

JUDGMENT OF THE COURT
13 July 1995 ^{*}

In Case C-156/93,

European Parliament, represented initially by Jorge Campinos, Jurisconsult, assisted by François Vainker and Kieran Bradley, of the Legal Service, acting as Agents, and subsequently by François Vainker and Kieran Bradley, acting as Agents, with an address for service in Luxembourg at the General Secretariat of the European Parliament, Kirchberg,

applicant,

v

Commission of the European Communities, represented by Christiaan Timmermans, Deputy Director-General, and David Gilmour and José Luis Iglesias Buhigues, Legal Advisers, acting as Agents, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz of the Legal Service, Wagner Centre, Kirchberg,

defendant,

supported by

Council of the European Union, represented by Jean-Claude Piris, Director-General of the Legal Service, and Michael Bishop, of the Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Bruno Eynard,

^{*} Language of the case: English.

Manager of the Legal Directorate of the European Investment Bank, 100 Boulevard Konrad Adenauer,

intervener,

APPLICATION for the annulment of Commission Regulation (EEC) No 207/93 of 29 January 1993 defining the content of Annex VI to Regulation (EEC) No 2092/91 on organic production of agricultural products and indications referring thereto on agricultural products and foodstuffs and laying down detailed rules for implementing the provisions of Article 5(4) thereto (OJ 1993 L 25, p. 5) or, in the alternative, the annulment of the contested parts thereof,

THE COURT,

composed of: G. C. Rodríguez Iglesias, President, F. A. Schockweiler, P. J. G. Kapteyn (Rapporteur) and P. Jann (Presidents of Chambers), G. F. Mancini, C. N. Kakouris, J. C. Moitinho de Almeida, J. L. Murray, G. Hirsch, H. Ragnemalm and L. Sevón, Judges,

Advocate General: F. G. Jacobs,
Registrar: L. Hewlett, Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 7 March 1995,

after hearing the Opinion of the Advocate General at the sitting on 18 May 1995,

gives the following

Judgment

- 1 By application lodged in the Registry of the Court of Justice on 16 April 1993, the European Parliament applied pursuant to Article 173 of the EEC Treaty for the annulment of Commission Regulation (EEC) No 207/93 of 29 January 1993 defining the content of Annex VI to Regulation (EEC) No 2092/91 on organic production of agricultural products and indications referring thereto on agricultural products and foodstuffs and laying down detailed rules for implementing the provisions of Article 5(4) thereto (OJ 1993 L 25, p. 5, hereinafter 'the contested regulation') or, in the alternative, the annulment of the contested parts thereof.
- 2 Council Regulation (EEC) No 2092/91 of 24 June 1991 on organic production of agricultural products and indications referring thereto on agricultural products and foodstuffs (OJ 1991 L 198, p. 1, hereinafter 'the basic regulation'), which is based on Article 43 of the Treaty, lays down *inter alia* rules on production, labelling and inspection enabling organic farming to be protected.
- 3 Article 5(1) to (6) of the basic regulation sets out the conditions under which labelling and advertising may refer to organic production methods. Article 5(7) provides that detailed rules concerning the implementation of Article 5 may be established according to the procedure laid down in Article 14, which enables the Commission to adopt measures if they are in accordance with the opinion of a committee composed of representatives of the Member States. Article 5(8) states that limitative lists of the substances and products referred to in certain provisions of Article 5 are to be established in Annex VI to the regulation according to the same procedure. Lastly, Article 5(9) provides that before 1 July 1993 the provisions of Article 5 are to be reviewed by the Commission, which may submit proposals for revision.
- 4 The contested Commission regulation establishes *inter alia* the limitative lists of substances to appear in Annex VI in accordance with Article 5(8) of the Council's basic regulation.

- 5 Section A4(i) of Annex VI refers in particular to preparations of micro-organisms normally used in food processing, with the exception of genetically modified micro-organisms (hereinafter ‘GMMOs’) as defined in Article 2(2) of Council Directive 90/220/EEC of 23 April 1990 on the deliberate release into the environment of genetically modified organisms (hereinafter ‘GMOs’) (OJ 1990 L 117, p. 15). Section B(i) refers to preparations of micro-organisms and enzymes used as processing aids in food processing, likewise with the exception of GMMOs as defined in Directive 90/220. However, such GMMOs appear in Section A 4(ii) and Section B(ii) if they have been included according to the decision procedure of Article 14 of the basic regulation.
- 6 Lastly, Article 2 of the contested regulation provides that some parts of Annex VI may be amended only if certain minimum requirements are satisfied. Thus, as regards the processing aids covered by Section B, the only substances to be included are those which are accepted in general food processing and for which it has been shown that, without having recourse to such substances, it is impossible to produce such foodstuffs.
- 7 The Parliament, pleading an infringement of its prerogatives, contests the validity of that inclusion of GMMOs in Annex VI to the basic regulation and relies in support of its action on three pleas: that the Commission has exceeded its power to amend the basic regulation, that it has misused its powers and, finally, that the statement of reasons for the contested provisions is insufficient.
- 8 The Commission, which expresses doubt as to the admissibility of the action, considers that the Parliament’s arguments should be rejected.
- 9 The Council has intervened in support of the form of order sought by the Commission. The Parliament challenges both the admissibility and the merits of that intervention.

Admissibility

- 10 The Court has consistently held (see, in particular, Case C-187/93 *Parliament v Council* [1994] ECR I-2857, paragraph 14) that 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. 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 Case C-316/91 *Parliament v Council* [1994] ECR I-625, paragraph 13).
- 11 Applying those criteria, the action must be declared inadmissible inasmuch as it is founded on the infringement of Article 190 of the Treaty. In alleging that the contested provisions are inadequately reasoned for the purposes of that article, the Parliament has failed to indicate in an appropriate manner how that infringement, assuming that it has been committed, is such as to impair its own prerogatives.
- 12 On the other hand, the right to be consulted in accordance with a provision of the Treaty is a prerogative of the Parliament (see Case C-316/91 *Parliament v Council*, paragraph 16). The Parliament maintains that the effect of the contested regulation, in so far as it governs the question whether GMOs can be authorized in the organic production of agricultural products, is to exclude the Parliament from the normal procedure for settling that question. According to the Parliament, the question falls within the ambit of the Council's basic regulation based on Article 43 of the Treaty, which provides that the Parliament must be consulted.
- 13 In so far, therefore, as it criticizes the fact that by adopting the contested regulation the Commission has exceeded its powers under the basic regulation, the action seeks to show an infringement of the prerogatives of the Parliament resulting from the lack of competence on the part of the Commission to amend that basic regulation or from the Commission's misuse of powers.

Admissibility of the Council's intervention

- 14 According to the final paragraph of Article 37 of the Statute of the Court, submissions made in an application to intervene are to be limited to supporting the form of order sought by one of the parties to the dispute (see Case C-155/91 *Commission v Council* [1993] ECR I-939, paragraph 24).
- 15 In inviting the Court to reject the plea of misuse of powers by the Commission, the Council is intervening in support of the defendant's contention that the action should be dismissed, basing its submissions on a plea which is not unconnected with those relied on by the Commission. The fact that the Council disputes only part of the arguments advanced in the action does not make its intervention inadmissible.

Substance

Excess of powers

- 16 The Parliament maintains that by extending the ambit of organic foodstuffs to cover products containing GMMOs the contested regulation undermines the objectives of the basic regulation relating to consumer expectations, conditions of fair competition, free movement of organic products and balance between agricultural production and environmental protection. It maintains that in so doing the Commission has exceeded its powers under the basic regulation and amended that regulation without observing the procedure laid down in Article 43 of the EEC Treaty, which provides for the adoption of legislative measures by the Council after consulting the Parliament.
- 17 The Commission maintains that the contested provisions, which permit the inclusion of GMMOs in the future to the lists of substances laid down in Annex VI of the basic regulation subject to certain conditions, are simply intended to safeguard the position in the future, without adversely affecting either the current interests of

consumers or the other concerns voiced by the Parliament. The Commission points out in particular that the basic regulation did not prohibit the use of GMOs or GMMOs in organic farming, despite the proposed amendment to that effect voted by the Parliament, and did not preclude their addition to the list of substances authorized for use as ingredients or processing aids. It considers that it was fully empowered by that regulation to adopt the measures it did.

18 As the Court has previously held (see, in particular, Case 46/86 *Romkes* [1987] ECR 2671, paragraph 16, and the judgment of 10 May 1995 in Case C-417/93 *Parliament v Council* [1995] ECR I-1185, paragraph 30), the Council cannot be required to draw up all the details of the regulations concerning the common agricultural policy according to the procedure laid down in Article 43 of the Treaty. It is sufficient for the purposes of that provision that the essential elements of the matter to be dealt with have been adopted in accordance with the procedure laid down by that provision, and the provisions implementing the basic regulations may be adopted according to a different procedure, as provided for by Article 5(7) and (8) of the basic regulation. Nevertheless, an implementing regulation such as the contested regulation, adopted without consultation of the Parliament, must respect the essential elements laid down in the basic regulation after consultation of the Parliament.

19 In the present case, as is apparent from the fifth recital in the preamble thereto, the main purpose of the basic regulation is to define a framework of Community rules on production, labelling and inspection enabling organic farming to be protected. The rules must ensure conditions of fair competition between producers, give the market for organic products a more distinctive profile and improve the credibility of such products in the eyes of consumers.

20 As regards more particularly the labelling and advertising of organic products intended for human consumption, Article 5(3) of the basic regulation defines the circumstances in which reference may be made, in the sales description of the product, to organic production methods. In principle, such references are permitted only if all the ingredients of agricultural origin of the product satisfy the production rules set out in Articles 6 and 7, if the product contains, as ingredients of

non-agricultural origin, only substances listed in Annex VI, if it has not been subjected to treatment involving the use of ionizing radiation or substances not listed in Annex VI, and if it has been prepared by an operator who is subject to the inspection measures provided for in Articles 8 and 9.

- 21 Limitative lists of the substances referred to in Annex VI to the basic regulation are to be established, pursuant to Article 5(8), in accordance with the procedure laid down in Article 14, which enables the Commission to adopt measures which are in accordance with the opinion of a committee composed of representatives of the Member States. It was in accordance with that procedure that the Commission adopted the contested regulation referring to GMMOs in the terms set out in paragraph 5 of this judgment.
- 22 Contrary to the Parliament's contentions, the contested provisions do not go beyond the framework for the implementation of the principles laid down by the basic regulation adopted following consultation of the Parliament.
- 23 In Section A4(i) of Annex VI, as in Section B(i), GMMOs are expressly excluded from basic preparations of micro-organisms normally used in food processing. They appear in Section A4(ii) and Section B(ii) only if included according to the decision procedure of Article 14 of the basic regulation. Thus, no GMMOs are specifically included in the limitative lists of substances set out in Annex VI to the basic regulation, and any change can only be in accordance with the procedure for establishing those lists and the conditions amending them, as laid down by Article 2 of the contested regulation. For that reason, the Advocate General considered, in paragraph 44 of his Opinion, that the contested provisions had no legal effect as far as the Parliament's claims were concerned.
- 24 Whatever the precise scope of those provisions may be, the effective inclusion of GMMOs in the limitative lists contained in Annex VI cannot in any event be regarded as contrary to the provisions of the basic regulation. Organic products may contain ingredients of non-agricultural origin and other substances within the

limits laid down by the aforementioned provisions of that regulation, which gave the Commission the task of drawing up the lists. As the Commission has pointed out, when the Council adopted the basic regulation it did not seek to prohibit the use of GMOs or GMMOs in organic farming despite the proposed amendment voted by the Parliament, and did not exclude such substances from those capable of inclusion in the limitative lists.

25 Furthermore, the general rules controlling the use of GMOs and GMMOs with a view to protecting human health and the environment do not fall within the scope of the basic regulation on organic production of agricultural products and indications referring thereto on agricultural products and foodstuffs. They are laid down by Council Directive 90/219/EEC of 23 April 1990 on the contained use of genetically modified micro-organisms (OJ 1990 L 117, p. 1) and by Directive 90/220, cited above. Those directives provide in particular for a system of prior notification of the use of such products to the competent authorities of the Member States by the manufacturer or importer and for authorization by those authorities or, in certain circumstances, by the Commission.

26 It is apparent from those observations that the effect of the reference to GMMOs in Annex VI of the basic regulation, the contents of which have been established by the contested regulation, is not to lay down new rules permitting the use of those substances in organic farming. Such use presupposes both compliance with the procedures laid down by the aforementioned directives and the effective inclusion of those substances in the limitative lists contained in Annex VI.

27 The contested provisions enacted by the Commission do not, therefore, amend the Community legislation adopted by the Council after obtaining the opinion of the Parliament. Consequently, the plea of excess of powers must be rejected.

Misuse of powers

28 The Parliament contends, in the alternative, that the Commission has misused the powers conferred on it by Article 5(8) of the basic regulation. It points out that at

the close of the debate in the Parliament on the basic regulation the Commission declared that it shared the concern expressed in the amendments to exclude the use of GMMOs in organic farming and assured the Parliament that ‘the technical work will be started so that an appropriate ruling can be examined’. The Commission should therefore have followed the procedure laid down in Article 5(9) of the basic regulation, requiring it to submit proposals for revision of that regulation, which, by virtue of Article 43 of the Treaty, may only take place following consultation of the Parliament.

- 29 The Commission challenges the Parliament’s interpretation of its statements. It maintains that it has not sought to use its powers under Article 5(8) of the basic regulation as a means of avoiding the requisite consultation of the Parliament on the use of GMMOs in food production. That subject is governed by other provisions of Community law, and if the use of GMMOs is to be authorized pursuant to those provisions, the only matter for discussion will be the extent to which other factors give rise to a need for special rules for the organic foodstuffs sector.
- 30 The Council supports the Commission’s arguments, maintaining in particular that the Commission could not legally bind itself by a declaration of intent, and certainly not before the Council had itself reached a decision on the proposal and conferred implementing powers on the Commission. Consequently, the Commission’s declaration cannot have the legal effect attributed to it by the Parliament.
- 31 The Court’s case-law (see, in particular, Case C-248/89 *Cargill v Commission* [1991] ECR I-2987, paragraph 26) defines misuse of powers as the adoption by a Community institution of a measure with the exclusive or main purpose of achieving an end other than that stated or evading a procedure specifically prescribed by the Treaty for dealing with the circumstances of the case.

32 As regards the requirement that the end pursued must be identical to that stated, it must be emphasized that there is nothing in the documents before the Court to suggest that the Commission adopted the contested provisions for a purpose other than that stated in the preamble to the regulation containing them. In particular, the reference to GMMOs in that regulation is in no way contrary to the objective defined in the sixth recital in the preamble, according to which the question whether products obtained from GMMOs may be used in foodstuffs whose labelling refers to organic production methods will need to be examined in detail when those products are approved for use in foodstuffs according to the relevant Community legislation.

33 As to the requirement precluding circumvention of a procedure for which special provision has been made, the Parliament's contention that the Commission should have followed the procedure laid down in Article 5(9) of the basic regulation is misconceived. As the Court observes in paragraph 27 of this judgment, the contested provisions enacted by the Commission do not amend the Community legislation adopted by the Council after obtaining the opinion of the Parliament.

34 Consequently, the plea of misuse of powers must be rejected.

35 It follows from all the foregoing considerations that the application must be dismissed in its entirety.

Costs

36 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the Parliament has been unsuccessful, it must be ordered to pay the costs. In accordance with Article 69(4) of the Rules, the Council, as intervener, must be ordered to bear its own costs.

On those grounds,

THE COURT

hereby:

1. Dismisses the action;

2. Orders the European Parliament to pay the costs. The Council shall bear its own costs.

Rodríguez Iglesias

Schockweiler

Kapteyn

Jann

Mancini

Kakouris

Moitinho de Almeida

Murray

Hirsch

Ragnemalm

Sevón

Delivered in open court in Luxembourg on 13 July 1995.

R. Grass

Registrar

G. C. Rodríguez Iglesias

President