



Press and Information

Court of Justice of the European Union
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Judgment in Joined Cases C-626/15 and C-659/16
Commission v Council (Antarctic MPAs)

Decisions adopted in the context of the international treaties relating to the preservation and conservation of living resources in Antarctica must be adopted jointly by the EU and the Member States who are parties to those treaties

The creation of marine protected areas in Antarctica cannot be proposed to the Commission for the Conservation of Antarctic Marine Living Resources on behalf of the EU acting alone

The Antarctic Treaty, signed on 1 December 1959, establishes the bases of the Antarctic system of agreements. In particular, that treaty provides that the Consultative Parties are to meet in order to study, formulate and recommend measures relating to the preservation and conservation of living resources in Antarctica. Of the 20 Member States which are contracting parties to that treaty, only 12 have the status of Consultative Parties, with the power on that basis to participate in decision-making at those meetings.

The cases concern measures for the protection of Antarctic seas and, in particular, the creation of a number of marine protected areas, which has been discussed for several years at the annual meetings of the Commission for the Conservation of Antarctic Marine Living Resources (the CCAMLR) established by the Convention on the Conservation of Antarctic Marine Living Resources (Canberra Convention), signed on 20 May 1980. The EU and 12 Member States are parties to the Canberra Convention.

The Council adopted two decisions: the first, contained in the conclusion of the Chairman of the Permanent Representatives Committee of 11 September 2015, approving the submission to the CCAMLR, on behalf of the EU and its Member States, of a reflection paper relating to a future proposal to create a marine protected area in the Weddell Sea (Antarctic peninsula) and the second, of 10 October 2016, approving the submission to the CCAMLR, on behalf of the EU and its Member States, of three proposals for the creation of marine protected areas and a proposal for the creation of special areas for scientific study of the marine area concerned, of climate change and of the retreat of ice shelves.

The Commission had insisted, when those decisions were adopted, that those measures fell within the scope, according to the Commission, of the EU's exclusive competence for the conservation of marine biological resources and that there was therefore no basis for submitting those measures on behalf of the EU and its Member States.

The Commission therefore asks the Court of Justice to annul those two decisions. The Commission maintains in particular that the main purpose and main component of the reflection paper and the envisaged measures fall within the exclusive competence which the EU possesses in respect of the conservation of marine biological resources under the Common Fisheries Policy, in accordance with a provision of the FEU Treaty. That provision applies to the adoption of any document or to any measure directed at conserving marine resources, whatever the objective pursued.

In today's judgment, the Court holds that, as protection of the environment is the main purpose and component of that document and those measures, **the contested decisions do not fall within the exclusive competence of the EU but within the competence regarding protection of the environment that the EU shares, in principle, with the Member States.**

The Court states that, certainly, the mere fact that international action of the EU falls within a competence shared between it and the Member States does not preclude the possibility of the required majority being obtained within the Council for the EU exercising that external competence alone. However, when the EU decides to exercise its powers they must be exercised with due regard for international law. In the specific context of the system of Antarctic agreements, exercise by the EU of the external competence at issue in the present cases that excludes the Member States would be incompatible with international law.

The Court considers that to permit the EU to have recourse, within the CCAMLR, to the power which it has to act without the participation of its Member States in an area of shared competence, when, unlike it, some Member States also have the status of Antarctic Treaty consultative parties, might undermine the responsibilities and rights of those Member States, which could weaken the coherence of the Antarctic system of agreements and, ultimately, run counter to provisions of the Canberra Convention.

NOTE: An action for annulment seeks the annulment of acts of the institutions of the EU that are contrary to EU law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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