

JUDGMENT OF THE COURT

4 October 1991 *

In Case C-70/88,

European Parliament, represented initially by Francesco Pasetti Bombardella, Jurisconsult, and subsequently by Jorge Campinos, Jurisconsult, acting as Agents, assisted by Christian Pennera and Johann Schoo, members of its Legal Service, with an address for service in Luxembourg at the General Secretariat of the European Parliament, Kirchberg,

applicant,

v

Council of the European Communities, represented initially by Raffaello Fornasier, Director-General of its Legal Service, and by Bernhard Schloh, Legal Adviser, acting as Agents, and subsequently by Bernhard Schloh, acting as Agent, with an address for service in Luxembourg at the office of Xavier Herlin, Manager of the Legal Directorate of the European Investment Bank, 100 Boulevard Konrad Adenauer,

defendant,

supported by

United Kingdom of Great Britain and Northern Ireland, represented initially by J. Gensmantel and subsequently by Rosemary Caudwell, of the Treasury Solicitor's Department, acting as Agents, with an address for service in Luxembourg at the British Embassy, 14 Boulevard Roosevelt,

and by

* Language of the case: French.

Commission of the European Communities, represented by Michel Van Ackere-Pietri, Legal Adviser, and by Jürgen Grünwald, a member of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Roberto Hayder, a representative of the Legal Service, Wagner Centre, Kirchberg,

interveners,

concerning, at this stage of the proceedings, an examination with regard to the substance of an application under Article 173 of the EEC Treaty and Article 146 of the EAEC Treaty for the annulment of Council Regulation (Euratom) No 3954/87 of 22 December 1987 laying down maximum permitted levels of radioactive contamination of foodstuffs and of feedingstuffs following a nuclear accident or any other case of radiological emergency (Official Journal 1987 L 371, p. 11),

THE COURT,

composed of: O. Due, President, G. F. Mancini, T. F. O'Higgins, J. C. Moitinho de Almeida, G. C. Rodríguez Iglesias and M. Díez de Velasco (Presidents of Chambers), Sir Gordon Slynn, C. N. Kakouris, R. Joliet, F. A. Schockweiler, F. Grévisse, M. Zuleeg and P. J. G. Kapteyn, Judges,

Advocate General: W. Van Gerven,
Registrar: J.-G. Giraud,

having regard to the Report for the Hearing,

after hearing oral argument on behalf of the parties at the hearing on 7 May 1991, at which the European Parliament was represented by Jorge Campinos, Johann Schoo, Christian Pennera and Professor Dieter H. Scheuing, acting as Agents, the Council by Bernhard Schloh, acting as Agent, the Commission by Jürgen Grünwald, acting as Agent, and the United Kingdom by Gerald Barling, Barrister, acting as Agent,

after hearing the Opinion of the Advocate General at the sitting on 26 June 1991,

gives the following

Judgment

- 1 By application lodged at the Court Registry on 4 March 1988, the European Parliament brought an action under Article 146 of the EAEC Treaty and Article 173 of the EEC Treaty for the annulment of Council Regulation (Euratom) No 3954/87 of 22 December 1987 laying down maximum permitted levels of radioactive contamination of foodstuffs and of feedingstuffs following a nuclear accident or any other case of radiological emergency (Official Journal 1987 L 371, p. 11).
- 2 That regulation, which is based on Article 31 of the EAEC Treaty, lays down the procedure for determining the maximum permitted levels of radioactive contamination of foodstuffs and feedingstuffs which may be placed on the market following a nuclear accident or any other case of radiological emergency which is likely to lead to or has led to significant radioactive contamination of foodstuffs and feedingstuffs. Foodstuffs or feedingstuffs with a level of contamination in excess of the maximum permitted levels laid down in a measure adopted in accordance with the provisions of the regulation at issue may not be placed on the market.
- 3 By interlocutory judgment of 22 May 1990 in Case C-70/88 *Parliament v Council* [1990] ECR I-2041, the Court dismissed the objection of inadmissibility raised by the Council and ordered the proceedings to continue with regard to the substance of the case. In the grounds of judgment in that case the Court held in substance that an action for annulment brought by the Parliament against an act of the Council or the Commission was admissible provided that the action sought only to safeguard the Parliament's prerogatives and it was founded only on submissions alleging their infringement (paragraph 27).
- 4 In support of its action the Parliament puts forward three pleas, the first of which alleges that the legal basis for the regulation at issue has been wrongly chosen, whilst the second and third pleas claim respectively that the legal form of the measure in question was inappropriate and that in that measure implementing powers were not delegated to the Commission.

- 5 Reference is made to the Report for the Hearing for a fuller account of the course of the procedure and the pleas and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

The first plea

- 6 By its first plea the Parliament claims in substance that the regulation at issue is wrongly based on Article 31 of the EAEC Treaty, whereas the appropriate legal basis would have been Article 100a of the EEC Treaty, if necessary in conjunction with Article 31 of the EAEC Treaty.

- 7 It should be recalled *in limine*, as the Court pointed out in paragraphs 28 to 31 of the interlocutory judgment previously cited, that by claiming that the regulation at issue is based on Article 31 of the EAEC Treaty, which provides only that the Parliament is to be consulted, whereas it ought to have been based on Article 100a of the EEC Treaty, which requires implementation of the procedure for cooperation with the Parliament, the Parliament is in fact claiming that its prerogatives were breached as a result of the choice of the legal basis. To that extent the application is therefore admissible.

- 8 It is therefore necessary to consider whether the regulation at issue could validly be adopted on the basis of Article 31 of the EAEC Treaty.

- 9 The Court has consistently held that in the context of the organization of the powers of the Community the choice of the legal basis for a measure may not depend simply on an institution's conviction as to the objective pursued but must be based on objective factors which are amenable to judicial review. Those factors

include in particular the aim and content of the measure (see, most recently, paragraph 10 of the judgment in Case C-300/89 *Commission v Council* [1991] ECR I-2867).

- 10 As regards the aim pursued, it may be seen from the first recital in the preamble to Regulation No 3954/87 that the purpose of the regulation is to establish uniform safety standards to protect the health of workers and of the general public, as provided in Article 2(b) of the EAEC Treaty. The fifth recital emphasizes in addition the need to 'set up a system allowing the Community, following a nuclear accident or any other case of radiological emergency which is likely to lead or has led to a significant radioactive contamination of foodstuffs and feedingstuffs, to fix maximum permitted levels of radioactive contamination in order to protect the population'.

- 11 As regards the content of the regulation at issue, it should be noted that the annex thereto lays down maximum permitted levels of radioactive contamination for foodstuffs and feedingstuffs. In the event of the Commission's receiving official information on nuclear accidents or on any other case of radiological emergency, substantiating that the said maximum permissible levels are likely to be reached or have been reached, the Commission is immediately to adopt, if the circumstances so require, a regulation rendering applicable those maximum permissible levels (Article 2). The Council is either to adapt or confirm, within a period of three months, the provisions of the Commission's regulation (Article 3). Regulation No 3954/87 moreover lays down a procedure to be followed for revising or supplementing the maximum permitted levels (Article 5).

- 12 The foregoing considerations indicate that the purpose of the regulation at issue, according to its aim and content, as they emerge from its actual wording, is to protect the population against the dangers arising from foodstuffs and feedingstuffs which have undergone radioactive contamination.

- 13 However, the Parliament contends that Article 30 et seq. of the EAEC Treaty, on the one hand, do not relate to so-called 'secondary' radiation, that is, radiation emanating from contaminated products, but, on the other hand, concern only the protection of persons directly involved in the nuclear industry.
- 14 There is no support in the relevant legislation for that restrictive interpretation, which cannot therefore be accepted. The indications are rather that the purpose of the articles referred to is to ensure the consistent and effective protection of the health of the general public against the dangers arising from ionizing radiations, whatever their source and whatever the categories of persons exposed to such radiations.
- 15 It is also necessary to consider whether, as the Parliament claims in the alternative, Regulation No 3954/87 ought also to have been based on Article 100a of the EEC Treaty on the ground that it concerns not only the protection of the public against ionizing radiations but also the establishment and functioning of the internal market within the meaning of Article 8a of the EEC Treaty.
- 16 It is true that Article 6(1) of the regulation at issue prohibits the placing on the market of foodstuffs and feedingsuffs with a level of radioactive contamination in excess of the maximum permitted levels laid down at Community level and that the 11th recital in the preamble to the regulation states that 'the adoption of a regulation rendering applicable maximum permitted levels would also maintain the unity of the Common Market and avoid deflections of trade within the Community'.
- 17 However, contrary to the Parliament's view, those factors do not justify the conclusion that the regulation at issue is also a harmonization measure within the meaning of Article 100a of the EEC Treaty. In fact the prohibition of marketing provided for in Article 6(1) is only one condition for the effectiveness of the application of the maximum permitted levels. The regulation therefore has only the incidental effect of harmonizing the conditions for the free movement of goods

within the Community inasmuch as, by means of the adoption of uniform protective measures, it avoids the need for trade in foodstuffs and feedingstuffs which have undergone radioactive contamination to be made the subject of unilateral national measures.

- 18 It follows from the foregoing that the contested regulation was validly adopted on the basis of Article 31 of the EAEC Treaty alone. The plea alleging that that legal basis was wrongly chosen must therefore be rejected.

The second and third pleas

- 19 By its second and third pleas the Parliament claims that on the one hand the Council adopted a regulation, whereas Article 31 of the EAEC Treaty allows only the adoption of a directive and, on the other hand, that the Council omitted, in the measure at issue, to delegate implementing powers to the Commission.

- 20 In this respect it is sufficient to note that the Parliament has not put forward in support of its pleas any evidence tending to show a breach of its prerogatives. The relevant pleas must therefore be rejected as inadmissible.

- 21 Since none of the Parliament's pleas has been successful, the application must be dismissed.

Costs

- 22 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the European Parliament has been unsuccessful, it must be ordered to pay the costs, including those of the parties who intervened in support of the form of order sought by the Council.

On those grounds,

THE COURT

hereby:

- 1. Dismisses the application;**
- 2. Orders the European Parliament to pay the costs, including those of the interveners.**

Due	Mancini	O'Higgins	Moitinho de Almeida	Rodríguez Iglesias
	Diéz de Velasco		Slynn	Kakouris
Joliet	Schockweiler	Grévisse	Zuleeg	Kapteyn

Delivered in open court in Luxembourg on 4 October 1991.

J.-G. Giraud
Registrar

O. Due
President