

Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 10 October 2013 — Ministero dell'Ambiente e della Tutela del Territorio e del Mare and Others v Fipa Group and Others

(Case C-534/13)

(2013/C 359/08)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Appellants: Ministero dell'Ambiente e della Tutela del Territorio e del Mare, Ministero della Salute, Istituto Superiore per la Protezione e la Ricerca Ambientale (ISPRA)

Respondents: Fipa Group srl, Ivan srl, TWS Automation srl

Question referred

Do the European Union principles relating to the environment, laid down in Article 191(2) of the Treaty on the Functioning of the European Union and in Directive 2004/35/EC⁽¹⁾ of 21 April 2004 (Articles 1 and 8(3) and recitals 13 and 24 in the preamble) — specifically, the 'polluter pays' principle, the precautionary principle and the principles that preventive action should be taken and that environmental damage should be rectified at source as a matter of priority — preclude national legislation, such as the rules set out in Articles 244, 245 and 253 of Legislative Decree No 152 of 3 April 2006, which, in circumstances in which it is established that a site is contaminated and in which it is impossible to identify the polluter or to have that person adopt the restoration measures, do not permit the administrative authority to require the owner (who is not responsible for the pollution) to implement the emergency safety and decontamination measures, merely attributing to that person financial liability limited to the value of the site once the decontamination measures have been carried out?

⁽¹⁾ Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage (OJ 2004 L 143, p. 56).

Action brought on 15 October 2013 — European Parliament v Council of the European Union

(Case C-540/13)

(2013/C 359/09)

Language of the case: French

Parties

Applicant: European Parliament (represented by: F. Drexler, A. Caiola, M. Pencheva, acting as Agents)

Defendant: Council of the European Union

Form of order sought

The European Parliament claims that the Court should:

- annul Council Decision 2013/392/EU of 22 July 2013 fixing the date of effect of Decision 2008/633/JHA concerning access for consultation of the Visa Information System (VIS) by designated authorities of Member States and by Europol for the purposes of the prevention, detection and investigation of terrorist offences and of other serious criminal offences;⁽¹⁾
- maintain the effects of Council Decision 2013/392/EU, until such time that it is replaced by a new act adopted in accordance with law;
- order the defendant to pay the costs.

Pleas in law and main arguments

The European Parliament puts forward two pleas in law in support of its action.

First, the European Parliament disputes the Council's use of an incorrect decision-making procedure for the adoption of Decision 2013/392/EU. The European Parliament should in fact have been involved in the adoption of the contested decision under an ordinary legislative procedure. Having not been involved with the adoption of the act, the European Parliament considers that the decision-making procedure followed by the Council is vitiated by an essential procedural requirement.

Second, the European Parliament alleges that the Council used either a legal basis which had been repealed by the entry into force of the Lisbon Treaty, or a secondary legal basis which is unlawful under the case-law of the Court of Justice.

Finally, should the Court of Justice decide to annul the contested decision, the Parliament considers that it would be appropriate for the Court to maintain the effects of the contested decision, in accordance with Article 264, second paragraph, TFEU, until such time that it is replaced by a new act adopted in accordance with law.

⁽¹⁾ OJ 2013 L 198, p. 45.