

JUDGMENT OF THE COURT
27 September 1988

In Case 302/87

European Parliament, represented by F. Pasetti Bombardella, Jurisconsult of the Parliament, assisted by C. Pennera and J. Schoo, members of the Parliament's Legal Department, acting as Agents, with an address for service at the Secretariat- General of the European Parliament, Kirchberg, Luxembourg,

applicant,

v

Council of the European [Union], represented by A. A. Dashwood, Director, F. Van Craeynest, a Principal Administrator in the Council's Legal Department, and B. Laloux, a member of that department, acting as Agents, with an address for service at the office of J.Kaser, Manager of the Legal Directorate of the European Investment Bank, 100 boulevard Konrad-Adenauer, Luxembourg,

defendant,

APPLICATION for a declaration that Council Decision 87/373/EEC of 13 July 1987 laying down the procedures for the exercise of implementing powers conferred on the Commission is void,

THE COURT

composed of: Lord Mackenzie Stuart, President, G. Bosco, O. Due, J. C. Moitinho de Almeida, G. C. Rodriguez Iglesias (Presidents of Chambers), T. Koopmans, U. Everling, K. Bahlmann, Y. Galmot, C. N. Kakouris, R. Joliet, T. F. O'Higgins and F. A. Schockweiler, Judges,

Advocate General: M. Darmon

Registrar: J. A. Pompe, Deputy Registrar

having regard to the Report for the Hearing and further to the hearing on 24 March 1988,

after hearing the Opinion of the Advocate General delivered at the sitting on 26 May 1988,

gives the following

Judgment

- 1 By an application lodged at the Court Registry on 2 October 1987, the European Parliament brought an action pursuant to [the first and second paragraphs of Article 263 TFEU] for a declaration that Council Decision 87/373/EEC of 13 July 1987 (Official Journal 1987, L 197, p. 33) laying down the procedures for the exercise of implementing powers conferred on the Commission was void.

- 2 By that decision, which is based on [Article 16(1) TEU and Articles 290 and 291 TFEU], the Council laid down the procedures which it may require to be observed for the exercise of the powers conferred by it on the Commission for the implementation of the rules laid down by the Council and adopted the provisions governing the composition, the functioning and the role of the committees of the representatives of the Member States called upon to act.
- 3 The Council raised an objection of inadmissibility pursuant to Article 91 (1) of the Rules of Procedure of the Court and requested the Court to give a decision on that objection without considering the substance of the case.
- 4 In support of its objection, the Council makes the point that [the first and second paragraphs of Article 263 TFEU] does not expressly provide that the European Parliament may bring an action for annulment. Nor, according to the Council, can the Parliament be recognized as having that capacity on the basis of reasoning founded on the need to ensure the coherence of legal remedies. Intervention and the action for failure to act which are available to the Parliament, as the Court held in its judgments of 29 October 1980 (in Case 138/79 *Roquette Frères v Council* [1980] ECR 3333 and in Case 139/79 *Maizena GmbH v Council* [1980] ECR 3393) and of 22 May 1985 (in Case 13/83 *European Parliament v Council* - The 'Transport' case [1985] ECR 1513), are wholly separate from the action for annulment.
- 5 The Council also maintains that neither the judgment of 23 April 1986 (in Case 294/83 *Parti écologiste 'Les Verts' v European Parliament* [1986] ECR 1339) nor the judgment of 3 July 1986 (in Case 34/86 *Council v European Parliament* - The 'Budget' case [1986] ECR 2155) allow it to be inferred that the Court recognized by implication that the European Parliament has the capacity to bring an action for annulment. The judgment in 'Les Verts' was based on the need to ensure that judicial protection was available against all measures intended to produce legal effects *vis-à-vis* third parties, regardless of which institution adopted the measure. It does not follow from this, according to the Council, that there must be a parallelism between the active and passive participation of the Parliament in proceedings for judicial review of legality. Nor can such parallelism be inferred from the 'Budget' judgment since all the measures adopted by the Council in connection with the budgetary procedure are in any event merely preparatory.

- 6 On 20 January 1988 the Court decided to give its decision on the Council's objection without considering the substance of the case.
- 7 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the course of the procedure and the submissions and arguments of the parties, which are mentioned or referred to hereinafter only in so far as is necessary for the reasoning of the Court.
- 8 It must be observed *in limine* that the parties have correctly placed the issue between them in the context of [the first and second paragraphs of Article 263 TFEU].
- 9 [Article 263 TFEU] contrasts the right of action of the institutions to which it refers in its first paragraph with the right of action of individuals, be they natural or legal persons, for which the conditions are laid down in its second paragraph. The European Parliament, which is one of the institutions of the [Union] listed in [Article 13 TEU], is not a legal person.
- 10 Moreover, it may be observed that the scheme of [the fourth paragraph of Article 263 TFEU] would in any event be inappropriate to an action by the European Parliament for annulment. The applicants referred to in [the fourth paragraph of Article 263 TFEU] must be directly and individually concerned by the actual content of the act which they challenge. However, it is not the content of the act which could adversely affect the European Parliament but a failure to comply with the procedural rules requiring its involvement. Moreover, [the fourth paragraph of Article 263 TFEU] refers only to a limited class of acts, namely those which are individual in their application, whereas the European Parliament seeks recognition of the right to bring actions against acts which have general application.
- 11 It should therefore be considered whether it is possible, by means of an interpretation of [the first and second paragraphs of Article 263 TFEU], for the European Parliament to be recognized as having capacity to bring actions for the annulment of

acts of the Council or the Commission.

- 12 As is apparent from [Articles 233 and 234 TFEU], the European Parliament is empowered, on the one hand, to exercise political control over the Commission which, pursuant to [Article 17(1) TEU], is required to 'ensure that the provisions of this Treaty and the measures taken by the institutions pursuant thereto are applied', and on the other, to censure the Commission, where necessary, if the latter should fail properly to discharge that task. The European Parliament's political control is also exercised by means of the debates that it may organize on specific or general questions, which enable it to pass motions on the policy followed by the Council or the Commission.
- 13 Moreover, irrespective of the budgetary powers conferred on it by the Luxembourg Treaty of 22 April 1970 and the Brussels Treaty of 22 July 1975, and the power of joint decision vested in it regarding accession and association agreements since the adoption of the Single European Act, the European Parliament is in a position to exercise influence over the content of the legislative measures adopted by the Council, either by means of the opinions which it issues under the consultation procedure or by means of the positions which it adopts under the cooperation procedure.
- 14 It should be emphasized that, as is apparent from the first paragraph of [Article 265 TFEU], the European Parliament was vested with the power to obtain a declaration by the Court establishing a failure to act on the part of the Commission or the Council and thus to bring to an end any immobilization of the decision-making machinery which might prevent it from exercising its powers. It is also open to the European Parliament to make its views heard before the Court by intervening in proceedings before it, as is apparent from Article 37 of the Statute of the Court.
- 15 Contrary to the assertion of the European Parliament, it does not follow that, because it is entitled to have a failure to act established and to intervene in proceedings before the Court, the Parliament must be recognized as having the possibility of bringing actions for annulment.

- 16 There is no necessary link between the action for annulment and the action for failure to act. This follows from the fact that the action for failure to act enables the European Parliament to induce the adoption of measures which cannot in all cases be the subject of an action for annulment. Thus, as is shown by the judgment of 12 July 1988 in Case 377/87 (*European Parliament v Council* [1988] ECR 4017), as long as a draft budget has not been presented by the Council, the European Parliament can obtain a judgment establishing the Council's failure to act, whereas the draft budget, which is a preparatory measure, could not be challenged under [Article 263 TFEU].
- 17 The argument has also been put forward that, in the absence of any power to bring an action for annulment, the European Parliament would be unable, after calling upon the Council or the Commission to act, in accordance with [Article 265 TFEU], to challenge an express refusal to act issued in response to that request. However, that argument is based on a false premise. A refusal to act, however explicit it may be, can be brought before the Court under [Article 265 TFEU] since it does not put an end to the failure to act.
- 18 Nor is there any necessary link between the right to intervene and the possibility of bringing an action. On the one hand, according to the second paragraph of Article 37 of the Statute of the Court of Justice of the E[U], the right of individuals to intervene is conditional merely upon 'an interest in the result of any case' before the Court, whereas the admissibility of an action for annulment brought by individuals is subject to the condition that they must be the addressees of the measure which they seek to have annulled or at least that the measure should be of direct and individual concern to them. On the other hand, under the first paragraph of Article 37, the European Parliament is entitled to intervene in cases such as those concerning the failure by States to fulfil their obligations, whereas the right to bring such cases before the Court is reserved to the Commission and the Member States.
- 19 The European Parliament goes on to state that [the first and second paragraphs of Article 263 TFEU] reflects a principle of equality between the institutions expressly mentioned in that provision, in the sense that each of them is entitled to bring an action against measures adopted by the other and, conversely, its own measures can be submitted by the other institution for review by the Court. Since it has held that

measures of the European Parliament capable of producing legal effects can be the subject of an action for annulment, the Court should, with a view to maintaining the institutional balance, decide that the European Parliament has the capacity to challenge acts of the Council and the Commission.

- 20 In that connection, it must be borne in mind that although the Court held in its judgment of 23 April 1986 (*Parti écologiste 'Les Verts' v European Parliament*, cited above) that an action for annulment may lie against measures adopted by the European Parliament intended to have legal effects *vis-à-vis* third parties, it did so because an interpretation excluding such measures from the scope of that action would have produced a result contrary to the system of the Treaty, which was intended to establish a complete system of judicial protection against acts of [Union] institutions which are capable of having legal effects.
- 21 However, a comparison between Article 38 of the ECSC Treaty [now expired], which was specifically referred to by the Court in the judgment in 'Les Verts', and Article 33 of the same Treaty [now expired] shows that, according to the scheme of the Treaties, in those cases where provision was made for acts of the European Parliament to be subject to review of their legality, the European Parliament was not thereby empowered to bring a direct action on its own initiative against acts of other institutions. The European Parliament's argument that there must be a parallelism between the capacity of defendant and the capacity of applicant in proceedings for judicial review must therefore be rejected.
- 22 The European Parliament then claims that the Court recognized by implication in its judgment of 3 July 1986 (*Council v European Parliament* -the 'Budget' case -cited above) that it had the capacity to bring an action for annulment.
- 23 It must be observed that the budgetary procedure described in [Article 314(3), (4), (6) and (7) TFEU] is characterized by successive deliberations of the two arms of the budgetary authority in the course of which each of them may, in accordance with the voting conditions laid down in the Treaty, react to the positions taken by the other. Those deliberations constitute measures preparatory to the drawing-up of the budget. As is apparent from the judgment of 3 July 1986 (*Council v Parliament* -the 'Budget' case -cited above) the budget does not become legally binding until

completion of the procedure, that is to say when the President of the European Parliament, in his capacity as an organ of that institution, declares that the budget has been finally adopted.

- 24 It follows that as far as the approval of the budget is concerned, the only measure which can be declared void emanates from an organ of the European Parliament and must therefore be attributed to that institution itself. Consequently, the European Parliament cannot rely upon the budgetary powers conferred upon it by the Luxembourg and Brussels Treaties cited above - powers which, moreover, are not at issue in the present case - in order to obtain recognition of its right to bring actions for the annulment of measures emanating from the Commission and the Council.
- 25 The European Parliament then goes on to state that if it had no power to bring actions for annulment it would not be in a position to defend its prerogatives *vis-à-vis* the other institutions.
- 26 It must be observed that the European Parliament has, from the outset, been endowed with the power to participate, on a consultative basis, in the legislative process, but that it was not thereby accorded the possibility of bringing actions for annulment. The prerogatives of the European Parliament have been augmented by the Single European Act, which has vested in it a power of joint decision with respect to accession and association agreements and has established a cooperation procedure in certain specified cases, but without any changes having been made to [Article 263 TFEU].
- 27 Apart from the abovementioned rights granted to the European Parliament by [Article 265 TFEU], the Treaty provides means for submitting for review by the Court acts of the Council adopted in disregard of the Parliament's prerogatives. Whilst [the first and second paragraphs of Article 263 TFEU] grants to all the Member States in general terms the right to bring an action for the annulment of such acts, [Article 17(1) TEU] confers more specifically on the Commission the responsibility for ensuring that the Parliament's prerogatives are respected and for bringing for that purpose such actions for annulment as might prove to be necessary. Moreover, any natural or legal person may, if the prerogatives of the European

Parliament are disregarded, plead an infringement of essential procedural requirements or an infringement of the Treaty in order to obtain the annulment of the measure adopted or, indirectly, a declaration pursuant to [Article 277 TFEU] that that measure is inapplicable. Similarly, the illegality of a measure on the ground of breach of the prerogatives of the European Parliament may be raised as an issue before a national court and the measure in question may be the subject of a reference to the Court for a preliminary ruling as to its validity.

- 28 It follows from all the foregoing considerations that the applicable provisions, as they stand at present, do not enable the Court to recognize the capacity of the European Parliament to bring an action for annulment.
- 29 The objection of inadmissibility must therefore be upheld and the application must be dismissed as inadmissible.

Costs

- 30 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party must be ordered to pay the costs if they have been asked for in the successful party's pleading. Since the European Parliament has failed in its action it must be ordered to bear the costs.

On those grounds,

THE COURT

hereby:

(1) Dismisses the application as inadmissible.

(2) Orders the European Parliament to bear the costs.

Mackenzie Stuart	Bosco	Due	Moitinho de Almeida
Rodriguez Iglesias	Koopmans	Everling	Bahlmann
Galmot	Kakouris	Joliet	O'Higgins
			Schockweiler

Delivered in open court in Luxembourg on 27 September 1988.

J.-G. Giraud
Registrar

A. J. Mackenzie Stuart
President