

Case T-240/04

French Republic

v

Commission of the European Communities

(European Atomic Energy Community — Investments — Communication to the
Commission of investment projects — Implementing procedures — Regulation
(Euratom) No 1352/2003 — Lack of competence of the Commission — Articles 41
EA to 44 EA — Principle of legal certainty)

Judgment of the Court of First Instance (First Chamber, Extended
Composition), 17 September 2007 II - 4038

Summary of the Judgment

*EAEC — Investments — Communication to the Commission of investment projects —
Implementing procedures*

*(Arts 41 EA to 44 EA; Council Regulation No 2587/1999; Commission Regulations
Nos 1209/2000, Arts 3c(2) and 4b, and 1352/2003)*

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Regulation No 1352/2003, amending Regulation No 1209/2000 determining procedures for effecting the communications prescribed under Article 41 of the Treaty establishing the European Atomic Energy Community, is annulled for lack of competence on the Commission's part to adopt it.

the latter regulation cannot be considered as necessary to give practical effect to the provisions of Articles 41 EA to 44 EA. Thus, it was not necessary to confer on the Commission the power to recommend the suspension of investment projects before finishing the examination of them, as Article 3c(2) of Regulation No 1209/2000 — as introduced by Regulation No 1352/2003 — provides, since such a suspension was not in any way envisaged in the EAEC Treaty.

In the first place, it does not follow either from the provisions of Articles 41 EA to 44 EA or from those of Regulation No 2587/1999 defining the investment projects to be communicated to the Commission in accordance with Article 41 EA, which are the legal bases referred to by the said Regulation No 1352/2003, that the Commission has the explicit power to adopt such a regulation. In particular, Articles 41 EA to 44 EA do not provide the Commission with regulatory powers relating to the procedure for the examination of investment projects. Similarly, the said Regulation No 2587/1999 contains no provision expressly empowering it to adopt regulations for the purposes of its implementation.

Moreover, and above all, the adoption of measures providing details of the Commission's examination procedure of investment projects, such as those in Regulation No 1352/2003, does not need to be carried out in the form of a regulation. Simple internal rules of organisation would suffice to achieve the goals that the Commission, in its own words, meant to achieve. Furthermore, Regulation No 1352/2003 introduces provisions, in particular Articles 3c(2) and 4b of Regulation No 1209/2000, which concern not only the internal organisation of the Commission but also have a legal effect on third parties. Those provisions are not intended to create obligations for third parties.

Secondly, Regulation No 2587/1999 is limited to defining those investment projects to be communicated to the Commission in accordance with Article 41 EA and does not in any way concern the process of discussions with the Commission on those projects. The Commission is therefore not given the implicit competence to adopt Regulation No 1352/2003. Similarly, the provisions of

Thus, by choosing a regulation — when no provision of Community law expressly gave it competence to do so — to adopt organis-

ing measures for the examination procedure of nuclear investment projects, which did not require the use of a legislative provision which is binding in its entirety and directly applicable in all Member States, the Commission infringed the rules on competence in

the EAEC Treaty, creating a risk of confusion damaging to legal certainty as regards the legal scope of that act for third parties.

(see paras 32, 33, 41, 42, 44, 47, 52-54)