



Press and Information

Court of Justice of the European Union

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Advocate General's Opinion in Case C-650/18
Hungary v Parliament

According to Advocate General Bobek, the Court should dismiss Hungary's action against the Parliament's resolution on the triggering of a procedure for determining the existence of a clear risk of a serious breach by this Member State of the EU's fundamental values

Although the action is admissible, it is nevertheless unfounded

On 12 September 2018, on the basis of a report adopted by its Committee on Civil Liberties, Justice and Home Affairs, also known by the name of its rapporteur as the Sargentini report, the European Parliament adopted a resolution on a proposal calling on the Council to determine, pursuant to Article 7(1) TEU, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded.

Pursuant to Article 354 TFEU, when adopting the resolution at issue, the Parliament was required to act by a two-thirds majority of the votes cast, representing the majority of its component Members. As Article 354 TFEU does not specify whether, in calculating if a text has been adopted or rejected, account shall also be taken of the abstentions, along with the votes cast for and against, the Parliament followed the provision of its Rules of Procedure relating to voting¹, which provides that, except where a specific majority is laid down by the Treaties, the abstentions are not to be taken into consideration.

The resolution was adopted with 448 votes cast for and 197 against it with 48 MEPs present having abstained from voting. Had the abstentions been taken into account for the calculation of whether the two-thirds majority of the votes cast had been reached, the majority required would not have been attained.

Asserting that, for the calculation of whether the two-thirds majority of the votes cast provided for by Article 354 TFEU has been reached, the abstentions should also have been taken into consideration and that, by having failed to take account of the abstentions, the Parliament did not comply with the requirements flowing from this article, Hungary has challenged before the Court of Justice the validity of the resolution.

In today's Opinion, Advocate General Mr Michal Bobek addresses, first, the question whether the action is admissible. In this regard, he points out that, unless the Treaties clearly and expressly exclude it, the Court has jurisdiction over all EU acts and that, in addition, any such express exclusion has to be interpreted narrowly. On this point, the Advocate General emphasises that **the fact that Article 269 TFEU confers specific jurisdiction on the Court to review compliance with the procedural stipulations relating to the adoption by the European Council or the Council of a determination pursuant to Article 7 TEU, cannot be perceived as excluding any other acts adopted under the latter article from judicial review.** On the contrary, the Advocate General takes the view that **the acts adopted on the basis of Article 7 TEU which are not covered by Article 269 TFEU remain subject to the general rules, enshrined in Article 263 TFEU, governing the judicial review of acts adopted by the EU institutions.**

¹ Rule 178(3) of the Parliament's Rules of Procedure.

As to the question whether the contested resolution constitutes a mere preliminary act devoid of any legal effects, which, as such, is not amenable to judicial review under Article 263 TFEU, the Advocate General proposes that the Court should answer in the negative. In this regard, the Advocate General highlights, on the one hand, that the contested resolution definitively lays down the position of the Parliament in the matter and, on the other hand, that potential shortcomings occurring in the course of its adoption cannot be remedied at later stages of the Article 7 TEU procedure.

Moreover, the contested resolution not only intends to produce legal effects vis-à-vis third parties, as required by Article 263 TFEU, but actually and clearly deploys such effects. On this point, the Advocate General sets out that the contested resolution triggered the Article 7 TEU procedure and, thereby, already has some legal effects or was certainly intended to have them. In addition, when the Article 7(1) TEU procedure has been initiated, and until the Council takes a decision in the matter, the Member State concerned loses ² the status of safe country in relation to asylum matters vis-à-vis the other Member States, which may then appraise on its merits an application for asylum submitted to them by a national of the Member State in question. Likewise, in the light of the Court's case-law ³, the contested resolution may have an impact on mutual trust and mutual recognition within the area of freedom, security and justice, in particular, in the context of the execution of European arrest warrants.

Under these conditions, the Advocate General considers that **Hungary has a clear interest in bringing proceedings against the contested resolution**, which not merely trigger Article 7(1) TEU but also carries legal consequences of its own for that Member State. The Advocate General therefore suggests that **the Court should declare the action admissible**.

As to the merits of the action, the Advocate General finds, first, that, from a linguistic point of view, the terms 'abstention' and 'vote cast' are mutually exclusive. Indeed, whilst a person abstaining asks to be counted as neither being in favour nor against a proposition and wishes to be treated as if they were not voting at all, the term 'vote cast' entails that a person has actively expressed their opinion through voting either in favour or against a proposition.

Second, the Advocate General sets out that the provision of **the Parliament's Rules of Procedure relating to voting**, in its version in force at the material time, provided that 'in calculating whether a text has been adopted or rejected, account shall be taken only of votes cast for and against, except where a specific majority is laid down by the Treaties' and, thereby, **clearly excluded abstentions from the count**). The fact that this provision refers, as a derogation to the general rule expressed therein, to a situation where 'a specific majority is laid down by the Treaties' does not affect the validity of that conclusion since, up to the present moment, no such derogation has been provided for by the Treaties.

Third, the Advocate General finds that, the MEPs having been duly informed, one and a half days before the vote, of the fact that abstentions would not be counted as votes cast, they were well aware of the rules applying to the voting process and could, therefore, exercise their right to vote in the light of those rules.

Finally, the Advocate General rejects Hungary's argument that, by failing to ask the opinion of the Parliament's Committee on Constitutional Affairs on how to interpret the provision of the Rules of Procedure relating to voting, the President of the Parliament did not fulfil his obligation to dissipate the uncertainties that had allegedly arisen in respect of that provision. Indeed, the Parliament's Rules of Procedure do not contain any obligation to consult that committee in order to interpret the voting rules.

Under these circumstances, the Advocate General proposes that **the Court should dismiss Hungary's action as unfounded**.

² Pursuant to paragraph (b) of the Sole Article of Protocol No 24 on asylum for EU nationals introduced by the Treaty of Amsterdam.

³ Judgment of 25 July 2018, *Minister for Justice and Equality (Deficiencies in the system of justice)* ([C-216/18 PPU](#)) (see also [PR No 113/18](#)).

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union 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 Opinion is published on the CURIA website on the day of delivery.

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