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Judgments of the Court in Joined Cases C-59/18, Italy v Council and C-182/18, *Commune di Milano v Council*, in Joined Cases C-106/19, Italy v Council and Parliament and C-232/19, *Commune di Milano v Parliament and Council*, and in Case C-743/19, *Parliament v Council*

### **Location of the seat of the EMA and the ELA: competence to decide on that matter is for the EU legislature and not the Member States**

*The decisions of the representatives of the Member States designating the new seat of the EMA and the seat of the ELA are political acts without any binding legal effects, with the result that they cannot be the subject of an action for annulment.*

On 20 November 2017, the Representatives of the Governments of the Member States chose the city of Amsterdam to replace London as the new location of the seat of the European Medicines Agency (EMA).

In June 2019, they also decided that the newly established European Labour Authority would have its seat in Bratislava.

Italy and the Comune di Milano dispute the decision of the Representatives of the Governments of the Member States to locate the seat of the EMA in Amsterdam (C-59/18 and C-182/18), and Regulation 2018/1718<sup>1</sup> which, subsequent to that decision, located that seat in that city (C-106/19 and C-232/19). For its part, the European Parliament disputes the decision of the representatives of the Member States to locate the seat of the ELA in Bratislava (C-743/19).

In today's judgments, **the Court, sitting as the Grand Chamber, dismisses the actions in their entirety.**

The Court begins by noting that measures adopted collectively by the Representatives of the Governments of the Member States are not subject to judicial review by the EU Courts under Article 263 TFEU.

However, such a measure must not in reality be a decision of the Council taken as an institution of the Union.

In those circumstances, the Court examines, first, whether competence to determine the location of the seat of the bodies, offices and agencies of the Union is for the Representatives of the Governments of the Member States, acting by common accord in accordance with the rule set out in Article 341 TFEU, or

<sup>1</sup> Regulation (EU) 2018/1718 of the European Parliament and of the Council of 14 November 2018 amending Regulation (EC) No 726/2004 as regards the location of the seat of the European Medicines Agency (OJ 2018 L 291, p. 3).

whether it is for the EU legislature.

**The Court holds that Article 341 TFEU does not apply to the designation of the location of the seat of a body, office or agency of the Union such as the EMA and the ELA.**

**The competence to determine the location of the seat of the EMA and the ELA thus lies with the EU legislature**, which must act to that end in accordance with the procedures laid down by the substantively relevant provisions of the Treaties.

Next, the Court takes the view **that the decisions of the Representatives of the Governments of the Member States taken in November 2017 and in June 2019, respectively, to designate the new seat of the EMA and the seat of the ELA** cannot be classified as acts of the Council. On the contrary, those decisions constitute acts taken collectively and by common accord by those government representatives.

The decisions at issue, which have been taken by the Member States in an area where the Treaties do not provide for their action, have no binding legal effects under EU law. They are political decisions **of the Member States, which cannot be the subject of an action for annulment under Article 263 TFEU.**

As regards the actions against **Regulation 2018/1718**, the Court **rejects all the arguments put forward by the Comune di Milano and the Italian Government, alleging infringement of the Parliament's prerogatives and the unlawfulness of that regulation arising from the alleged procedural irregularity leading to the decision of the representatives of the Member States of 20 November 2017 to choose the city of Amsterdam as the new seat of the EMA.**

In that regard, the Court holds that that decision is a non-binding measure of political cooperation which is not capable of limiting the discretion of the EU legislature. **Therefore, it cannot be held, in the present case, that the Parliament declined to exercise its legislative powers by considering itself to be bound by the contested decision.**

The Court adds that it was open to the Parliament, in the event of disagreement with the political decision of the Member States to relocate the seat of the EMA to Amsterdam, to object to that decision being reflected in EU legislation.

**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 judgments ([C-59/18 and C-182/18](#), [C-106/19 et C-232/19](#), and [C-743/19](#)) is published on the CURIA website on the day of delivery.

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