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Judgment of the Court of Justice in Case C-91/05

Commission v Council

**THE COURT ANNULS THE COUNCIL DECISION SUPPORTING THE
MORATORIUM ON SMALL ARMS AND LIGHT WEAPONS IN WEST AFRICA**

The decision, which pursues objectives falling not only within common foreign and security policy but also Community development cooperation policy, should have been adopted under the EC Treaty and not the EU Treaty

In July 2002, the Council adopted, in the framework of the Common Foreign and Security Policy (CFSP) and on the basis of the EU Treaty, a Joint Action concerning the combating of the proliferation of small arms and light weapons¹. In order to implement that joint action, on 2 December 2004 the Council adopted a Decision² with a view to a European Union contribution to the Economic Community of West African States (ECOWAS) in the framework of the Moratorium on Small Arms and Light Weapons. The decision was adopted on the basis of the joint action and the EU Treaty.

When the draft of that decision was discussed, the Commission declared that in its view it should not be adopted under the EU Treaty and on the basis of the CFSP and that it fell rather under Community development cooperation policy and, more specifically, the Cotonou Agreement³. In that context, the Commission stated that it was already preparing a similar financing proposal under the Cotonou Agreement. Following adoption of the decision and taking the view that it was not adopted on the correct legal basis, the Commission requested the Court to annul the decision.

As a preliminary point, the Court points out that Community development cooperation policy concerns not only the economic and social development of developing countries and the campaign against poverty, but also the development and consolidation of democracy and the rule

¹ Council Joint Action 2002/589/CFSP of 12 July 2002 on the European Union's contribution to combating the destabilising accumulation and spread of small arms and light weapons (OJ 2002 L 191, p. 1).

² Council Decision 2004/833/CFSP of 2 December 2004 implementing Joint Action 2002/589/CFSP with a view to a European Union contribution to ECOWAS in the framework of the Moratorium on Small Arms and Light Weapons (OJ 2004 L 359, p. 65).

³ The Cotonou Agreement, signed in 2000 between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part, aims to promote and expedite the economic, cultural and social development of the ACP States, to contribute to peace and security and to promote a stable and democratic political environment.

of law, as well as respect for human rights and fundamental freedoms. If a measure is to fall within development cooperation policy, it must nevertheless contribute to the pursuit of that policy's economic and social development objectives. In that regard, the Court points out that certain measures aiming to prevent fragility in developing countries, including those adopted in order to combat the proliferation of small arms and light weapons, can contribute to the elimination or reduction of obstacles to the economic and social development of those countries.

The Court reiterates its case-law according to which, in accordance with Article 47 of the EU Treaty, a measure which could be adopted under the EC Treaty cannot have the EU Treaty as a legal basis. Even if a measure simultaneously pursues a number of objectives or has several components, without one being incidental to the other, it cannot for that reason be adopted on the basis of the EU Treaty if it also falls within a competence conferred by the EC Treaty.

In that regard, the first recital in the preamble to the contested decision states that the excessive and uncontrolled accumulation and spread of small arms and light weapons not only poses a threat to peace and security, but also reduces the prospects for sustainable development, particularly in West Africa. While the decision forms part of a general perspective of preserving peace and strengthening international security, it also has the specific objective of strengthening the capacities of a group of developing countries to combat a phenomenon which constitutes an obstacle to the sustainable development of those countries. The decision therefore pursues a number of objectives, falling within the CFSP and development cooperation policy respectively, without one of those objectives being incidental to the other.

That conclusion is moreover validated by the content of the decision.

Thus, the Court concludes that, by adopting the contested decision on the basis of the CFSP, even though it also falls within development cooperation policy, the Council infringed Article 47 of the EU Treaty.

Therefore, the Council decision is annulled.

Unofficial document for media use, not binding on the Court of Justice.

Languages available: CS DA DE EN ES FR NL PL PT SK SL SV

The full text of the judgment may be found on the Court's internet site

<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-91/05>

It can usually be consulted after midday (CET) on the day judgment is delivered.

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