

JUDGMENT OF THE COURT

30 June 1993 <sup>\*</sup>

In Joined Cases C-181/91 and C-248/91,

**European Parliament**, represented by Jorge Campinos, Jurisconsult, acting as Agent, assisted by Christian Pennera and Kieran Bradley, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the General Secretariat of the European Parliament, Kirchberg,

applicant,

v

**Council of the European Communities**, represented by Arthur Alan Dashwood, Director of the Legal Service, assisted by Yves Crétien, Legal Adviser, acting as Agents, with an address for service in Luxembourg at the office of Jörg Käser, Manager of the Legal Department of the European Investment Bank, 100 Boulevard Konrad Adenauer,

defendant,

APPLICATION for the annulment of an act adopted at the 1487th session of the Council with a view to the grant of special aid to Bangladesh,

and

**European Parliament**, represented by Jorge Campinos, Jurisconsult, acting as Agent, assisted by Christian Pennera and Kieran Bradley, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the General Secretariat of the European Parliament, Kirchberg

applicant,

<sup>\*</sup> Language of the case: French.

v

**Commission of the European Communities**, represented by Jean Amphoux, Principal Legal Adviser, and Mr Götz zur Hausen, Legal Adviser, acting as Agents, with an address for service in Luxembourg at the office of Nicola Anzecchino, of its Legal Service, Wagner Centre, Kirchberg,

defendant,

APPLICATION for the annulment of budgetary implementation measures adopted by the Commission on the basis of the act adopted at the 1487th session of the Council with a view to the grant of special aid to Bangladesh,

THE COURT,

composed of: O. Due, President, G. C. Rodríguez Iglesias and J. L. Murray (Presidents of Chambers), G. F. Mancini, R. Joliet, F. A. Schockweiler, M. Diez de Velasco, P. J. G. Kapteyn and D. A. O. Edward, Judges,

Advocate General: F. G. Jacobs,  
Registrar: J.-G. Giraud,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 28 October 1992,

after hearing the Opinion of the Advocate General delivered at the sitting on 16 December 1992,

gives the following

## Judgment

1 By applications of 11 July 1991 and 2 October 1991 the Parliament brought actions under Article 173 of the EEC Treaty for the annulment of an act adopted at the 1487th session of the Council with a view to the grant of special aid to Bangladesh and of the means adopted by the Commission for the implementation of that act.

2 In the course of an ordinary session held at Brussels on 13 and 14 May 1991 under the chairmanship of Jacques F. Poos, the Minister of Foreign Affairs of the Grand Duchy of Luxembourg, a decision was taken to grant special aid to Bangladesh. Item 12 of the minutes of that meeting described the decision as follows:

‘The Member States meeting in the Council have decided on the basis of a Commission proposal to grant special aid of ECU 60 million to Bangladesh under a Community action.

The distribution amongst the Member States will be based on GNP.

The aid will be integrated into the Community’s general action plan for Bangladesh.

It will be provided either directly by the Member States, or by means of an account administered by the Commission.

The Commission will coordinate the whole of the special aid of ECU 60 million.’

That decision was the subject of a press release entitled ‘Aid for Bangladesh — Council conclusions’ (reference 6004/91, Press 60-c).

3 Following that decision the Commission opened a special account with Banque Bruxelles Lambert, and invited the Member States to transfer their contributions to it. Only Greece took up that suggestion; the other Member States paid their contributions directly within the framework of bilateral aid.

- 4 In its action brought against the Council the Parliament seeks the annulment of the decision to grant special aid to Bangladesh (hereinafter 'the contested act').
- 5 By separate document, the Council raised an objection of inadmissibility under Article 91 of the Rules of Procedure on the ground that the contested act was not an act of the Council within the meaning of Article 173 of the Treaty. By decision of 15 June 1992 the Court joined that objection to the substance of the case.
- 6 In its action brought against the Commission, the Parliament seeks in addition the annulment of the measures adopted by the Commission in implementation of the contested act. These are, first, the decision of 10 June of the Director General for Budgets to enter under Article 900 of the general budget of the Communities for 1991 (on the revenue side) the sum of ECU 716 775.45 representing Greece's contribution held in the special account opened with Banque Bruxelles Lambert, secondly, the decision of 13 June 1991 crediting that sum to a supplementary heading opened on the expenditure side of the general budget (item B7-3000: Financial and technical cooperation with Asian developing countries) and, thirdly, any other budgetary measures of which the Parliament had no knowledge (hereinafter 'the budget entries').
- 7 By order of 15 October 1992, the President decided, pursuant to Article 43 of the Rules of Procedure, to join the applications brought against the Council and the Commission.
- 8 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, 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 action brought against the Council

- 9 The Council claims that the Court should declare the application brought against it inadmissible on the ground that the contested act was adopted, not by the Council, but by the Member States, and thus cannot be the subject of an action for annulment under Article 173 of the Treaty.
  
- 10 Parliament submits, on the other hand, that in view of its title, 'Council conclusions', and the fact that it was adopted at the 1487th session of the Council, which was attended by, among others, all the Ministers of Foreign Affairs of the Member States, the contested act constitutes an act of the Council. It argues that, by adopting that act, the Council infringed the prerogatives conferred on Parliament by Article 203 of the Treaty in budgetary matters.
  
- 11 In order to decide this point it must be pointed out first that under Article 173 the Court's function is to 'review the legality of acts of the Council and the Commission other than recommendations or opinions'.
  
- 12 It is clear from the wording of that provision that acts adopted by representatives of the Member States acting, not in their capacity as members of the Council, but as representatives of their governments, and thus collectively exercising the powers of the Member States, are not subject to judicial review by the Court. As the Advocate General stated in section 18 of his Opinion, it makes no difference in this respect whether such an act is called an 'act of the Member States meeting in the Council' or an 'act of the representatives of the Governments of the Member States meeting in the Council'.
  
- 13 However, the Court has consistently held that an action for annulment is available in the case of all measures adopted by the institutions, whatever their nature or form, which are intended to have legal effects (Case 22/70 *Commission v Council* [1971] ECR 263).

14 Consequently, it is not enough that an act should be described as a 'decision of the Member States' for it to be excluded from review under Article 173 of the Treaty. In order for such an act to be excluded from review, it must still be determined whether, having regard to its content and all the circumstances in which it was adopted, the act in question is not in reality a decision of the Council.

15 It follows that the assessment of the admissibility of the application is bound up with the assessment to be made of the complaints levelled against the contested act.

16 Before considering those complaints, it should be pointed out that the Community does not have exclusive competence in the field of humanitarian aid, and that consequently the Member States are not precluded from exercising their competence in that regard collectively in the Council or outside it.

17 In support of its application, Parliament relies firstly on the reference made in the contested act to the Commission's proposal. In its opinion, that reference shows that, in view of the procedure which led to the act's adoption, it was the Council, not the Member States, which acted in this case.

18 That argument is not conclusive. Not all proposals from the Commission necessarily constitute proposals within the meaning of Article 149 of the Treaty. Their legal character must be assessed in the light of all the circumstances in which they were made. They may just as well constitute mere initiatives taken in the form of informal proposals.

19 Secondly, Parliament observes that, according to the description of the act, the special aid was to be administered by the Commission. According to the fourth indent of Article 155 of the Treaty, however, powers of implementation may be conferred on the Commission only by a decision of the Council.

- 20 That argument cannot be accepted either. The fourth indent of Article 155 of the Treaty does not prevent the Member States from entrusting the Commission with the task of coordinating a collective action undertaken by them on the basis of an act of their representatives meeting in the Council.
- 21 Thirdly, Parliament submits that the contested act requires the special aid to be distributed among the Member States according to GNP, which, in its view, constitutes a typically Community concept.
- 22 It is sufficient to state in response to that argument that nothing in the Treaty precludes the Member States from making use outside the Community context of criteria taken from the budgetary provisions for allocating the financial obligations resulting from decisions taken by their representatives.
- 23 Fourthly, Parliament submits that, in view of the fact that in the future the implementation of the contested act will be subjected to the supervision of the Court of Auditors and Parliament, in accordance with Articles 206a and 206b of the Treaty respectively, the act is manifestly a Community act.
- 24 As can be seen from the Council minutes, quoted above, the contested decision leaves it to the Member States to choose whether to pay their contribution by way of bilateral aid or through an account administered by the Commission. Since the contested act does not require the use of the Community budget for the part of the aid to be administered by the Commission, the budget entry made by the latter cannot have any bearing on how the act is categorized.
- 25 It follows from the whole of the foregoing that the contested act is not an act of the Council but an act taken by the Member States collectively. The application brought by Parliament against the Council must therefore be declared inadmissible.

## The action brought against the Commission

- 26 Parliament considers that, by entering in the Community budget the Greek contribution to the special aid for Bangladesh, the Commission infringed the Treaty provisions relating to the budget and thereby infringed the prerogatives conferred on Parliament by those provisions.
- 27 The Commission claims that the Parliament's application should be declared inadmissible on the ground that the budget entry is not a challengeable act within the meaning of Article 173 of the Treaty and that it did not infringe Parliament's prerogatives.
- 28 In order to determine whether the budget entry constitutes a Commission decision capable of infringing Parliament's prerogatives, it must first be noted that the contested measures constitute procedures for carrying out a mandate which, as stated in paragraph 20 above, was conferred on the Commission by the Member States, and not by the Council.
- 29 Moreover, those measures relate to aid granted within the framework of a collective action of the Member States financed directly by them.
- 30 It follows that the Member States' contributions to the special aid are not items of Community revenue within the meaning of Article 199 of the Treaty and that the expenditure relating thereto does not constitute expenditure of the Community within the meaning of that article, either.
- 31 Consequently, the entry in the Community budget of the Greek contribution to the special aid was not capable of amending the budget.

- 32 It must therefore be held that that act was incapable of infringing Parliament's prerogatives set out in Article 203 of the Treaty and that the application brought against the Commission must be declared inadmissible.

### Costs

- 33 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since Parliament has been unsuccessful, it must be ordered to pay the costs.

On those grounds,

### THE COURT

hereby:

1. Dismisses the applications as inadmissible;
2. Orders the European Parliament to pay the costs.

Due	Rodríguez Iglesias	Murray	Mancini	
Joliet	Schockweiler	Diez de Velasco	Kapteyn	Edward

Delivered in open court in Luxembourg on 30 June 1993.

J.-G. Giraud

Registrar

O. Due

President

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