the Parliament have the right to bring an action for failure to act, but the Treaties provide means for submitting for review by the Court acts of the Council or the Commission adopted in disregard of the Parliament's prerogatives.

16 However, the circumstances and arguments adduced in the present case show that the various legal remedies provided for both in the Euratom Treaty and in the EEC Treaty, however effective and diverse they may be, may prove to be ineffective or uncertain.

17 First, an action for failure to act cannot be used to challenge the legal basis of a measure which has already been adopted.

18 Secondly, the submission of a reference for a preliminary ruling on the validity of such an act or the bringing of an action by Member States or individuals for the annulment of the act are mere contingencies, and the Parliament cannot be sure that they will materialize.

19 Finally, while the Commission is required to ensure that the Parliament's prerogatives are respected, that duty cannot go so far as to oblige it to adopt the Parliament's position and bring an action for annulment which the Commission itself considers unfounded.

20 It follows from the foregoing that the existence of those various legal remedies is not sufficient to guarantee, with certainty and in all circumstances, that a measure adopted by the Council or the Commission in disregard of the Parliament's prerogatives will be reviewed.

21 Those prerogatives are one of the elements of the institutional balance created by the Treaties. The Treaties set up a system for distributing powers among the different Community institutions, assigning to each institution its own role in the institutional structure of the Community and the accomplishment of the tasks entrusted to the Community.

22 Observance of the institutional 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.

- 23 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, consequently, review the observance of the Parliament's prerogatives when called upon to do so by the Parliament, by means of a legal remedy which is suited to the purpose which the Parliament seeks to achieve.
- 24 In carrying out that task the Court cannot, of course, include the Parliament among the institutions which may bring an action under Article 173 of the EEC Treaty or Article 146 of the Euratom Treaty without being required to demonstrate an interest in bringing an action.
- 25 However, it is the Court's duty to ensure that the provisions of the Treaties concerning the institutional balance are fully applied and to see to it that the Parliament's prerogatives, like those of the other institutions, cannot be breached without it having available a legal remedy, among those laid down in the Treaties, which may be exercised in a certain and effective manner.
- 26 The absence in the Treaties of any provision giving the Parliament the right to bring an action for annulment may constitute a procedural gap, but it cannot prevail over the fundamental interest in the maintenance and observance of the institutional balance laid down in the Treaties establishing the European Communities.
- 27 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 their infringement. 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.
- 28 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.

- 29 In the present case, the Parliament claims that the contested regulation is based on Article 31 of the Euratom Treaty, which provides only that the Parliament is to be consulted, whereas it ought to have been based on Article 100a of the EEC Treaty, which requires implementation of the procedure for cooperation with the Parliament.
- 30 The Parliament infers from that that the Council's choice of legal basis for the contested regulation led to a breach of its prerogatives by denying it the possibility, which the cooperation procedure offers, of participating in the drafting of the measure more closely and actively than it could in the consultation procedure.
- 31 Since the Parliament claims that its prerogatives were breached as a result of the choice of legal basis for the contested measure, it follows from all the foregoing that the present action is admissible. The Council's objection of inadmissibility must therefore be dismissed and the proceedings must be continued with regard to the substance of the case.

Costs

- 32 The costs must be reserved.

On those grounds,

THE COURT

hereby:

(1) Dismisses the objection of inadmissibility raised by the Council;

(2) Orders the proceedings to continue with regard to the substance of the case;

(3) Reserves costs.

Due	Slynn	Kakouris	Schockweiler
Zuleeg	Mancini	Joliet	Moitinho de Almeida
			Rodríguez Iglesias

Delivered in open court in Luxembourg on 22 May 1990.

J.-G. Giraud
Registrar

O. Due
President