Reports of Cases

OPINION OF ADVOCATE GENERAL
MENGOZZI
delivered on 6 September 2012 [1]

Joined Cases C-237/11 and C-238/11

French Republic
v

European Parliament

(Actions for annulment — Calendar of plenary sittings of the European Parliament for 2012 and 2013 — Protocols on the location of the seats of the institutions and of certain bodies, offices, agencies and departments of the European Union)

I – Introduction

1. By its actions brought on 19 May 2011, the French Republic claims that the Court should annul the vote of the European Parliament of 9 May 2011 concerning the calendar of part-sessions for 2012 (Case C-237/11) and the vote of the Parliament of the same day concerning the calendar of part-sessions for 2013 (Case C-238/11) (collectively, 'the contested decisions').

2. The particular feature of those calendars is that, for the months of October 2012 and October 2013, provision is made for the Parliament to hold two plenary sittings in Strasbourg (France), both of which are to take place in the same week and to be of shorter duration than those scheduled for the other months of the year.

II – Legal framework and background to the dispute

3. At the Edinburgh Summit in 1992, the Governments of the Member States adopted a decision – 'the Edinburgh Decision' – on the location of the seats of the institutions and of certain bodies and departments of the European Communities, on the basis of Articles 216 EEC, 77 ECSC and 189 EAEC.

4. Article 1(a) of the Edinburgh Decision provided:

'The European Parliament shall have its seat in Strasbourg where the 12 periods of monthly plenary sessions, including the budget session, shall be held. The periods of additional plenary sessions shall be held in Brussels [(Belgium)]. The Committees of the European Parliament shall meet in Brussels. The General Secretariat of the European Parliament and its departments shall remain in Luxembourg.'

1 — Original language: French.

5. At the intergovernmental conference leading to the adoption of the Treaty of Amsterdam, it was decided to append the Edinburgh Decision to the treaties. Currently, the text of Article 1(a) of the Edinburgh Decision is reproduced in Protocol No 6 to the EU Treaty and to the FEU Treaty and Protocol No 3 to the EAEC Treaty (collectively, 'the Protocols'). [2]

6. Under primary law, therefore, the Parliament must hold a plenary sitting each month in Strasbourg. Nevertheless, it is traditional for the August plenary sitting to be deferred to October, during which two plenary part-sessions must therefore be held in Strasbourg.

7. On 3 March 2011, the Conference of Presidents adopted two draft calendars of the Parliament's part-sessions for the years 2012 and 2013. Those two drafts provided that the Parliament was to hold a plenary sitting from 1 to 4 October 2012 and from 22 to 25 October 2012 and also from 30 September 2013 to 3 October 2013 and from 21 to 24 October 2013.

8. On 7 March 2011, two amendments were tabled to the draft calendars presented by the Conference of Presidents, one concerning the calendar for 2012, the other concerning the calendar for 2013. Framed in identical terms, the two amendments proposed 'cancelling the part-session in week 40' [3] and 'splitting October part-session II [from 22 October to 25 October 2012 and from 21 October to 24 October 2013] into two separate part-sessions'. The first October 2012 part-session was accordingly scheduled for 22 and 23 October 2012 (for 2013, 21 and 22 October 2013), and the second October 2012 part-session was to take place on 25 and 26 October 2012 (for 2013, on 24 and 25 October 2013). The two amendments were put to the vote and adopted.

9. Accordingly, the calendar of part-sessions for 2012 provides that two part-sessions are to be held in October during the same week: on 22 and 23 October (first part-session) and 25 and 26 October (second part-session).

10. According to the 2013 calendar of part-sessions, two part-sessions are to be held in October, during the same week: on 21 and 22 October (first part-session) and 24 and 25 October (second part-session).

III – The forms of order sought and the procedure before the Court

11. By order of 9 January 2012, the President of the Court ordered Cases C-237/11 and C-238/11 to be joined for the purposes of the oral procedure and the judgment.

12. The French Republic claims that the Court should:

— annul the contested votes; and

— order the Parliament to pay the costs.

13. The Parliament contends that the Court should:

— dismiss the actions as inadmissible;

— in the alternative, dismiss the actions as unfounded, and

— order the French Republic to pay the costs.

2 — See point (a) of the Sole Article of each of those protocols.

3 — That is to say, the part-session from 1 to 4 October 2012 and that from 30 September to 3 October 2013.

14. By order of 21 September 2011, the President of the Court granted the Grand Duchy of Luxembourg leave to intervene in support of the form of order sought by the French Republic.

15. The French Republic, the Grand Duchy of Luxembourg and the Parliament were heard at the hearing held on 5 June 2012.

IV – Analysis

16. Since the application initiating proceedings for the action brought by the French Republic in Case C-237/11 is worded in exactly the same terms as that for Case C-238/11, and because the same is true of the written pleadings submitted by the Parliament and those submitted by the Grand Duchy of Luxembourg,[4] I shall offer the Court a single analysis of the two actions.

17. The two actions for annulment brought by the French Republic are structured around a sole plea in law, alleging infringement of the protocols concerning the seats of the institutions and failure to comply with the judgment in *France* v *Parliament*.[5] Since the Parliament has cast doubt on the admissibility of the actions, it is necessary to begin the analysis by considering that aspect of the dispute.

A – *Admissibility of the actions*

1. Arguments of the parties

18. The basis taken by the Parliament for disputing the admissibility of the actions for annulment is the assertion that the contested votes are not actionable measures for the purposes of Article 263 TFEU. According to the Parliament, those votes pertain exclusively to the internal organisation of the Parliament and do not produce legal effects vis-à-vis third parties, a position confirmed by the fact that there is no obligation to state reasons for those votes. Moreover, it is apparent from the settled case-law of the Court of Justice and the General Court of the European Union that, although an action for annulment may lie against measures adopted by the European Parliament intended to have legal effects vis-à-vis third parties, measures which relate only to the internal organisation of the work of the Parliament cannot be challenged by such an action.[6] The planning of the Parliament's work requires the adoption of a certain number of internal measures, including the contested votes, which fall within the exercise of the power conferred on the Parliament under Article 232 TFEU. The only consequences of those votes are of a financial nature and concern solely the Member State of the location. The Parliament contends that the French Republic is seeking a declaration that the Parliament has failed to fulfil its obligations even though no such legal remedy is provided for under the treaties. Lastly, the Parliament rejects the argument put forward by the French Republic and by the Grand Duchy of Luxembourg to the effect that, in *France* v *Parliament*, the Court implicitly but necessarily ruled on the admissibility of the action for annulment.

19. The French Republic and the Grand Duchy of Luxembourg argue, on the other hand, that *France* v *Parliament* undeniably constitutes a precedent by which the Court annulled the Parliament's vote of 20 September 1995 fixing its calendar of work for 1996. They maintain that, since the issue of admissibility carries implications for the public interest and, as such, must be raised by the Court of its own motion, the Court's silence on this point, in that judgment, calls for recognition of the fact that it implicitly but necessarily acknowledged the admissibility of the action for annulment brought

4 — The only difference is the year covered by the parliamentary calendar.

5 — Case C-345/95 *France* v *Parliament* [1997] ECR I-5215.

6 — In that regard, the Parliament cites Case 294/83 *Les Verts* v *Parliament* [1986] ECR 1339, paragraph 25 et seq.; Case C-314/91 *Weber* v *Parliament* [1993] ECR I-1093, paragraph 12; and Case T-353/00 *Le Pen* v *Parliament* [2003] ECR II-1729, paragraph 77.

at the time against a vote comparable in every respect to the votes being contested today. The French Republic adds that the question whether the contested votes come under the internal organisation of the Parliament or whether they produce legal effects vis-à-vis third parties is an issue inseparably associated with consideration of the content of those votes and, in consequence, with consideration of the merits of the actions. [7]

2. Assessment

20. So far as measures adopted by the Parliament are concerned, an action for annulment under Article 263 TFEU may be brought only in respect of measures intended to produce legal effects vis-à-vis third parties. The question whether an act constitutes an actionable measure for the purposes of Article 263(1) TFEU turns on the nature of that act: the form in which it is adopted is irrelevant. [8] In the present case, the specific point on which the parties disagree concerns the legal effects of the contested votes.

21. In *Weber* v *Parliament*, [9] the Court stated that measures 'which relate only to the internal organisation of the work of the Parliament' cannot be challenged in an action for annulment and that '[t]hat class of measures includes measures of the Parliament which either do not have legal effects or have legal effects only within the Parliament as regards the organisation of its work and are subject to review procedures laid down in its Rules of Procedure'. [10] Accordingly, the Court held that a decision of the Parliament refusing to grant one of its Members a transitional end-of-service allowance has 'legal effects going beyond the internal organisation of the work of that institution in so far as they affect the financial situation of Members of Parliament when they cease to serve in that capacity'. [11]

22. In a different context, the Court has also held that a resolution of the Parliament which specified the staff dealing with certain activities whose presence in Brussels the Parliament considered essential and which instructed the competent bodies of the Parliament to take speedily all appropriate steps to implement that resolution was 'of a decision-making nature and [could], in certain circumstances, affect the guarantees provided for the Grand Duchy of Luxembourg in the relevant texts relating to the seat and places of work of the Parliament'. [12]

23. On the other hand, the Court upheld an objection of inadmissibility in relation to an action for the annulment of a decision of the President of the Parliament declaring admissible a motion for the setting up of a committee of inquiry, holding that 'the act ... which is contested is not such as to produce legal effects vis-à-vis third parties [since] the committees of inquiry ... have only investigative powers and, consequently, the acts relating to their setting up concern only the internal organisation of the work of the European Parliament'. [13] The Court took the same approach in an action challenging the propriety of the procedure by which the chairman of an interparliamentary delegation was appointed, the powers of such delegations being limited to matters of information and contact, and their constitutional documents concerning solely the internal organisation of the work of the Parliament. [14]

7 — The French Republic relies here particularly on Case 230/81 *Luxembourg* v *Parliament* [1983] ECR 255, paragraph 30; Joined Cases 358/85 and 51/86 *France* v *Parliament* [1988] ECR 4821, paragraph 15; and Joined Cases C-213/88 and C-39/89 *Luxembourg* v *Parliament* [1991] ECR I-5643, paragraph 16.

8 — Joined Cases C-213/88 and C-39/89 *Luxembourg* v *Parliament*, paragraph 15.

9 — Case C-314/91 *Weber* v *Parliament* [1993] ECR I-1093.

10 — *Weber* v *Parliament*, paragraphs 9 and 10.

11 — *Ibidem*, paragraph 11.

12 — Joined Cases C-213/88 and C-39/89 *Luxembourg* v *Parliament*, paragraphs 26 and 27. For a detailed illustration of the implicit recognition of the decision-making nature of an amendment to the Rules of Procedure of the Parliament, see Case C-167/02 P *Rothley and Others* v *Parliament* [2004] ECR I-3149.

13 — Order of 4 June 1986 in Case 78/85 *Group of the European Right* v *Parliament* [1986] ECR 1753, paragraph 11.

14 — Order of 22 May 1990 in Case C-68/90 *Blot and Front National* v *Parliament* [1990] ECR I-2101, paragraphs 10 and 11.

24. In the light of those different positions adopted by the Court, how should the contested votes be viewed?

25. I doubt whether, as the Parliament maintains, the effects of the contested votes are wholly internal to the Parliament. It is true that, prima facie, the calendar vote enables the Parliament to plan its work and appears to relate to its internal organisation. However, the calendar establishes for the whole year, not only the Parliament's periods of work, but also the periods during which the Parliament, its Members and its staff are to be present at its various places of work. I am therefore inclined to share the view of Advocate General Lenz that 'the necessary infrastructure preparations [for the part-sessions] ... give rise indirectly to obligations to third parties',[15] and not to rule out the possibility that those votes might meet the conditions laid down in the first paragraph of Article 263 TFEU.

26. My concurrence with the views of Advocate General Lenz also leads me to reject the Parliament's argument opposing the view that the judgment in Case C-345/95 *France* v *Parliament* serves as a precedent as regards the admissibility of the action. As I stated above, although the French Republic maintains that the Court expressed its opinion 'implicitly but necessarily' on the admissibility of the action in that judgment, the Parliament maintains, on the contrary, that the judgment's silence on that point shows that the Court refrained from taking a position. However, apart from the fact that the issue of the inadmissibility of an action carries implications for the public interest and, as such, is a point which the Court is required to raise of its own motion,[16] as the French Republic and the Grand Duchy of Luxembourg have rightly pointed out, the Court's attention had also been specifically drawn by Advocate General Lenz to the question of the admissibility of the action brought at the time by the French Republic contesting the vote of the Parliament.[17] Accordingly, when the Court ruled on the merits in that case, it did so in full awareness of all the issues involved.

27. In any event, even where the Court does not believe itself to be in a position to determine a priori whether the measure challenged in an action for annulment actually produces legal effects, it takes the approach that only through consideration of the merits will it be able to do so. Accordingly, the Court has held that 'a determination of the legal effect of the contested resolution is inseparably associated with consideration of its content and observance of the rules on competence. It is therefore necessary to proceed to consideration of the substance of the case'.[18] Furthermore, the Court reiterated that position when seised of an action for annulment of decisions of the Bureau of the Parliament, one of which took the form of a note on the medium-term forecasts of the activities of the Parliament in the three normal places of work.[19]

28. Consequently, it is not possible, in every case, to reject actions at this stage of the analysis – and those actions must therefore be declared admissible.

15 — See point 16 of the Opinion of Advocate General Lenz in Case C-345/95 *France* v *Parliament*. Advocate General Mancini had already expressed a view on the possibility that measures of internal organisation may produce legal effects (see the Opinion of Advocate General Mancini in Case 230/81 *Luxembourg* v *Parliament* and, in particular, p. 302).

16 — Case 6/60 *Humblet* v *Belgian State* [1960] ECR 559, 570.

17 — See point 9 et seq. of the Opinion of Advocate General Lenz delivered in Case C-345/95 *France* v *Parliament*.

18 — Case 230/81 *Luxembourg* v *Parliament*, paragraph 30.

19 — Joined Cases C-213/88 and C-39/89 *Luxembourg* v *Parliament*, paragraph 16.

B – *The sole plea in law: breach of the Protocols and failure to comply with the judgment in Case C-345/95* France *v* Parliament

1. Arguments of the parties

29. By the first part of the sole plea, the French Republic maintains that, since the Protocols merely reproduce the Edinburgh Decision, the relevance of the judgment in Case C-345/95 *France* v *Parliament*, in which the Court was called upon to interpret that decision, is in no way diminished in the context of the present cases. The French Republic points out that, at the time, the Court had taken the view that, by adopting the Edinburgh Decision, the Member States had affirmed the Parliament's practice of meeting, as a rule, every month in Strasbourg and of deferring the August monthly session until October. Since the documents refer to 'the' 12 monthly plenary sittings, the Decision – like the Protocols – must be construed as necessarily referring to the practice as it existed before the Edinburgh Decision was adopted. It is apparent from paragraph 5 of the judgment in Case C-345/95 *France* v *Parliament* that the Court defined a monthly plenary part-session, to be held in Strasbourg, as extending from Monday to Friday. According to the French Republic, the Court thus 'implicitly but necessarily' acknowledged that the Edinburgh Decision had also fixed the duration of the part-sessions. It follows that, by reducing to two days the two part-sessions to be held in October 2012 and in October 2013, the contested votes undermined the substantive provision made by the Protocols, because the effect of such a step is to reduce by 1/12 the annual duration of the plenary sittings to be held in Strasbourg and, consequently, to schedule in reality only 11 monthly plenary sittings. If the Court were to consider that the contested votes are consistent with the Protocols, the French Republic warns against the danger that such a step would develop into a general approach and that, in due course, the number of plenary sittings to be held in Strasbourg would be reduced even further.

30. By the second part of the plea, the French Republic claims that the Parliament has upset the regularity with which the plenary sittings must be held. According to the Court's finding in paragraph 29 of its judgment in Case C-345/95 *France* v *Parliament*, the Edinburgh Decision defines the seat of the Parliament as 'the place where 12 ordinary plenary part-sessions must take place on a regular basis'. An interruption of that regularity is acceptable only in respect of the August sitting and, for election years, the June sitting.

31. By the third part of the plea, the French Republic maintains – again on the basis of paragraph 29 of Case C-345/95 *France* v *Parliament* – that the Parliament was not in a position to schedule additional part-sessions to be held in Brussels owing to the fact that such additional sessions may be fixed only if 12 plenary part-sessions have already been scheduled. Since the calendars for 2012 and 2013 provide for only 11 plenary sittings, the Parliament could not schedule additional sittings for those two years.

32. By the fourth part of the plea, the French Republic argues that the Parliament acted in breach of the division of powers between the Member States and the Parliament, as defined by the Court in Case C-345/95 *France* v *Parliament*. It maintains that the objective pursued by the contested votes is none other than to reduce the presence of Members of the European Parliament ('MEPs') in Strasbourg. That is confirmed by the fact that the calendars for October 2012 and October 2013 were voted in identical terms, which proves that this is not a specific response to a need dictated by the current circumstances, but rather a practice intended to become permanent. The French Republic argues that the contested votes reveal a certain paradox: the duration of parliamentary plenary sittings are being reduced at a time when the Parliament's burden of work is becoming heavier and heavier. Lastly, the French Republic refers to the activities entailed by a plenary sitting of the Parliament and explains that it is not possible for all that work to be accomplished in the same way if the duration of the sessions is reduced to two days.

33. In its intervention in support of the French Republic, the Grand Duchy of Luxembourg agrees with the conclusions reached by the French Republic and argues that, in reality, an improvement in the internal organisation of the Parliament's work is not the true objective of the contested votes. The Grand Duchy of Luxembourg points out that the present situation clearly reflects objection to the fact that the Parliament has several places of work and, more specifically, to its obligation to be in Strasbourg. Through the contested votes, the Parliament does indeed intend to locate its seat itself. The Grand Duchy of Luxembourg points out, furthermore, that the Parliament has not explained in what respect this new organisation of the October sittings enables it to organise its work better and argues that the constant increase in the Parliament's areas of competence makes the reduction in the duration and frequency of the monthly plenary sittings illogical. Lastly, the Grand Duchy of Luxembourg submits that there is a very clear difference between the monthly plenary part-sessions and the additional plenary part-sessions; they are distinguished both by their duration (four days for the monthly part-sessions, two days for the additional part-sessions) and by the place in which they are to be held (Strasbourg for the monthly part-sessions and Brussels for the additional part-sessions). Accordingly, either the two 2-day sittings planned for October by the contested votes are, in fact, to be regarded as a single 4-day sitting, in which case the calendars concerned are providing for only 11 monthly plenary part-sessions; or there are actually two 2-day part-sessions, and sittings of that length fall to be re-categorised as additional plenary sittings which the Parliament was not entitled to schedule since such sittings can be scheduled only after the Parliament has actually fixed 12 monthly plenary part-sessions. Whichever interpretation is accepted, the contested votes do not comply with the Protocols.

34. The Parliament begins its defence with a description of the historical development of its powers, pointing out that being spread over three places of work has always been a handicap to its proper functioning. The Parliament nevertheless maintains that it has always fulfilled its obligations under primary law. As regards the calendars for 2012 and 2013, it states that, for each year, 12 plenary sittings have actually been scheduled for Strasbourg, that is to say, ten 4-day sittings and two 2-day sittings. In total, for each of the two years concerned by the contested votes, the Parliament will sit for 44 days in Strasbourg,[20] as opposed to 8 days in additional part-sessions in Brussels.

35. The Parliament goes on to point out the factual and legal differences which, in its view, distinguish the present case from Case C-345/95 *France* v *Parliament*. The organisation of the Parliament's work develops as its competence evolves. Following the adoption of the Treaty of Lisbon, in particular, the budgetary procedure was simplified and needs only a single reading, which, according to the Parliament, makes it unnecessary to hold a 'budget session' as provided under the Protocols. As a rule, the budget session is one of the two October sessions. The Parliament then refers to a number of comments – attributable either to the Parliament itself, or to the MEPs of which it is composed, or even to the community at large – all of which are critical of the disadvantages arising from the fact that it has a number of different places of work, whether from an economic, environmental or productivity point of view. According to the Parliament, the contested votes should therefore also be viewed in the light of those considerations, which should in turn be viewed against the background of economic and financial crisis.

36. In response to the arguments set out by the French Republic, the Parliament contends that the Protocols do not establish any duration for the part-sessions. Article 341 TFEU confers competence on the Member States to locate the seat of the institutions. That legal basis must be narrowly construed and the Member States' exercise of that competence cannot affect the Parliament's power to determine its own internal organisation. Even if the Edinburgh Decision were regarded as giving some indication as to the duration of the monthly part-sessions of the Parliament, that would beg the comment that, in so doing, the Member States have acted *ultra vires* in their exercise of the competence conferred on them under Article 341 TFEU. In fact, no express provision is made,

20 — At the hearing, the Parliament's representative reduced that figure to 34 days, since the monthly plenary part-sessions begin on Mondays at 5 p.m. and end on Thursdays at the same time.

whether in the treaties, or in the Protocols, or even in the Rules of Procedure of the Parliament, concerning the duration of the plenary part-sessions. The Parliament also contests the interpretation placed by the French Republic on the judgment in Case C-345/95 *France* v *Parliament*, emphasising in particular that the factual situation submitted for consideration by the Court in that case is quite different from the situation at the heart of the present actions.

37. By contrast, the Parliament maintains that, as regards the duration of the part-sessions, the relevant authority is *Wybot*,[21] since the Court held in that case that, 'in the absence of any provision in the treaties on the subject, the determination of the duration of its sessions falls within the European Parliament's power to adopt rules for its own internal organisation'. Accordingly, the Parliament is free to determine the duration of its sessions.

38. The Parliament vigorously contests the French Republic's interpretation of the Edinburgh Decision. It argues that, by construing the Edinburgh Decision as setting in stone the evolutionary stage reached by parliamentary practice up to that point, the French Republic is trying to deprive the Parliament of the power to develop its practice further, a process rendered necessary by the changes in the Parliament's role and competence. Although the Parliament does not hide the fact that its objective is to reduce the impact which the location of its seat has on its operation and to limit the effects linked to the plurality of its places of work, it maintains that, as the planning for the years 2012 and 2013 currently stands, Strasbourg remains the centre of gravity for parliamentary sittings. It also points out that October is the only month in the year in which it is possible to reduce the two part-sessions, because, since 2001, the other monthly part-sessions have been held over four days, and it maintains that the danger that their duration might be further reduced is pure speculation.

39. In its reply, the French Republic points out that the Parliament exercises its competence in relation to the European Central Bank and the Court of Auditors even though those institutions do not have their headquarters in Brussels. Clearly, therefore, the Parliament is not required to sit in the same city as that in which the institution in respect of which it exercises its competence is located.

40. The French Republic also challenges the Parliament's statements regarding the budget session, arguing that the budget vote by the Parliament, in plenary session, in the presence of the Council of the European Union and of the European Commission, requires the Parliament to take especial care at the reading because it is the only reading. That being so, the budget session is still extremely important.

41. As for the various comments referred to by the Parliament, the French Republic criticises them as lacking objectivity and points out that the location of the seat of the institutions falls within the exclusive competence of the Member States. Moreover, at the hearing, the French Republic contested the figures quoted by the Parliament regarding carbon dioxide emissions and the costs generated by the geographic dispersion of the Parliament's places of work.[22]

42. Moreover, according to the French Republic, *Wybot* cannot cast doubt on its interpretation of the Protocols as regards the duration of sittings, since that judgment was delivered in a context so different as to have no relevance for the present actions. The French Republic goes on to state that the fact that the Court had 'implicitly but necessarily' acknowledged that the Edinburgh Decision had formalised existing practice, including with regard to the duration of the sittings, means that the Court did not believe that the Member States had exceeded their powers. Accordingly, the Parliament has not put forward any arguments capable of justifying the amendments made by the contested votes.

21 — Case 149/85 [1986] ECR 2391, paragraph 16.

22 — Referring to a 2007 study, the Parliament gave the figure of 19 000 tonnes of carbon dioxide. The French Republic – citing another study, carried out in 2012 – estimates the environmental cost of journeys to Strasbourg at 4 699 tonnes of carbon dioxide. As regards the economic cost, on the basis of a 2011 study, the Parliament quotes a figure of EUR 160 million. The French Republic – citing the same study as for the estimate of the environmental cost – assesses at EUR 51 million the costs arising from the location of the Parliament's seat in Strasbourg.

43. In its rejoinder, the Parliament repeats, in essence, the same arguments as those put forward in its defence, namely that the competence of the Member States to locate the seat of the institutions is not so wide-sweeping as to give them the right to fix the duration of the monthly parliamentary part-sessions, which is a matter exclusively for the internal organisation of the Parliament. Invoking the autonomy which it must be allowed if it is to organise its work in a more effective and less costly manner, the Parliament denies any desire to call in question the location of its seat in Strasbourg. The Parliament points out that the duration of the additional plenary part-sessions, which are to be held in Brussels, has also been reduced. The Parliament notes that when it amended its practice regarding the duration of the plenary part-sessions in 2000 by cancelling the Friday sittings, the French Republic did not bring an action: but, as a proportion, the contested votes represent at the very worst a 1/12 reduction whereas the amendments to practice made in 2000 and effective from 2001 constituted a 1/5 reduction. The Parliament suggests that the fact that the French Republic did not challenge the cancellation of the Friday sittings supports the inference that it recognised, also implicitly but necessarily, that the Parliament was at liberty to fix the duration of its part-sessions. The Parliament adds that the purpose of the adjustment made to its work schedule is to increase efficiency and points out that, from now on, the activities of the committees are more important than the work in the parliamentary chamber. In any event, the effectiveness of the Parliament's right to autonomous organisation must be preserved, particularly because it is the only institution which is directly elected by the citizens. Lastly, in response to the arguments of the Grand Duchy of Luxembourg, the Parliament rejects the idea that a part-session would lose its normal plenary nature if it were to last only two days. It is inconceivable that the Edinburgh Decision, hence the Protocols, could be construed as compelling the Parliament to hold its plenary part-sessions from Monday morning to Friday evening, regardless of the institution's actual needs.

2. Appraisal

44. Although the Court cannot be unaware of the strong criticism surrounding the Parliament's obligation to sit in Strasbourg, a point raised, moreover, by the parties, it is important to bear in mind that, in the present case, it is called upon to give a ruling on the legal position.

45. By its sole plea in law, the French Republic submits that the contested votes are in breach of the Protocols and incompatible with the judgment in Case C-345/95 *France* v *Parliament*, owing to: (i) the duration established for the plenary part-sessions to be held in October 2012 and October 2013 (first part of the plea); (ii) the break in the regularity with which part-sessions are held, entailed by the plan to hold two 2-day plenary sessions in the same week (second part of the plea); (iii) the confusion between the notions of ordinary plenary sittings and additional plenary sittings, which flaws the contested votes (third part of the plea); and, lastly, (iv) breach of the division of powers between the Member States and the Parliament (fourth part of the plea).

46. In order that the case may be better understood, I suggest that I begin my analysis by pointing out the essential contributions made by the judgment in Case C-345/95 *France* v *Parliament*. I shall then offer an across-the-board analysis of the various parts of the plea raised by the French Republic which will consist, first, in showing that the Court cannot, in assessing this case, take the duration of the monthly plenary part-sessions as its sole yardstick because there is no express rule determining that duration a priori and, second, in proposing a broader test for assessing the legality of the contested votes, namely that of overall cohesion.

a) The contributions made by Case C-345/95 *France* v *Parliament*

47. In the action for annulment which was brought at that time, as I have already recalled, against the Parliament's vote fixing its calendar of work for 1996, the Court held, in respect of the dispersion of the work of the Parliament over three places of work, that, '[g]iven a plurality of working places, the exercise [of the competence of the Member States to locate by mutual agreement the seat of the

institutions of the European Union] involved not only the obligation to determine the location of the seat of the Parliament but also the implied power to give precision to that term by indicating the activities which must take place there'.[23] The Court accordingly held that, in adopting the Edinburgh Decision, the intention of the Member States was 'to provide that the seat of the Parliament, in Strasbourg, be the principal place where it meets in ordinary plenary sitting, and to that end to specify the mandatory number of part-sessions which must be held there'.[24] The Court even went on to find that the Member States had 'endorsed its practice of meeting in principle every month in Strasbourg'.[25] As for the budget session, the Court interpreted the Edinburgh Decision as meaning that that session was to be held 'during one of the ordinary plenary part-sessions held at the seat of the institution'.[26]

48. Thus, the seat of the Parliament has been defined, according to the Court's interpretation of the Edinburgh Decision, as 'the place where 12 ordinary plenary part-sessions must take place on a regular basis, including those during which the Parliament is to exercise the budgetary powers conferred upon it by the Treaty. Additional plenary part-sessions cannot therefore be scheduled for any other place of work unless the Parliament holds the 12 ordinary plenary part-sessions in Strasbourg, where it has its seat'.[27]

49. The Court then traced a line of demarcation between the competence of the Member States to determine the seat of the institutions and the power of internal organisation which must be recognised as accruing to the Parliament. The Court accordingly held that '[w]hilst the Parliament is authorised, under that power of internal organisation, to take appropriate measures to ensure the proper functioning and conduct of its proceedings, its decisions in that regard must respect the competence of the Governments of the Member States to determine the seat of the institutions'.[28] In return, 'the Member States have the duty, in exercising their competence ..., to respect the Parliament's power to determine its own internal organisation and to ensure that such decisions do not stand in the way of the proper functioning of that institution'.[29] In so doing, the Court also recognised that, '[w]hilst it is true that the Edinburgh Decision does place certain constraints on the Parliament as regards the organisation of its work, those constraints are inherent in the need to determine its seat while maintaining several places of work for the institution'.[30]

50. Given that the Edinburgh Decision has been incorporated into established law by the Protocols, there is no need, for the purposes of assessing the legality of the contested votes, to alter its interpretation by the Court – a fortiori because the parties do not intend to call that interpretation into question.

b) The lack of any established rule governing the duration of the monthly plenary part-sessions

51. The parties disagree as to whether the Edinburgh Decision, as incorporated into established law by the Protocols, lays down obligations which the Parliament is required to meet concerning the duration of its plenary sessions.

23 — Case C-345/95 *France* v *Parliament*, paragraph 24.
24 — *Ibidem*, paragraph 25.
25 — *Ibidem*, paragraph 26.
26 — *Ibidem*, paragraph 28.
27 — *Ibidem*, paragraph 29.
28 — *Ibidem*, paragraph 31.
29 — *Ibidem*, paragraph 32.
30 — *Ibidem*, paragraph 32.

52. First of all, I question the relevance, for the present case, of invoking *Wybot*. Although, as the Parliament points out, the Court held in that judgment that, 'in the absence of any provision in the treaties on the subject, the determination of the duration of its sessions falls within the European Parliament's power to adopt rules for its own internal organisation',[31] it did so in the specific context of that case. *Wybot* arose in a very different legal framework and concerned the determination of the duration of the annual session,[32] that is to say, the total duration of the period during which the Parliament was in session, which the Parliament was free to determine. Clearly, that was why the Court was able to state that the determination of the duration of the sessions – understood as the annual sessions – was decided, in the final analysis, through the exercise of the Parliament's power to determine its own internal organisation. That in no way makes it possible to infer, in the present actions, that the Parliament enjoys a similar freedom as regards determination of the duration of the monthly plenary part-sessions.

53. Even if, proceeding by *reductio ad absurdum*, it were sought to infer from *Wybot* that, even as regards the monthly plenary part-sessions, the determination of the duration of the part-sessions fell within the Parliament's power of internal organisation, the fact remains that that power must be exercised in compliance with primary law. In my view, there is a clear link between the determination of the duration of the part-sessions and compliance with the decision of the Member States to locate the seat of the Parliament in Strasbourg. To put it plainly, a vote which provides that all the monthly plenary part-sessions to be held in Strasbourg are each to last only one half-day is in breach of the protocols which determine the seat of the Parliament. Viewed from this angle, the competence exercised by the Member States when they determined the seat of the Parliament necessarily carried implications regarding the length of time that the Parliament would spend in Strasbourg, but not so far, however, as to lay down a rigid rule. The Court recognised this, moreover, by stating that 'the seat ... [is] the *principal* place where it meets'.[33] Accordingly, the location of the seat entails, by its very nature, consequences in terms of frequency but none the less it cannot be said that the Member States acted *ultra vires*, as the Parliament contends.

54. That said, it must be acknowledged that the wording of the Protocols sheds no light regarding the specific duration of the plenary part-sessions and it must be said that, as the Parliament points out, there is no express rule in that regard. I am also inclined to qualify, according to perspective, the obligations concerning duration which the French Republic infers from paragraph 5 of the judgment in Case C-345/95 *France* v *Parliament*. That paragraph, which merely states that it was, 'however, common ground between the parties that plenary part-sessions extending from a Monday to a Friday are held in Strasbourg', is clearly situated in the part of the judgment which sets out the background to the dispute and, accordingly, no legal inferences can properly be drawn from it. The particularly rigid position adopted by the French Republic in that regard is considerably weakened by the fact that, as from 2001, the monthly plenary part-sessions have extended only from Monday to Thursday and the French Republic raised no objection at the material time.[34]

55. Accordingly, it is not possible to determine the legality of the contested votes simply by testing them against a clearly established rule which establishes the duration of the monthly plenary part-sessions. In those circumstances, a more complete test must be applied for the Court to exercise its jurisdiction to review legality.

31 — See *Wybot*, paragraph 16.

32 — This was for the purposes of determining the scope *ratione temporis* of the parliamentary immunity of an MEP.

33 — Case C-345/95 *France* v *Parliament*, paragraph 25. Emphasis added.

34 — None the less, the fact that the French Republic did not object to that change in practice even though it was, proportionately and according to the Parliament, much more significant than the change introduced by the contested votes, has no bearing on the assessment of those votes which the Court is called upon to give now.

c) The overall cohesion test

56. The lack of any express rule, coupled with the natural growth of the Parliament's role and consequently of its work, shows that it is necessary to undertake a dynamic interpretation of the Protocols in accordance with the principles of mutual respect laid down by the Court in Case C-345/95 *France* v *Parliament*. The analysis must therefore be more comprehensive, and it is no longer the duration, in the strict sense, which is decisive for ruling on the legality of the contested votes, but rather the overall cohesion of the calendars.

57. The test for overall cohesion is accordingly conducted in two steps.

58. First, the calendars of work for 2012 and 2013 must be examined in their entirety, particular account being taken of the frequency and duration of the 12 monthly plenary part-sessions planned.

59. Secondly, any finding that the organisation of the calendars interrupts the pattern of frequency or betrays a lack of consistency must not automatically lead the Court to conclude that there has been a breach of the Protocols, since it is apparent from Case C-345/95 *France* v *Parliament* that the Court has acknowledged that it is open to the Parliament to justify such irregularities. In that regard, in addition to the various short-term economic reasons which could be offered, the Court will have to be especially careful to preserve the proper functioning of the institution and the proper conduct of its procedures.

60. If we apply this test to the contested votes, a test which seems to me to be the most appropriate for maintaining the balance which the Court has strived to attain and which has most respect both for the competence of the Member States to determine the seat of the Parliament and for the Parliament's power to determine its own internal organisation, what do we find?

i) The holding of two monthly plenary part-sessions in the same week in October amounts to inconsistency

61. For the years 2012 and 2013, the contested votes provide, for each month of the year except August and October, that a monthly plenary half-session is to be held over a period of four days (more precisely, from 5 p.m. on Monday to 5 p.m. on Thursday). In the case of October, and following the adoption of an amendment 'cancelling the part-session period in week 40' and 'splitting October part-session period II',[35] two 2-day part-sessions (from Monday to Tuesday and from Thursday to Friday) are held in the same week.

62. It thus emerges from a wholly objective examination of the calendars that the contested votes endorsed a break in the regularity of the sittings. Consequently, it can scarcely be denied that, although the fact that there is no part-session in August necessarily leads to an irregularity in the calendar in that two sittings then have to be held in the same month, that irregularity is exacerbated – as regards the years 2012 and 2013 – by the fact that the duration of those two part-sessions is different as compared with the other months in the year during which a monthly plenary part-session, which covers four days, must be held.

35 — See point 8 of the present Opinion.

ii) Lack of justification

63. However, as I have pointed out, the Parliament may, in exercise of its power to determine its own internal organisation, take appropriate measures to ensure its proper functioning and the proper conduct of its procedures. Nor did the Court, in its judgment in Case C-345/95 *France* v *Parliament*, rule to the contrary, since it accepted that derogations from the rule requiring 12 ordinary plenary part-sessions may be allowed provided that they are justified.[36] Accordingly, the Protocols cannot be construed in such a way that this power of internal organisation is denied.

64. The fact that the two monthly plenary part-sessions planned for October 2012 and October 2013 are not of the same length as those of the other months of the year is in principle, therefore, open to justification.

65. However, it has to be said that the Parliament struggles to give convincing reasons to justify, or at least to explain, the fact that, by the contested votes, the duration of the two plenary part-sessions in October 2012 and 2013 has been reduced to two days.

66. First, it must be acknowledged that the Parliament's legal arguments are more often than not driven by its clearly stated wish to be able to determine its seat itself, to such an extent that it is not easy to distinguish between what reflects the actual needs of the Parliament as regards the organisation of its work and what reflects a manipulation of its power to determine its own internal organisation, with a view to circumventing the rules imposed upon it by primary law. The Parliament's freedom to determine its seat itself, however desirable, cannot find recognition on the basis of its power to determine its own internal organisation, but requires rather the revision of primary law, which may in certain circumstances be initiated by the Parliament.[37]

67. Secondly, the Parliament has not given any particular reason to explain the reasons why the October plenary part-sessions have to be arranged as set out in the contested votes.

68. The Parliament has argued that the budget session, which the Protocols require to be held in Strasbourg, does not, at the moment and following successive amendments to the budget procedure, have the same importance as when the Edinburgh Decision was adopted. Despite the fact that the Parliament's exercise of its budgetary competence is a fundamental event in the democratic life of the European Union and must therefore be undertaken with all the care, rigour and commitment which such a responsibility demands, it is not for the Court to impose a priori an average duration for the budget session. However, even if it is conceded – and I am not persuaded – that such a session may take place over a shorter length of time than the other monthly plenary part-sessions, that does not eclipse the fact that the second monthly plenary part-session scheduled for the same week in October in 2012 and 2013 – which is therefore not the budget session – has had its duration curtailed as compared with the monthly plenary part-sessions of the other months in the year, for no apparent reason.

69. In that regard, it is not plausible to form the view already that, for example, the Parliament's activity at the monthly plenary sitting in October 2013, which will not be devoted to the budget, will be lighter and that two days of session[38] will be sufficient. A quick look at the agenda for the last monthly plenary part-sessions shows a particularly heavy programme, extending over four days.[39] When questioned on that point at the hearing, the Parliament's representative did not explain why

36 — Case C-345/95 *France* v *Parliament*, paragraph 33.

37 — See Article 48 TEU.

38 — To be perfectly precise, from Monday to Tuesday or from Thursday to Friday.

39 — In order to be convinced, it is enough to consider the agenda of the last plenary part-session held by the Parliament in Strasbourg from 2 to 5 July 2012 (see session document No 491 927 of 2 July 2012).

exactly – apart from the case of the budget session – the agenda for the other part-session scheduled for October would be lighter, and went so far as to acknowledge that it is not possible for the Parliament to anticipate, when it votes on its calendar, the content of the agenda for the various part-sessions.

70. The arguments referring to the increase in the Parliament's committee work, to the detriment of its plenary work, is extremely interesting and does indeed reflect a real development in the organisation of the work of the Parliament. That being so, once again, the reason why only the duration of that October part-session should be concerned still escapes me.

71. Lastly, the Parliament has also relied on the fact that the contested votes must be read in the light of the costs generated by the plurality of the Parliament's places of work – costs rendered even more onerous in an economic crisis. That is undeniably the strongest argument. The present situation probably requires this matter to be considered. The fact remains that, in view of the division of powers prescribed by the treaties, that responsibility lies with the Member States. I would add that, in my view, those costs are part of the 'constraints ... inherent' in the plurality of the Parliament's places of work to which the Court referred in Case C-345/95 *France* v *Parliament*.[40] Since, in any event, 12 monthly plenary part-sessions are required under the protocol, to hold two plenary part-sessions in the same month, each of which has a duration equal to those of the other months of the year, does not represent an additional cost as compared with the cost of holding, over the whole year, such a part-session each month, including August.

72. Consequently, the Parliament has not given reasons, relating to the current circumstances, justifying an ad hoc adjustment to its calendar; nor has it shown that holding two ordinary plenary part-sessions in October, of the same duration as that of the other months of the year, would be detrimental to the proper functioning of the institution or the proper conduct of its procedures.

d) Conclusion

73. In the light of the general scheme of the calendars for 2012 and 2013, it is therefore clear that the two part-sessions scheduled for the same week in October 2012 and October 2013 in fact cover the time accounted for by a single part-session, which may reasonably be presumed, owing to the lack of convincing explanations from the Parliament in these proceedings, to have been artificially split into two in order to meet, no less artificially, the requirements of the Protocols.

74. It must therefore be stated that the two part-sessions scheduled for the same week in October cannot, taken separately, be categorised as monthly plenary part-sessions for the purposes of the Protocols. It follows that the contested votes fail to schedule, for 2012 and 2013, the 12 monthly plenary part-sessions required under those protocols.

75. Since the sole plea in law raised in these actions by the French Republic is therefore well founded, it must be upheld.

V – Costs

76. 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 French Republic has applied for costs, the European Parliament should be ordered to pay the costs.

40 — Cited in point 32 above.

77. In accordance with Article 69(4) of the Rules of Procedure, the Grand Duchy of Luxembourg should be ordered to bear its own costs.

VI – Conclusion

78. In the light of the foregoing considerations, I propose that the Court:

(1) annul the votes of the European Parliament of 9 March 2011 concerning the calendar of parliamentary part-sessions for 2012 and the calendar of parliamentary part-sessions for 2013 in so far as they schedule, for the same week in October of the years concerned, two ordinary plenary part-sessions of a shorter duration than the part-sessions to be held in the other months of the year, even though that difference is not justified;

(2) order the European Parliament to pay the costs;

(3) order the Grand Duchy of Luxembourg to bear its own costs.