JUDGMENT OF THE COURT (Sixth Chamber)
2 October 1997 *

In Case C-259/95,

European Parliament, represented by Christian Pennera, Head of Division in its Legal Service, and Auke Baas, of the same service, acting as Agents, with an address for service in Luxembourg at the Secretariat-General of the European Parliament, Kirchberg,

applicant,

v

Council of the European Union, represented by Guus Houttuin, of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of Alessandro Morbilli, Manager of the Legal Affairs Directorate of the European Investment Bank, 100 Boulevard Konrad Adenauer,

defendant,

supported by

Kingdom of Sweden, represented by Lotty Nordling, Rättschef in the Foreign Trade Department of the Ministry of Foreign Affairs, Stockholm, acting as Agent,

* Language of the case: French.

and

Commission of the European Communities, represented by John Forman, Legal Adviser, and Dominique Maidani, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, also of its Legal service, Wagner Centre, Kirchberg,

interveners,

APPLICATION for the annulment of Council Decision No 95/184/EC of 22 May 1995 amending Decision No 3092/94/EC introducing a Community system of information on home and leisure accidents (OJ 1995 L 120, p. 36),

THE COURT (Sixth Chamber),

composed of: G. F. Mancini, President of the Chamber, J. L. Murray, G. Hirsch (Rapporteur), H. Ragnemalm and R. Schintgen, Judges,

Advocate General: A. La Pergola,
Registrar: H. von Holstein, Assistant Registrar,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 27 February 1997 at which the Parliament was represented by Christian Pennera and Auke Baas; the Council by Aidan Feeney, of its Legal Service, acting as Agent; the Kingdom of Sweden by Erik Brattgard, Departementsråd in the Foreign Trade Department of the Ministry of Foreign Affairs, acting as Agent; and the Commission by John Forman and Dominique Maidani,

after hearing the Opinion of the Advocate General at the sitting on 20 March 1997,

gives the following

Judgment

1 By application lodged at the Court Registry on 2 August 1995, the European Parliament brought an action under the third paragraph of Article 173 of the EC Treaty for the annulment of Council Decision No 95/184/EC of 22 May 1995 amending Decision No 3092/94/EC introducing a Community system of information on home and leisure accidents (OJ 1995 L 120, p. 36; hereinafter 'the contested Decision').

2 The Community system of information on home and leisure accidents was set up for the year 1993 by Council Decision No 93/683/EEC of 29 October 1993 (OJ 1993 L 319, p. 40) in order to identify, on the basis of data collected from hospitals, the products involved in accidents of that kind. That system, which is seen as the corollary to Council Directive 92/59/EEC of 29 June 1992 on general product safety (OJ 1992 L 228, p. 24), consists essentially in financial assistance to the Member States for the hospitals — the number of which is fixed per Member State —contributing to the collection of the data specified in Annex I to that decision.

3 By Decision No 3092/94/EC of the European Parliament and of the Council of 7 December 1994 (OJ 1994 L 331, p. 1), the system was retained for a further four years (1994-1997), with annual funding of ECU 2.5 million and involving a total of 54 hospitals, distributed among the Member States in accordance with the table set out in Annex I to that decision.

4 By the contested Decision, the Council amended Decision No 3092/94 to take account of the accession to the Community of three new Member States. Article 1 of that Decision states that, for the period 1995 to 1997, ECU 2.808 million per year is deemed necessary by way of financial resources for implementing the system, and raises the number of participating hospitals to 65. Article 2 provides that the Decision is to apply from the date of entry into force of the Treaty of Accession.

5 Whereas Decision No 3092/94 was based on Article 129a(2) of the EC Treaty, which refers to the co-decision procedure laid down in Article 189b of the EC Treaty, the contested Decision was adopted in accordance with the procedure referred to in Article 169 of the Act concerning the conditions of accession of the Kingdom of Norway, the Republic of Austria, the Republic of Finland and the Kingdom of Sweden and the adjustments to the Treaties on which the European Union is founded (OJ 1994 C 241, p. 21; hereinafter 'the Act of Accession'). Article 169 provides:

'1. Where acts of the institutions prior to accession require adaptation by reason of accession, and the necessary adaptations have not been provided for in this Act or its Annexes, those adaptations shall be made in accordance with the procedure laid down by paragraph 2. Those adaptations shall enter into force as from accession.

2. The Council, acting by a qualified majority on a proposal from the Commission, or the Commission, according to which of these two institutions adopted the original acts, shall to this end draw up the necessary texts.'

6 Under Article 2(3) of the Treaty of Accession (OJ 1994 C 241, p. 9), the institutions of the Union may adopt before accession the measures referred to, *inter alia*, in Article 169 of the Act of Accession. Those measures are to enter into force only subject to and on the date of the entry into force of the Treaty, namely 1 January 1995.

7 The Parliament maintains that the contested Decision was adopted in breach of its prerogatives and outside the scope *ratione temporis* and *ratione materiae* of the powers defined in Article 169 of the Act of Accession.

8 By orders of the President of the Court of Justice of 12 February 1996 and 26 February 1996, the Kingdom of Sweden and the Commission were each granted leave to intervene in support of the form of order sought by the Council.

9 It should be noted at the outset that, in contrast with adaptations resulting directly from the Act of Accession, which do not constitute acts of the institutions and are not, therefore, open to a review of legality, adaptations adopted pursuant to acts of the institutions are subject as such to the review of legality provided for in the Treaty (Joined Cases 31/86 and 35/86 *LAISA and Another* v *Council* [1988] ECR 2285, paragraph 17). Since the present action has been brought by the Parliament in respect of adaptations introduced by a decision of the Council, and for the purpose of defending Parliament's prerogatives, it must be held admissible.

The scope *ratione temporis* of Article 169 of the Act of Accession

10 The Parliament argues, first, that it is clear from the actual wording of Article 169 — at least, from the French-language version — that the adaptations contemplated may be made only between 24 June 1994 and 31 December 1994, that is to say, during the transitional period between signature of the Treaty of Accession and its entry into force. Thereafter, Article 169 may no longer be applied.

11 On that point, it should be noted that, by virtue of Article 3 of the Treaty of Accession, all the language versions of that Treaty — which, under Article 1(2), second sentence, thereof, incorporates the Act of Accession — are equally authentic.

12 Although the French-language version of Article 169 provides that adaptations thereunder must be made prior to accession — 'avant l'adhésion' — the fact remains that all the other language versions place that temporal restriction not on recourse to Article 169 but on the date of adoption of the acts to be amended ('De fornødne tilpasninger af institutionernes retsakter fra før tiltrædelsen; Erfordern vor dem Beitritt erlassene Rechtsakte der Organe aufgrund des Beitritts eine Anpassung; Οταν πράξεις των οργάνων πριν τη προσχώρηση χρειάζονται προσαρμογή συνεπεία αυτής; En caso de que los actos de las instituciones previos a la adhesión requieran una adaptación como consecuencia de ésta; Más gá gníomhartha na n-institiúidí arna ndéanamh roimh an aontachas a oiriúnú de thoradh an aontachais; Quando gli atti delle istituzioni precedenti all'adesione richiedono adattamenti in conseguenza dell'adesione; Indien besluiten van de Instellingen van vóór de toetreding in verband met de toetreding moeten worden aangepast; Quando os actos das Instituições, anteriores à adesão, devam ser adaptados em virtude da adesão; Jos toimielinten ennen liittymistä antamia säädöksiä on mukautettava liittymisen johdosta; Sådana anpassningar av institutionernas rättsakter som behövs inför anslutningen; Where acts of the institutions prior to accession require adaptation by reason of accession').

13 The Court has consistently held that the need for a uniform interpretation requires that, in the event of a divergence between the various language versions, the provision in question should be construed by reference to the purpose and general scheme of the rules of which it forms part (see, *inter alia*, Case C-72/95 *Kraaijeveld and Others* v *Gedeputeerde Staten van Zuid-Holland* [1996] ECR I-5403, paragraph 28).

14 Article 169 forms part of Title II of Part Five of the Act of Accession, which is entitled 'Applicability of the acts of the institutions'. Thus the sole purpose of the adaptations made on the basis of Article 169 is to extend to the new Member States the application of Community measures which have not been adapted by the Act of Accession itself. No other amendments can, therefore, be based on Article 169 of that Act.

15 In this case, only two aspects of Decision No 3092/94 required adjustment in order to extend its application to the new Member States: the number of hospitals

had to be altered so as to reflect the population of the new Member States and, accordingly, the financial assistance had to be increased proportionately. By raising the number of hospitals from 54 to 65, and the level of Community funding from ECU 2.5 million to ECU 2.808 million, the Council complied with the criteria laid down in Decision No 3092/94. The contested Decision therefore adhered to the framework laid down for adaptations within the meaning of Article 169.

16 The Parliament maintains, however, that the aim of Article 2(3) of the Treaty of Accession was to enable the Community institutions to adopt, during the transitional period, all the measures necessary to ensure that the new Member States were fully integrated by the time of accession. Clearly, therefore, that provision did not envisage the adoption of retroactive measures such as the contested Decision.

17 Furthermore, given the basic principle, alluded to primarily in Article 2 of the Act of Accession, that the entire *acquis communautaire* must be accepted as binding, it is inconceivable in the Parliament's view that a provision contained in Part Five of the Act of Accession could be the means of introducing a mechanism for derogating from the ordinary rules of law, whereby — notwithstanding the fact that all major acts compulsorily take effect from the date of accession — certain institutions would still be free to make adaptations at any time subsequently, that is to say, they would be able to amend Community measures which had been adopted prior to accession and which had not been identified at the time of accession.

18 In that regard the first point to note is that, under Article 2(3) of the Treaty of Accession, the Community institutions 'may' adopt before accession certain measures referred to in, *inter alia*, Article 169 of the Act of Accession. Consequently, Article 2(3) does not place any restriction on the use of Article 169 after the entry into force of the Treaty of Accession, but merely authorizes its use before that date.

19 Secondly, the principle that the acceding State must accept all acts adopted by the institutions prior to the time when its accession takes effect (see Joined Cases 39/81, 43/81, 85/81 and 88/81 *Halyvourgiki* v *Commission* [1982] ECR 593, paragraph 12) is not called in question by acts adopted after accession on the basis of Article 169. As is clear from paragraph 14 above, Article 169 may be relied on solely for the enactment of adaptations designed merely to render the measures concerned applicable in the new Member States, to the exclusion of all other amendments. The application of the *acquis communautaire* in accordance with Article 2 of the Act of Accession does not therefore mean that Article 169 ceases to apply upon the entry into force of the Treaty of Accession.

20 As regards the Parliament's assertion that such an interpretation would lead to the unrestricted application of Article 169, suffice it to note that, in any event, the contested Decision was adopted within a reasonable period after the entry into force of the Treaty of Accession.

21 Lastly, in so far as Article 169(1), second sentence, of the Act of Accession lays down that adaptations thereunder are to enter into force as from the date of accession, thereby endowing acts adopted subsequently with retroactive effect, it is settled law that, although in general the principle of legal certainty precludes a Community measure from taking effect from a point in time before its publication, it may exceptionally be otherwise where the purpose to be achieved so demands and where the legitimate expectations of those concerned are duly respected (see Case C-331/88 *Fedesa and Others* [1990] ECR I-4023, paragraph 45).

22 In the present case, since the objective pursued was the uniform application of the *acquis communautaire* throughout the Union, it was necessary to give effect to the adaptation measures as from the date of accession, even if they were adopted subsequently. In the absence of any allegation by the Parliament that the principle of legal certainty or the protection of legitimate expectations has been infringed, the first plea in law must be rejected.

The scope *ratione materiae* of Article 169 of the Act of Accession

23 The Parliament argues in support of this plea that Article 169 of the Act of Accession cannot serve as the legal basis for an act amending an earlier measure adopted jointly by the Parliament and the Council by virtue of Article 129a in conjunction with Article 189b of the Treaty. The Council is not empowered to amend a joint act of the Parliament and the Council unilaterally.

24 According to the Parliament, Article 169(2) of the Act of Accession concerns only acts adopted by the Council or the Commission. Clearly, the intention underlying the Act of Accession was to set up a flexible procedure for the adaptation of such acts and thus to define the role of those two institutions in the procedure for adopting decisions under Article 169. However, it is unthinkable that the expression 'acts of the institutions' was intended to encompass not only acts of the Council and of the Commission but also those jointly adopted by the Parliament and the Council, which are fundamentally different from acts adopted by the Council alone, as is evident from Articles 172, 173, 189, 190 and 191 of the EC Treaty. Article 169(2) of the Act of Accession cannot, therefore, in the Parliament's view, be used for the adaptation of acts adopted jointly by the Council and the Parliament.

25 It should be noted that Article 169(1), first sentence, of the Act of Accession envisages the need to adapt 'acts of the institutions' to meet requirements flowing from the accession of the new Member States and, to that end, refers to the procedure laid down in Article 169(2). That provision states that the Council, acting by a qualified majority on a proposal from the Commission, or the Commission, according to which of those two institutions adopted the original acts, are to that end to draw up the necessary texts.

26 Acts of the Council, without further qualification, are those adopted by that institution, either alone or together with the Parliament under the co-decision procedure. It is clear from the various provisions of the EC Treaty (see, *inter alia*, Article 56(2), second sentence; Article 100a(1), second sentence; and Article 129a(2), on which Decision No 3092/94 is based) that acts adopted jointly by the Council and the Parliament are regarded as acts of the Council. Consequently, the reference in Article 169(2) of the Act of Accession to acts of the Council also embraces those which the Council has adopted jointly with the Parliament.

27 Furthermore, the Parliament has expressly recognized that the intention underlying Article 169 was to introduce a flexible procedure for the adaptation of acts which had not been adapted in the Act of Accession itself. It has not, however, put forward any argument showing that the intention was to exclude from that procedure areas in which Community acts had initially been adopted jointly by the Parliament and the Council under the procedure laid down in Article 189b of the Treaty. Thus the Parliament's second plea in law is predicated, in fact, on the illegality of Article 169 of the Act of Accession, which, in any event, is not subject to review by the Court.

28 In those circumstances, the application must be dismissed.

Costs

29 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the Parliament has been unsuccessful, it must be ordered to pay the costs. In accordance with Article 69(4) of those Rules, the Commission and the Kingdom of Sweden, the interveners, must bear their own costs.

On those grounds,

THE COURT (Sixth Chamber)

hereby:

1. **Dismisses the application;**

2. **Orders the European Parliament to pay the costs;**

3. **Orders the Kingdom of Sweden and the Commission to bear their own costs.**

Mancini Murray Hirsch

Ragnemalm Schintgen

Delivered in open court in Luxembourg on 2 October 1997.

R. Grass G. F. Mancini

Registrar President of the Sixth Chamber