

JUDGMENT OF THE COURT (Second Chamber)

1 October 2009\*

In Case C-370/07,

ACTION for annulment under Article 230 EC, brought on 2 August 2007,

**Commission of the European Communities**, represented by G. Valero Jordana and C. Zadra, acting as Agents, with an address for service in Luxembourg,

applicant,

v

**Council of the European Union**, represented by J.-P. Jacqué, F. Florindo Gijón and K. Michoel, acting as Agents,

defendant,

\* Language of the case: English.

supported by:

**United Kingdom of Great Britain and Northern Ireland**, represented by E. Jenkinson and I. Rao, acting as Agents, and D. Wyatt QC,

intervener,

THE COURT (Second Chamber),

composed of C.W.A. Timmermans, President of the Chamber, J.-C. Bonichot, J. Makarczyk, L. Bay Larsen (Rapporteur) and C. Toader, Judges,

Advocate General: J. Kokott,  
Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 4 March 2009,

after hearing the Opinion of the Advocate General at the sitting on 23 April 2009,

gives the following

## **Judgment**

- 1 By its application, the Commission of the European Communities seeks the annulment of the decision of the Council of the European Union of 24 May 2007 establishing the position to be adopted on behalf of the European Community with regard to certain proposals submitted at the 14th meeting of the Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), The Hague (Netherlands), 3 to 15 June 2007 ('the contested decision').

### **Legal background**

- 2 Article 253 EC provides:

'Regulations, directives and decisions adopted jointly by the European Parliament and the Council, and such acts adopted by the Council or the Commission, shall state the reasons on which they are based and shall refer to any proposals or opinions which were required to be obtained pursuant to this Treaty.'

3 Under Article 300(2) EC, as amended by the Treaty of Nice:

‘Subject to the powers vested in the Commission in this field, the signing, which may be accompanied by a decision on provisional application before entry into force, and the conclusion of the agreements shall be decided on by the Council, acting by a qualified majority on a proposal from the Commission. The Council shall act unanimously when the agreement covers a field for which unanimity is required for the adoption of internal rules and for the agreements referred to in Article 310.

By way of derogation from the rules laid down in paragraph 3, the same procedures shall apply for a decision to suspend the application of an agreement, and for the purpose of establishing the positions to be adopted on behalf of the Community in a body set up by an agreement, when that body is called upon to adopt decisions having legal effects, with the exception of decisions supplementing or amending the institutional framework of the agreement.

The European Parliament shall be immediately and fully informed of any decision under this paragraph concerning the provisional application or the suspension of agreements, or the establishment of the Community position in a body set up by an agreement.’

### **Background to the dispute**

4 The Convention on International Trade in Endangered Species of Wild Fauna and Flora, signed on 3 March 1973 in Washington (‘CITES’), entered into force on 1 July 1975. Its aim is to protect wild fauna and flora threatened with extinction, principally by limiting or regulating trade in those species.

- 5 The Community is not a contracting party to CITES. It has observer status at Conferences of the Parties. However, since 1982 it has autonomously adopted measures designed to implement within the Community the obligations of the Member States deriving from CITES.
- 6 The most recent instrument adopted in order to implement CITES autonomously is Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein (OJ 1997 L 61, p. 1). It was adopted on the basis of Article 130s(1) of the EC Treaty (now, after amendment, Article 175(1) EC).
- 7 On 4 April 2007, the Commission sent to the Council a proposal for the adoption of the contested decision, which referred, with respect to its legal basis, first, to Articles 175(1) EC and 133 EC and, second, to the second subparagraph of Article 300(2) EC.
- 8 On 24 May 2007, the Council adopted the contested decision, which does not indicate the legal basis underlying it.
- 9 By letter of 14 June 2007, the Council sent that decision to the Parliament.

10 The contested decision is worded as follows:

‘Article 1

The position of the Community, as regards areas within the Community’s field of competence, to be expressed by Member States acting jointly in the interest of the Community, at CITES COP 14 [14th meeting of the Conference of the Parties], shall be in accordance with the Annexes to this Decision.

Article 2

Where new scientific or technical information presented after the adoption of this Decision and before or during COP 14 is likely to affect the position referred to in Article 1, or where new proposals are made at that meeting on which there is not yet a Community position, the Community position as regards areas within the Community’s field of competence shall be established by means of on-the-spot co-ordination before the COP is called to vote on those proposals.’

## **Forms of order sought and procedure**

11 The Commission claims that the Court should:

- annul the contested decision; and
  
- order the Council to pay the costs.

12 The Council contends that the Court should:

- dismiss the application;
  
- alternatively, and to the extent to which the Court annuls the contested decision, declare that the effects of the decision are definitive; and
  
- order the Commission to pay the costs.

13 By order of the President of the Court of 20 November 2007, the United Kingdom of Great Britain and Northern Ireland was granted leave to intervene in support of the form of order sought by the Council.

## The action

### *Admissibility*

- 14 The Council submits, in the context of a preliminary observation on a procedural point, that the application is devoid of purpose on the ground that all of the legal effects of the contested decision have already been exhausted, since the Community position contained in that decision was expressed at the Conference of the Parties to CITES which took place in The Hague from 3 to 15 June 2007.
- 15 The Commission, which states that the purpose of bringing the present action is to obtain a judgment from the Court preventing the Council from adopting decisions in the future which fail to state their legal basis in the context of the Conference of the Parties to CITES, submits that the action is admissible.
- 16 In that connection, it must be recalled that the Commission does not have to demonstrate an interest in bringing proceedings in order to bring an action seeking the annulment of such decisions (see, to that effect, Case 45/86 *Commission v Council* [1987] ECR 1493, paragraph 3).
- 17 Furthermore, it should be observed that the Court has already declared an action for annulment to be admissible where the measure had already been implemented or was no longer in force at the time at which the action was brought (see Case 53/85 *AKZO Chemie and AKZO Chemie UK v Commission* [1986] ECR 1965, paragraph 21, and Case 207/86 *Apesco v Commission* [1988] ECR 2151, paragraph 16).
- 18 The present action is accordingly admissible.



*Substance*

## Arguments of the parties

- 19 The Commission puts forward a single plea in support of its action, alleging breach of the duty to state reasons referred to in Article 253 EC, on the ground that the contested decision fails to state the legal basis on which it is founded.
- 20 The Commission states that it had proposed, as the substantive legal basis of the contested decision, the combined provisions of Articles 133 EC and 175 EC, since, in the context of CITES, the regulation of trade in species and the conservation of those species were of equal importance. The failure to indicate that dual legal basis deprived the Community institutions concerned and the Member States of information as to their respective areas of competence and hence of information on their respective roles within the context of the Conference of the Parties to CITES. The fact that Regulation No 338/97 is based on Article 175 EC alone, and not on the combined provisions of Articles 133 EC and 175 EC, is without relevance since the legal basis of an act must be determined by taking account of its aim and its specific content, and not in the light of the legal basis chosen for the adoption of other similar Community acts.
- 21 With regard to the procedural legal basis, the Commission asserts that only a Council decision based on the second subparagraph of Article 300(2) EC may constitute the appropriate legal instrument for defining a Community position where a decision of the Conference of the Parties to CITES having legal effects has to be adopted and the *acquis communautaire* may be affected as a result. The omission of the legal basis, the Commission contends, caused a great deal of uncertainty as to the procedure actually followed by the Council and affected the prerogatives of the Parliament.

- 22 Referring to the judgment in Case 45/86 *Commission v Council*, the Commission also submits that the legal basis of the contested decision cannot be inferred from other information in that decision. Furthermore, the Council avoided any reference to the Treaty in the contested decision.
- 23 The Commission challenges the Council's argument that the contested decision is not a decision within the terms of Article 249 EC. It contends, in that connection, that the distinction drawn by the Council between the two types of decision on the basis of the use of two different words in the German version of the Treaty ('Entscheidung' and 'Beschluß'), a use which appears in only two other language versions of the Treaty, namely the Dutch ('beschikking' and 'besluit') and Slovene versions ('odločba' and 'sklep'), has no basis in the Treaty. The Treaty, it is submitted, does not draw a distinction between the decisions referred to in Article 253 EC and other decisions. The Commission states that the measures referred to in the second subparagraph of Article 300(2) EC are designated by the word 'decisions' and that, in particular, the English and French versions of the Treaty, considered in their context, are consistent with that terminology.
- 24 The failure to state the legal basis of the contested decision cannot be justified, according to the Commission, by the fact that that decision is addressed only to the parties which participated in its adoption, since it is necessary to preserve the prerogatives of the institutions and not to impede judicial review by the Court.
- 25 The Commission challenges the relevance, in the present case, of the reference to the judgment in Case 22/70 *Commission v Council* [1971] ECR 263 ('the *AETR* judgment'), which related to certain 'negotiations by the Council', since, in the present case, what is in issue is a decision of the Council adopted pursuant to the second subparagraph of Article 300(2) EC and expressly mentioned in Article 253 EC. The Commission states that, by contrast, in the case which gave rise to the *AETR* judgment, the measure concerned was adopted in the light of the very specific circumstances of that case, and was regarded as valid by the Court only in those circumstances, and in respect of which the Commission had given its consent.

- 26 The Commission submits that the failure to state the legal basis in the contested decision is not a purely formal defect in so far as, according to the Court, the choice of the appropriate legal basis has constitutional significance (Opinion 2/00 [2001] ECR I-9713, paragraph 5), with the result that such a defect constitutes a failure eroding the constitutional balance established by the Treaty between the institutions themselves and between the Community and the Member States. Furthermore, the Council deliberately removed the reference to the legal basis in question, thereby implying that it did not agree that it was necessary to mention it expressly.
- 27 In addition, the procedure provided for in the second subparagraph of Article 300(2) EC has not been complied with inasmuch as the contested decision was not sent to the Parliament until three weeks after it had been adopted, that is to say, on 14 June 2007, with the result that its belated transmission adversely affected the Parliament's prerogatives.
- 28 Finally, the Commission challenges the relevance of the Council's additional remarks on the practice concerning the establishment of Community positions, and points out that, according to the case-law, a mere practice on the part of the Council cannot derogate from rules laid down in the Treaty (Case 68/86 *United Kingdom v Council* [1988] ECR 855, paragraph 24).
- 29 The Council contends, as its principal argument, that, in the present case, it was not required to state the legal basis of the contested decision inasmuch as the latter is a *sui generis* decision, designated in German by the term 'Beschluß', adopted by the Council in the context of the Community's external relations, in accordance with the second subparagraph of Article 300(2) EC. That decision, it argues, must be distinguished from the decision designated by the German word 'Entscheidung' and referred to in Articles 249 EC and 253 EC.
- 30 The Council explains that, since the contested decision affects only relations between the Community and the Member States and inter-institutional relations, and as it therefore has no effect on the legal rights and obligations of third parties, such as individuals or companies, the obligation to state reasons serves no purpose since that

decision is addressed only to the parties which participated in its adoption. In the same way as the Court found in the *AETR* judgment, which concerned ‘negotiations by the Council’ for the purpose of concluding an international agreement, the contested decision in the present case is a ‘Beschluss’ and, as such, does not appear on the exhaustive list of measures for which reasons must be given.

31 As a subsidiary argument, the Council submits, referring to the judgment in Case C-210/03 *Swedish Match* [2004] ECR I-11893, paragraph 44, that the absence of a reference, in a measure, to its legal basis is a purely formal defect. The absence of such a reference in the contested decision had no effect on the procedure applicable for its adoption since, in the present case, the procedure provided for in the second subparagraph of Article 300(2) EC was complied with. The Council states, in that connection, that that provision requires only transmission of the decision concerned to the Parliament for information purposes, but it does not lay down any time-limit and does not in any way require the Parliament to submit that decision to parliamentary scrutiny.

32 With regard to the dual substantive legal basis proposed by the Commission, the Council contends that, as Regulation No 338/97 was adopted on the basis of Article 130s of the Treaty alone, it would not have been possible to achieve the qualified majority within the Council which would have enabled the legal basis proposed to be accepted.

33 According to the Council, it was important to adopt a Community position in accordance with the procedures provided for by the Treaty before the start of the 14th meeting of the Conference of the Parties to CITES. The fact that no legal basis is indicated for the contested decision had no effect on the procedure leading to its adoption, on its binding nature, on the negotiations themselves which were undertaken in the conference, or on the role played by the Commission and the Member States in those negotiations. The Council states that the Commission’s role in those negotiations was determined — and limited — by the fact that the Community is not a contracting party to CITES, and not by the failure to state the legal basis of the contested decision.

- 34 The Council submits that the failure to state the legal basis in the contested decision also had no effect on the adoption of the corresponding internal Community measure, since Article 19 of Regulation No 338/97 provides that the adoption, *inter alia*, of amendments to the annexes to that regulation as a result of the decisions of the Conference of the Parties and those of the Standing Committee of CITES is subject to a comitology procedure.
- 35 The Council also observes that the practice relating to the establishment of Community positions is rather diverse and has continued to be diverse since the entry into force of the Treaty of Nice. On the one hand, there are Council decisions which refer either to the substantive legal basis alone or solely to the second subparagraph of Article 300(2) EC. On the other hand, it is not uncommon for Community positions to be established through direct Council approval of the text on which the position is to be adopted, without an accompanying *sui generis* decision. In these latter cases, the Council has always acted upon a proposal from the Commission, reflecting the form suggested by it.
- 36 The United Kingdom, while supporting all of the Council's arguments, adds that the second subparagraph of Article 300(2) EC does not contain any provision which has the effect of replacing *sui generis* decisions with decisions referred to in Article 249 EC in the context in question. Furthermore, the Commission's participation in the process leading to the adoption of the contested decision and in the negotiations relating to CITES offered that institution all the legal safeguards that Article 253 EC is designed to ensure for third parties. *Sui generis* decisions give the Community the degree of flexibility it needs in order to participate effectively in bodies established by international agreements and it would be detrimental to the Community interest if the Council were to be obliged to specify the legal basis for all decisions of the kind which is in issue in the present case. The United Kingdom submits that the fact that the Council is not under a strict obligation to state the legal basis of a *sui generis* measure in accordance with Article 253 EC does not mean that it should decline to do so.

## Findings of the Court

- 37 As a preliminary point, the Court has consistently held that the obligation under Article 253 EC to give reasons requires that all of the measures concerned should contain a statement of the reasons which led the institution to adopt them, in order that the Court can exercise its power of review and that the Member States and the third parties concerned may learn of the conditions under which the Community institutions have applied the Treaty (see to that effect, inter alia, Case C-41/93 *France v Commission* [1994] ECR I-1829, paragraph 34).
- 38 It is clear from the Court's case-law that the obligation to indicate the legal basis of a measure is related to the duty to state reasons (see, inter alia, Case 45/86 *Commission v Council*, paragraph 9, and Case 203/86 *Spain v Council* [1988] ECR 4563, paragraphs 36 to 38).
- 39 The Court has also held that the requirement of legal certainty means that the binding nature of any act intended to have legal effects must be derived from a provision of Community law which prescribes the legal form to be taken by that act and which must be expressly indicated therein as its legal basis (Case C-325/91 *France v Commission* [1993] ECR I-3283, paragraph 26).
- 40 It is in the light of those considerations that it is necessary to determine whether the contested decision could have been validly adopted without an indication of its legal basis. To that end, it is necessary to examine whether that decision is subject to the duty to state reasons and whether it must therefore indicate the legal basis.
- 41 In support of their respective arguments, the parties primarily adduce terminological arguments, relying on the different linguistic versions of Article 300(2) EC. The Commission submits that the contested decision is a decision within the meaning of Article 249 EC, designated in German by the word 'Entscheidung', and must therefore

be reasoned. By contrast, the Council, supported by the United Kingdom, takes the view that it is a *sui generis* decision, designated in German by the word 'Beschluss', which is not covered by Article 253 EC.

42 In that connection, the classification of the contested decision as a decision within the meaning of Article 249 EC or as a *sui generis* decision is not conclusive in the present case for the purpose of deciding whether it must be subject to the obligation that it be reasoned. That obligation, which is justified in particular by the need for the Court to be able to exercise judicial review, must apply to all acts which may be the subject of an action for annulment. According to settled case-law, acts open to challenge, within the meaning of Article 230 EC, are any measures adopted by the institutions, whatever their form, which are intended to have binding legal effects (see, *inter alia*, the *AETR* judgment, paragraph 42, Case 60/81 *IBM v Commission* [1981] ECR 2639, paragraph 9, and Case C-521/06 P *Athinaiki Techniki v Commission* [2008] ECR I-5829, paragraph 42). It follows that, in principle, any measure producing binding effects is subject to the obligation to state reasons.

43 In the present case, Article 1 of the contested decision establishes the Community position as regards the areas within its field of competence, which is to be expressed by the Member States acting jointly in the interest of the Community at the 14th meeting of the Conference of the Parties to CITES.

44 The contested decision is therefore a measure which produces binding legal effects, in so far as it establishes the Community position at that 14th meeting, and which is binding in nature, first, with respect to the Council and the Commission and, second, with respect to the Member States inasmuch as it obliges them to defend that position.

45 It follows that the contested decision must be reasoned and must therefore indicate the legal basis on which it is founded in order, in particular, that the Court may be able to exercise its powers of review.

46 The legal basis must also be indicated in the light of the principle of the allocation of powers enshrined in the first paragraph of Article 5 EC, according to which the Community must act within the limits of the powers conferred on it and of the objectives assigned to it by the Treaty in both the internal action and the international action of the Community (see Opinion 2/94 [1996] ECR I-1759, paragraph 24).

47 In that regard, the Court has already held that the choice of the appropriate legal basis has constitutional significance, since, having only conferred powers, the Community must tie the contested decision to a Treaty provision which empowers it to approve such a measure (see, to that effect, Opinion 2/00, paragraph 5).

48 The indication of the legal basis also has particular importance for preserving the prerogatives of the Community institutions concerned by the procedure for the adoption of a measure. Thus, in the present case, such an indication is liable to have an effect on the powers of the Parliament, given that Articles 133 EC, 175 EC, and 300(2) EC do not confer on it the same degree of involvement in the adoption of a measure. In the same way, an indication of the legal basis is necessary in order to determine the voting procedure within the Council. In that regard, the first subparagraph of Article 300(2) EC provides that the Council is to act by qualified majority except, first, when the agreement covers a field for which unanimity is required for the adoption of internal rules and, second, for the agreements referred to in Article 310 EC.

49 Furthermore, the indication of the legal basis determines the division of powers between the Community and the Member States. In the present case, the application of Article 175 EC or Article 133 EC alone would not have had the same implications for the division of powers between the Community and the Member States as a combined application of those two provisions, since Article 133 EC confers powers exclusive to the Community, whereas Article 175 EC provides for powers shared between the Community and the Member States. The failure to indicate a legal basis may thus give



rise to confusion as to the nature of the Community's powers and is liable to weaken the Community in the defence of its position in international negotiations.

50 The finding that the contested decision ought to have indicated the legal basis on which it is founded cannot be called into question by the arguments relied on by the Council and the United Kingdom.

51 As regards, first, the Council's argument based on the *AETR* judgment, it must be stated, first of all, that the contested decision and the reasoning in that judgment were not adopted in comparable situations. The latter concerned the appropriate methods of cooperation with a view to ensuring the most effective means possible of defending the Community's interests in the negotiation and conclusion of the European agreement concerning the work of crews of vehicles engaged in international road transport at a time when the implementation of a new division of powers within the Community might have compromised the successful outcome of the negotiations. It was therefore an act adopted in circumstances specific to the case which gave rise to the *AETR* judgment. There is nothing comparable in the present case inasmuch as the Council adopted a decision in accordance with the second subparagraph of Article 300(2) EC.

52 Second, as regards the United Kingdom's argument that excessive formality would seriously hamper the effectiveness of the Community's participation in bodies set up by international agreements, it should be noted, first, that, although the need for flexibility as regards courses of action to be taken may be of some importance in the context of international negotiations, the fact remains that the Community has only conferred powers and may act only within the limits of those powers. Second, according to settled case-law, the requirement to be satisfied by the statement of reasons is determined in the light of the nature of the act concerned and its context (see, to that effect, Case C-333/07 *Régie Networks* [2008] ECR I-10807, paragraph 63 and the case-law cited). Therefore, although a statement of reasons for the act in question, more or less detailed depending on the circumstances, may indeed be capable of addressing any difficulties encountered during international negotiations, the need to indicate its legal basis is not an excessive requirement. The indication of the legal basis must therefore be regarded, in principle, as a minimum item of information making it possible to satisfy the requirement that the reasons on which a decision is based should be stated, since the

Community must link the measure to a provision of the Treaty which empowers it to adopt that decision.

53 Third, the argument regarding the constraints relating to time-limits likewise raised by the United Kingdom must also be rejected. As the Community has only conferred powers, the article of the Treaty which confers those powers on it must be determined before it acts. Furthermore, stating the legal basis subsequently, in an act intended to implement amendments to CITES at Community level, is not sufficient, contrary to the Council's submissions, to comply with the duty to state reasons, since the statement of reasons for a measure must appear in that measure (see Case C-291/98 P *Sarrió v Commission* [2000] ECR I-9991, paragraphs 73 and 75, and Case C-378/00 *Commission v Parliament and Council* [2003] ECR I-937, paragraph 66).

54 Finally, the argument put forward by the Council that, in the past, comparable decisions also failed to indicate the legal basis on which they were founded likewise cannot be accepted. Suffice it to point out in that regard that a mere practice on the part of the Council cannot derogate from rules laid down in the Treaty and cannot therefore create a precedent binding on the Community institutions with regard to the correct legal basis (Case 68/86 *United Kingdom v Council*, paragraph 24, and Case C-271/94 *Parliament v Council* [1996] ECR I-1689, paragraph 24).

55 It follows that the contested decision ought, at least, to have indicated the legal basis on which it is founded in order to satisfy the obligation to state reasons.

56 However, it must be recalled that failure to refer to a precise provision of the Treaty need not necessarily constitute an infringement of essential procedural requirements if the legal basis for a measure may be determined from other parts of the measure. However, such explicit reference is indispensable where, in its absence, the parties concerned and the Court are left uncertain as to the precise legal basis (see Case 45/86 *Commission v Council*, paragraph 9).

57 In the present case, the legal basis cannot be determined with the help of any element in the contested decision. The latter merely refers to the Council's draft decision submitted to it by the Commission. Paragraph 1 of the grounds for the contested decision states that CITES is implemented in the Community by Regulation No 338/97. As to paragraphs 2 to 4 of those grounds, they merely state that certain resolutions of the Conference to the Parties to CITES are liable to affect Community legislation, that the Community is not yet a contracting party to CITES and that, where Community rules have been established for the attainment of the objectives of the Treaty, Member States cannot, outside the Community framework, assume obligations which might affect those rules or alter their scope.

58 Furthermore, it is clear from the documents submitted to the Court that the choice of the relevant legal basis was the subject of disagreement within the Council. Similarly, the Commission stated in that connection, without being contradicted on the point, that a number of Member States formulated objections with respect to the dual substantive legal basis proposed by the Commission, several of them preferring to use Article 175 EC alone, while other Member States expressed their disagreement with the proposed procedural legal basis, namely the second subparagraph of Article 300(2) EC.

59 The Council, moreover, states that, when it adopted the contested decision, it acted in accordance with the procedure set down in the second subparagraph of Article 300(2) EC, but took the view that it was not absolutely necessary to indicate the procedural legal basis. It explains that it was not possible to achieve consensus on the dual substantive legal basis proposed by the Commission.

60 It follows that the legal basis of the contested decision cannot be clearly deduced from that decision itself and that the fact that no legal basis is indicated is explained by the existence of disagreement within the Council, at least with regard to the substantive legal basis.

61 In those circumstances, contrary to the submissions of the Council and the United Kingdom, the failure to indicate any legal basis in the contested decision cannot be regarded a purely formal defect.

62 It follows that the contested decision must be annulled by reason of the failure to indicate the legal basis on which it was founded.

*The request that the effects of the contested decision be maintained*

63 The Council, supported in this regard by the United Kingdom, asks the Court to maintain the effects of the contested decision in the event that it is annulled. The Commission has not objected to that request.

64 Under the second paragraph of Article 231 EC 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 as definitive. Such a provision 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 the second paragraph of Article 231 EC (Case C-155/07 *Parliament v Council* [2008] ECR I-8103, paragraph 87 and the case-law cited).

65 It must be observed that the contested decision was intended to establish the Community position on a number of proposals examined during the 14th meeting of the Conference of the Parties to CITES which took place in The Hague from 3 to 15 June 2007. It is not disputed in this regard that that Community position was in fact expressed by the Member States in accordance with the contested decision.

66 In those circumstances, the effects of the contested decision, which is annulled by the present judgment, must be maintained on grounds of legal certainty.

## Costs

67 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for costs and the Council has been unsuccessful, the Council must be ordered to pay the costs. In accordance with the first subparagraph of Article 69(4) of the Rules of Procedure, the United Kingdom, which has intervened in this dispute, must bear its own costs.

On those grounds, the Court (Second Chamber) hereby:

- 1. Annuls the decision of the Council of the European Union of 24 May 2007 establishing the position to be adopted on behalf of the European Community with regard to certain proposals submitted at the 14th meeting of the Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), The Hague (Netherlands), 3 to 15 June 2007;**
- 2. Maintains in force the effects of the annulled decision;**

- 3. Orders the Council of the European Union to pay the costs;**
  
- 4. Orders the United Kingdom of Great Britain and Northern Ireland to bear its own costs.**

[Signatures]