

Case C-106/96

United Kingdom of Great Britain and Northern Ireland

v

Commission of the European Communities

(Community action programme to combat social
exclusion — Funding — Legal basis)

Opinion of Advocate General Tesouro delivered on 22 January 1998 I - 2731
Judgment of the Court, 12 May 1998 I - 2745

Summary of the Judgment

- Budget of the European Union — Implementation — Commitment of significant expenditure — Need for a prior basic act — Non-significant nature of an action — Burden of proof borne by the Commission — Decision to fund a project relating to social exclusion under a given budget heading and without a basic act — Lack of competence of the Commission — Illegality*
(EC Treaty, Arts 4(1), 205 and 209; Financial Regulation, Art. 22(1))
- Actions for annulment — Judgment annulling a measure — Effects — Limitation by the Court — Annulment of a decision*
(EC Treaty, Arts 173 and 174, second para.)

1. It follows from Articles 205 and 209 of the Treaty and the second subparagraph of Article 22(1) of the Financial Regulation, read together with paragraph 3(c) of Section IV of the Joint Declaration of 30 June 1982 by the European Parliament, the Council and the Commission, that implementation of Community expenditure relating to any significant Community action presupposes not only the entry of the relevant appropriation in the budget of the Community, which is a matter for the budgetary authority, but in addition the prior adoption of a basic act authorising that expenditure, which is a matter for the legislative authority, whereas implementation of budgetary appropriations for Community action which does not fall within that category — namely non-significant Community action — does not require prior adoption of such a basic act.

The requirement that a basic act must be adopted before an appropriation is implemented derives directly from the scheme of the Treaty, in accordance with which the conditions governing the exercise of legislative powers and budgetary powers are not the same. The fact that implementation of expenditure on the basis of the mere entry of the relevant appropriations in the budget is an exception to that fundamental rule means that it cannot be assumed that Community action is non-significant and the Commission must therefore prove it to be so.

The appropriations under heading B3-4103 of the budget for the financial

year 1995 were to cover expenditure under a programme to combat poverty and social exclusion to be proposed by the Commission; however, when its proposal was not adopted by the Council, the Commission decided to commit that expenditure to fund the projects to combat social exclusion announced in its Press Release IP/96/67 of 23 January 1996, but did not succeed in establishing before the Court that the projects in question constituted non-significant action. Consequently, it was not competent to commit that expenditure, thus acting in breach of Article 4(1) of the Treaty, and its decision must therefore be annulled.

2. Since annulment of the Commission's decision referred to in its Press Release IP/96/67 of 23 January 1996, announcing certain grants for European projects seeking to overcome social exclusion, takes place at a time when all, or almost all, of the relevant payments have been made, important considerations of legal certainty, comparable with those arising where certain regulations are annulled, justify the Court in exercising the power conferred on it by the second paragraph of Article 174 of the Treaty when it annuls a regulation and in deciding that the annulment is not to affect the validity of payments made or undertakings given under contracts which were the subject of the funding in issue.