

JUDGMENT OF THE COURT

24 October 1989 *

In Case 16/88

Commission of the European Communities, represented by its Legal Adviser D. Sorasio, acting as Agent, with an address for service in Luxembourg at the office of Georgios Kremlis, a member of its Legal Department, Wagner Centre, Kirchberg,

applicant,

supported by

European Parliament, represented by F. Pasetti Bombardella, Jurisconsult, assisted by C. Pennera and J. Schoo, members of its Legal Department, with an address for service in Luxembourg at its General Secretariat, Kirchberg,

intervener,

v

Council of the European Communities, represented by F. Van Craeynest, a member of its Legal Department, acting as Agent, with an address for service in Luxembourg at the office of J. Käser, Manager of the Legal Directorate of the European Investment Bank, 100 boulevard Konrad-Adenauer,

defendant,

APPLICATION for a declaration that Article 6(4) of Council Regulation (EEC) No 3252/87 of 19 October 1987 on the coordination and promotion of research in the fisheries sector (Official Journal 1987, L 314, p. 17) is void,

* Language of the case: French

THE COURT

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

Advocate General: M. Darmon
Registrar: B. Pastor, Administrator

having regard to the Report for the Hearing and further to the hearing on 25 April 1989,

after hearing the Opinion of the Advocate General delivered at the sitting on 30 June 1989,

gives the following

Judgment

- 1 By an application lodged at the Court Registry on 15 January 1988, the Commission brought an action under Article 173(1) of the EEC Treaty for a declaration that Article 6(4) of Council Regulation (EEC) No 3252/87 of 19 October 1987 on the coordination and promotion of research in the fisheries sector (Official Journal 1987, L 314, p. 17) is void.

- 2 That regulation was adopted by the Council on the basis of Article 43 of the Treaty, in the context of the coordination of the structural policies of Member States in the fisheries sector, with a view to establishing Community research programmes in areas of special importance for the common fisheries policy and Community research coordination programmes. In Article 5 of the regulation the Council reserved the power to adopt those programmes, acting on a proposal from the Commission, and did so for the period 1988-92 by Decision 87/534/EEC of 19 October 1987 (Official Journal 1987, L 314, p. 20). By Article 6 of the regu-

lation, the Council empowered the Commission to ensure that the Community research programmes are carried out by concluding for that purpose cost-sharing research contracts with research institutes and centres and to ensure that the Community research coordination programmes are carried out by organizing for that purpose seminars, conferences, study visits, exchanges of researchers and working meetings of scientific experts and by collating, analysing and publishing, if necessary, the results.

- 3 Article 6(4) of Regulation No 3252/87 specifies that decisions concerning the execution of those programmes are to be adopted by the Commission under the procedure laid down in Article 47 of Council Regulation (EEC) No 4028/86 of 18 December 1986 (Official Journal 1986, L 376, p. 7). That article provides:
- ‘1. Where the procedure laid down in this article is to be followed, matters shall be referred to the Standing Committee for the Fishing Industry, by its chairman, either on his own initiative or at the request of the representative of a Member State.
 2. The representative of the Commission shall submit a draft of the measures to be taken. The Committee shall deliver its opinion within a time-limit to be set by the chairman according to the urgency of the matter. Opinions shall be adopted by a majority of 54 votes, the votes of the Member States being weighted as laid down in Article 148(2) of the Treaty. The chairman shall not vote.
 3. The Commission shall adopt the measures which shall apply immediately. However, if these measures are not in accordance with the opinion of the Committee, the Commission shall forthwith communicate them to the Council. In that event the Commission may defer their application for not more than one month from the date of such communication. The Council, acting by a qualified majority, may adopt different measures within one month.’
- 4 The effect of that procedure, which is known as the ‘management committee’ procedure, is to allow the Council to act itself in the Commission’s stead if the Standing Committee for the Fishing Industry gives an unfavourable opinion on the measures envisaged by the Commission.

- 5 The Commission contests the use of that procedure, and makes two submissions in support of its claim: that there has been an infringement of Article 205 and the third indent of Article 155 of the Treaty, and that the third indent of Article 145 of the Treaty, as amended by the Single European Act, has been wrongly or improperly applied. Although worded differently, both submissions reflect the same idea. Almost all the individual decisions which the Commission has been empowered to take in the relevant sphere involve the use of budget appropriations. They do not, therefore, fall within the concept of the implementation of rules within the meaning of the third indent of Article 145 of the Treaty, but instead partake of the powers held by the Commission under Article 205 of the Treaty. By making the exercise of those prerogatives subject to a management committee procedure, the Council has encroached upon the Commission's own power of decision conferred upon it by Article 205. That procedure, applied to the individual measures mentioned in Article 6 of Regulation No 3252/87, enables the Council to intervene in a field where the Commission has exclusive power.
- 6 The Council, for its part, contends that a clear distinction must be drawn between the power to adopt acts of general or individual application which is covered by Articles 145 and 155 of the Treaty and the budgetary powers which are governed by Articles 203 and 205 of the Treaty. It points out that implementation of the budget is not possible until a substantive decision has been taken giving the expenditure a legal basis. In the present case, the decisions to be adopted by the Commission on the basis of Article 6 of Regulation No 3252/87, and in particular those involving the conclusion of contracts, constitute substantive decisions, while the implementation of the budget involves the use of the relevant appropriations. Article 6 confers a power within the meaning of Article 155 of the Treaty, and such powers may be conferred for the purpose of adopting individual measures. The Council adds, further, that the interpretation put forward by the Commission would have the effect of distorting the scope of Article 206b. When giving the Commission a discharge in respect of the implementation of the budget, the European Parliament must take into account the legislative framework surrounding that implementation and is not competent to comment on substantive decisions taken by the Commission in the exercise of a power, such as that in the present case, conferred on it under Article 155 of the Treaty.
- 7 Reference is made to the Report for the Hearing for a fuller account of the relevant legislation and the submissions and arguments of the parties, which are referred to hereinafter only in so far as is necessary for the reasoning of the Court.

- 8 It must first be noted that Articles 145 and 155, like Articles 205, 206a and 206b, are in Part Five of the Treaty, which deals with the institutions of the Community. However, Articles 145 and 155 of the Treaty appear in Title I, 'Provisions governing the institutions', whilst Articles 205, 206a and 206b are in Title II, which deals with 'Financial provisions'. The function of each of those sets of provisions must therefore be examined within the Community institutional system. For that purpose, it is necessary first to consider the provisions of the Treaty governing the institutions and then to determine whether the conclusions which may be drawn from them must be modified in the light of the financial provisions of Article 205 of the Treaty.
- 9 The provisions of the Treaty which specify the powers of the institutions to adopt acts of general or individual application in the fields covered by the Treaty may — as is the case, for example, with Article 90(3), Article 91, Article 93(2) and Article 115 of the Treaty — confer directly on the Commission its own power of decision within the meaning of Article 155 of the Treaty.
- 10 When, however, the power of decision is conferred by the Treaty on the Council, the Commission could, even before the Single European Act, be empowered to adopt implementing measures under the fourth indent of Article 155 of the Treaty. In certain cases, moreover, as was provided explicitly in Article 79(4), or implicitly in Article 87(2)(d), of the Treaty, it was given responsibility for the application of rules to particular situations. Finally, after the amendments made to Article 145 by the Single European Act, the Council may reserve the right to exercise implementing powers directly only in specific cases, and it must state in detail the grounds for such a decision. In the field of agriculture, governed by Article 43 of the Treaty, with which this case is concerned, the allocation of implementing powers is determined by the third indent of Article 145 of the Treaty, as amended by the Single European Act.
- 11 The concept of implementation for the purposes of that article comprises both the drawing up of implementing rules and the application of rules to specific cases by means of acts of individual application. Since the Treaty uses the word 'implementation' without restricting it by the addition of any further qualification, that term cannot be interpreted so as to exclude acts of individual application.

- 12 Under the system established by the Treaty as it stood before the Single European Act, the Court ruled, in its judgment of 17 December 1970 in Case 25/70 *Einfuhr- und Vorratsstelle v Köster* [1970] ECR 1161, paragraphs 9 and 10, that if the Council could confer implementing powers on the Commission under Article 155 of the Treaty it could also make the exercise of those powers subject to a management committee procedure which enabled the Council to take the decision itself if it saw fit, and that the legality of the management committee procedure could not be disputed in relation to the institutional structure of the Community.
- 13 The Council's right to make the exercise of the powers which it confers on the Commission subject to certain procedures was expressly preserved in the amendments made to Article 145 of the Treaty by the Single European Act. Those procedures must be consonant with rules laid down in advance by the Council, acting unanimously on a proposal from the Commission and after obtaining the opinion of the European Parliament. They were laid down by Council Decision 87/373 of 13 July 1987 (Official Journal 1987, L 197, p. 33).
- 14 The parties did not comment on the reasons for which the provision in Regulation No 3252/87 on which the present action turns refers to the procedure laid down in Article 47 of Council Regulation No 4028/86 rather than to one of those set up by Decision 87/373, which was applicable at the time of the adoption of Regulation No 3252/87. However, the procedure referred to corresponds in substance to procedure II(a) in Article 2 of Decision 87/373.
- 15 It must now be considered whether, as the Commission maintains, the Council has, by making the adoption of the decisions which it empowered the Commission to take subject to the management committee procedure, encroached upon the Commission's power under Article 205 of the Treaty to implement the budget on its own responsibility.
- 16 It must be stressed in that regard that the Commission's power to implement the budget is not such as to modify the division of powers resulting from the various provisions of the Treaty which authorize the Council and the Commission to adopt generally applicable or individual measures within specific areas, such as Article 43, which is in issue in the present case, and from the institutional provisions of the third indent of Article 145 and Article 155.

- 17 Even though an individual measure may almost inevitably entail the commitment of expenditure, the two must be distinguished — particularly since the power to adopt the administrative decision and the power to commit the expenditure may be entrusted, within the internal organization of each institution, to different officials.
- 18 It follows that the Commission is wrong to maintain that the Council cannot confer upon it under the third indent of Article 145 the power to adopt individual measures when such measures have financial implications.
- 19 That interpretation, which rules out the possibility that commitments of expenditure might in themselves and irrespective of any substantive decision impose legally binding obligations on the Community *vis-à-vis* third parties, is, moreover, in conformity with the system of supervision of the implementation of the budget in which the European Parliament has been given, under Article 206b of the Treaty, the power to give a discharge to the Commission, and in which the Court of Auditors is required to assist the European Parliament within the limits defined in Article 206a(2) of the Treaty and Article 80 of the Financial Regulation adopted by the Council on 21 December 1977 (Official Journal 1977, L 356, p. 1) in accordance with Article 209 of the Treaty.
- 20 The above interpretation is also supported, with regard more specifically to research programmes, by Article 7 of the EAEC Treaty. That article empowers the Council to determine research programmes and the Commission to ensure that they are carried out. The latter provision would have been superfluous if the power to carry out the programmes — including the decision to conclude research contracts and the conclusion of those contracts — formed part of the power to implement the budget which the Commission possesses in any event under the first paragraph of Article 179 of the EAEC Treaty.
- 21 It follows from all those considerations that the Commission's 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 Commission has failed in its submissions, it must be ordered to pay the costs, except those of the intervener, which must bear its own costs.

On those grounds,

THE COURT

hereby:

- (1) Dismisses the application;**
- (2) Orders the Commission to pay the costs, except those of the intervener;**
- (3) Orders the intervener to bear its own costs.**

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

Delivered in open court in Luxembourg on 24 October 1989.

J.-G. Giraud
Registrar

O. Due
President