

Case C-155/07

European Parliament

v

Council of the European Union

(Action for annulment — Decision 2006/1016/EC — Community guarantee to the European Investment Bank against losses under loans and loan guarantees for projects outside the Community — Choice of legal basis — Article 179 EC — Article 181a EC — Compatibility)

Opinion of Advocate General Kokott delivered on 26 June 2008 I - 8107
Judgment of the Court (Third Chamber), 6 November 2008 I - 8130

Summary of the Judgment

1. *Development cooperation — Economic, financial and technical cooperation with third countries — Articles 179 EC and 181a EC*
(Arts 177 EC, 179 EC and 181a EC)

2. *Acts of the institutions — Choice of legal basis — Community guarantee to the European Investment Bank against losses under loans and loan guarantees for projects outside the Community — Decision 2006/1016*
(Arts 177 EC, 179 EC and 181a EC; Council Decision 2006/1016)
3. *Actions for annulment — Judgment annulling a measure — Effects — Limitation by the Court*
(Art. 231, second para., EC; Council Decision 2006/1016)

1. It is true that in its literal sense the term ‘third countries’ used in Article 181a EC in connection with economic, financial and technical cooperation with third countries is sufficiently wide to encompass both developing countries and other third countries. It cannot, however, be implied from this, without restricting the scope of Article 179 EC in Title XX of the EC Treaty on development cooperation, that all economic, financial and technical cooperation measures with developing countries within the meaning of Article 177 EC may be undertaken on the sole basis of Article 181a EC. Although Article 181a EC alone expressly envisages ‘economic, financial and technical cooperation’, while Article 179 EC refers, in a general way, only to ‘measures’, the fact remains that such cooperation may, depending on its specific details, constitute a typical form of development cooperation.

In addition, Article 181a EC is introduced by the words ‘[w]ithout prejudice to the other provisions of this Treaty, and in particular to those of Title XX’. Those words indicate that Title XX applies specifically to development cooperation.

Although Article 179 EC also starts with the words ‘[w]ithout prejudice to the other provisions of this Treaty’, it must, however, be noted, first, that Article 179 EC was drafted at a time before Article 181a EC existed. Second, the proviso contained in Article 179 EC is less specific than that contained in Article 181a EC, which refers expressly to Title XX of the Treaty. In those circumstances, the proviso contained in Article 181a EC applies with priority over the proviso in Article 179 EC.

It follows that, since Article 181a EC is to apply without prejudice to Title XX of the EC Treaty, that article is not intended to constitute the legal basis for measures pursuing the objectives of development cooperation within the meaning of Title XX which are set out in Article 177 EC.

(see paras 39-45, 47)

2. Decision 2006/1016 grants a Community guarantee to the European Investment Bank (EIB) against losses under loans and loan guarantees for projects outside the Community. In so far as the contested decision concerns developing countries within the meaning of Title XX of the Treaty, it falls under that title, and thus under Article 179 EC, inasmuch as the financial cooperation which the decision implements through the Community guarantee granted to the EIB also pursues, in so far as developing countries are concerned, the socio-economic objectives referred to in Article 177 EC, particularly the sustainable economic and social development of such countries.

Accordingly, Decision 2006/1016 has two components, one of which concerns development cooperation falling under Article 179 EC, while the other concerns economic, financial and technical cooperation with third countries other than developing countries, falling under Article 181a EC. Those two components are inseparably linked, without it being possible to identify a main or predominant aim or component.

Recourse to a dual legal basis is, however, not possible where the procedures laid down for each legal basis are incompatible with one another. In that regard, the Council acts by a qualified majority both under the procedure referred to

in Article 179 EC and under that laid down in Article 181a EC. Moreover, the use of a dual legal basis consisting of Articles 179 EC and 181a EC would not encroach on the rights of the European Parliament. The use of Article 179 EC involves greater participation by the Parliament since it provides for the adoption of the measure by the 'co-decision' procedure, while Article 181a EC — the sole legal basis used for the adoption of the contested decision — provides only for consultation of the Parliament by the Council. In view, furthermore of the complementary relationship which exists between Titles XX and XXI of the Treaty and the quasi-interdependence of Articles 179 EC and 181a EC, the procedures respectively laid down in those two articles cannot be classed as incompatible.

It follows that Decision 2006/1016 should have been founded, exceptionally, on the dual legal basis of Articles 179 EC and 181a EC. It must thus be annulled, since it is based on Article 181a EC alone.

(see paras 37, 66, 67, 72, 75-77, 79, 83-85, operative part 1)

3. The second paragraph of Article 231 EC, under the terms of which the Court may, if it considers this necessary, state which of the effects of a regulation which it has declared void are to be considered definitive, is also capable of being applied, by analogy, to a decision where there are important grounds of legal certainty, comparable to those which arise in the case of annulment of certain regulations, justifying exercise by the Court of the power conferred on it, in this context, by that article.

In that regard, Decision 2006/1016 granting a Community guarantee to the European Investment Bank (EIB) against losses under loans and loan guarantees for projects outside the Community, without maintaining its effects would be liable to have adverse consequences for the credit rating of the European Investment Bank and would lead to

damaging uncertainties for current and future financing operations of that organisation.

In those circumstances, it is necessary for the Court to order that the effects of Decision 2006/1016 be maintained for European Investment Bank financing arrangements entered into before the entry into force, within a period of 12 months from the date of delivery of the judgment, of a new decision adopted on the appropriate legal basis, namely Articles 179 EC and 181a EC together.

(see paras 87-89, operative part 2)