Reports of Cases

OPINION OF ADVOCATE GENERAL
KOKOTT
delivered on 28 October 2015[1]

Case C-263/14

European Parliament
v

Council of the European Union

(Action for annulment — Council Decision 2014/198/CFSP — Operation Atalanta — Agreement between the European Union and the United Republic of Tanzania — Transfer of suspected pirates and seized property from the European Union-led naval force to Tanzania — Choice of correct legal basis — Common foreign and security policy (CFSP, Article 37 TEU) — Judicial cooperation in criminal matters and police cooperation (Articles 82 TFEU and 87 TFEU) — Rights of the European Parliament to have a say where 'international agreements relate exclusively to the CFSP' (Article 218(6) TFEU) — Provision of immediate and full information to the Parliament (Article 218(10) TFEU) — Maintenance of the effects of the decision)

I – **Introduction**

1. Is the transfer of a pirate by the European Union to the State authorities of the United Republic of Tanzania primarily an act of foreign and security policy? Or does such a measure also include significant elements of international cooperation between police and law enforcement authorities? These are essentially the legal questions which the Court is asked to clarify in the present case. In doing so, it will be able to build on the foundations which it laid in Case C-658/11.[2]

2. Like Case C-658/11, this case also concerns the military operation through which the European Union has for some time now been participating in the fight against piracy off the Somali coast in the form of an EU-led naval force. In many cases the persons arrested and property seized by the EU Member States' warships are transferred to third States in that region with a view to a prosecution. In order to establish the detailed arrangements for such transfers, the Union has concluded international agreements with those third States — in Case C-685/11 with Mauritius and in this case with Tanzania.

1 — Original language: German.

2 — Judgment in *Parliament* v *Council* (C-658/11, EU:C:2014:2025).

3. In the present case the European Parliament is again at odds with the Council of the European Union over the choice of the substantive legal basis for the conclusion of such agreements. Whilst the Council based its Decision 2014/198/CFSP [3] approving the agreement with Tanzania [4] *solely* on the rules on the common foreign and security policy (CFSP), namely on Article 37 TEU, the Parliament takes the view that recourse should have been had *additionally* to the provisions on judicial cooperation in criminal matters and police cooperation, more specifically, Articles 82 TFEU and 87 TFEU.

4. At first sight this might all seem a question of technical detail which certainly does not hold the same excitement as many literary treatments of the subject of piracy. [5] Nevertheless, the problem at issue here has considerable political and even constitutional implications because it is necessary to define more sharply the limits of the common foreign and security policy and to delimit it from other European Union policies. [6] The choice of the substantive legal basis predetermines, to a significant degree, the powers of the European Parliament. If it transpires that the disputed agreement is to be attributed exclusively to the CFSP, as it was here, and could therefore be concluded solely on the basis of Article 37 TEU, the Parliament had no rights at all to have a say under the first part of the second subparagraph of Article 218(6) TFEU, not even a right of consultation. If, however, recourse should rightly have been had to a combination of Article 37 TEU and Articles 82(1) and (2) and 87(2) TFEU as the legal bases, the disputed agreement would have required the consent of the Parliament under point (a)(v) of the second subparagraph of Article 218(6) TFEU. The scope of the European Commission's powers in the procedure for the conclusion of such an international agreement is also dependent to a considerable extent on the choice of legal basis.

5. The debate over the choice of the correct legal basis forms the main subject-matter of this action for annulment which the Parliament has brought against the Council. However, the parties are also in dispute over the extent of the Council's duty under Article 218(10) TFEU to inform the Parliament fully and immediately at all stages of the procedure for the conclusion of an international agreement.

II – **Legislative framework**

6. The legislative framework of this case is formed by Articles 216 and 218 TFEU, both contained in Title V of the FEU Treaty, which is dedicated to 'International agreements'.

7. Article 216(1) TFEU summarises the substantive legal bases on which the Union has been able to conclude international agreements since the Treaty of Lisbon:

'The Union may conclude an agreement with one or more third countries or international organisations where the Treaties so provide or where the conclusion of an agreement is necessary in order to achieve, within the framework of the Union's policies, one of the objectives referred to in the Treaties, or is provided for in a legally binding Union act or is likely to affect common rules or alter their scope.'

3 — Council Decision 2014/198/CFSP of 10 March 2014 on the signing and conclusion of the Agreement between the European Union and the United Republic of Tanzania on the conditions of transfer of suspected pirates and associated seized property from the European Union-led naval force to the United Republic of Tanzania (OJ 2014 L 108, p. 1), also 'the contested decision'.

4 — OJ 2014 L 108, p. 3; also 'the disputed agreement'.

5 — I am thinking in particular of the stories about the character of *Long John Silver* in 'Treasure Island' (Robert Louis Stevenson) and of 'El Trato de Argel' (Miguel de Cervantes), but also of children's stories like 'Pippi Langstrumpf in Taka-Tuka-Land' (Astrid Lindgren) and 'Jim Button and the Wild 13' (Michael Ende).

6 — See also Opinion of Advocate General Bot in *Parliament* v *Council* (C-658/11, EU:C:2014:41, points 4 and 5).

8. Article 218 TFEU governs the procedure for negotiating and concluding international agreements and includes the following provisions:

‘…

4. The Council may address directives to the negotiator and designate a special committee in consultation with which the negotiations must be conducted.

5. The Council, on a proposal by the negotiator, shall adopt a decision authorising the signing of the agreement and, if necessary, its provisional application before entry into force.

6. The Council, on a proposal by the negotiator, shall adopt a decision concluding the agreement.

Except where agreements relate exclusively to the common foreign and security policy, the Council shall adopt the decision concluding the agreement:

(a) after obtaining the consent of the European Parliament in the following cases:

…

(v) agreements covering fields to which either the ordinary legislative procedure applies, or the special legislative procedure where consent by the European Parliament is required.

The European Parliament and the Council may, in an urgent situation, agree upon a time-limit for consent.

(b) after consulting the European Parliament in other cases. ...

…

10. The European Parliament shall be immediately and fully informed at all stages of the procedure.

…’

9. From the point of view of substantive law, Article 37 TEU, which appears in Chapter 2 of Title V of the EU Treaty (‘Common foreign and security policy’) and is contained in Section 1 (‘Common provisions’), is also relevant. That provision states:

‘The Union may conclude agreements with one or more States or international organisations in areas covered by this Chapter.’

10. Reference should also be made to Articles 82 TFEU and 87 TFEU, which are part of Title V of the FEU Treaty on the ‘Area of freedom, security and justice’.

11. Article 82 TFEU concerns judicial cooperation in criminal matters. Under the second subparagraph of Article 82(1), the European Parliament and the Council may adopt ‘measures’ in the ordinary legislative procedure, inter alia, to

— ‘support the training of the judiciary and judicial staff’ (point (c)) and to

— ‘facilitate cooperation between judicial or equivalent authorities of the Member States in relation to proceedings in criminal matters and the enforcement of decisions’ (point (d)).

12. Furthermore, the second subparagraph of Article 82(2) TFEU permits the European Parliament and the Council in the ordinary legislative procedure to adopt directives to establish certain minimum rules for criminal procedure concerning inter alia

— mutual admissibility of evidence between Member States (point (a)) and

— the rights of individuals in criminal procedure (point (b)).

13. Article 87 TFEU concerns police cooperation. Under Article 87(2)(a), the European Parliament and the Council may, for the purposes of developing such cooperation, establish measures in the ordinary legislative procedure concerning the collection, storage, processing, analysis and exchange of relevant information.

III – **Background to the dispute**

14. In view of the rising incidence of piracy off the Somali coast, at the end of 2008 the Council adopted, within the framework of the EU common foreign and security policy, a Joint Action[7] establishing a joint military operation called Operation Atalanta. The operation consisted in the deployment of an EU-led naval force (EU NAVFOR) for the protection of vulnerable vessels cruising off the Somali coast and the deterrence, prevention and repression of acts of piracy and armed robbery off the Somali coast.

15. It is apparent from Article 1(1) of the Joint Action, that, through that military operation, which was decided on the basis of Articles 14, 25(3) and 28(3) EU,[8] the Union is supporting the objectives set by the United Nations Security Council in its Resolutions 1814, 1816, 1838, 1846 and 1851 (2008) and also refers to Article 100 et seq. of the United Nations Convention on the Law of the Sea.[9]

16. The mandate of EU NAVFOR under Article 2(e) of the Joint Action includes 'in view of prosecutions potentially being brought by the relevant States … [to] arrest, detain and transfer persons suspected of intending, as referred to in Articles 101 and 103 of the United Nations Convention on the Law of the Sea, to commit, committing or having committed acts of piracy or armed robbery' and to 'seize the vessels of the pirates or armed robbers or the vessels caught following an act of piracy or an armed robbery and which are in the hands of the pirates or armed robbers, as well as the property on board'.

17. According to the first sentence of Article 10(3) of the Joint Action, the 'detailed modalities for the participation by third States' in the activity of EU NAVFOR are 'the subject of agreements concluded in accordance with … Article 37 [TEU]'. In addition, Article 10(6) of the Joint Action states:

'The conditions for the transfer to a State participating in the operation of persons arrested and detained, with a view to the exercise of jurisdiction of that State, shall be established when the participation agreements referred to in paragraph 3 are concluded or implemented.'

7 — Council Joint Action 2008/851/CFSP of 10 November 2008 on a European Union military operation to contribute to the deterrence, prevention and repression of acts of piracy and armed robbery off the Somali coast (OJ 2008 L 301, p. 33), as amended by Joint Action 2010/766/CFSP (OJ 2010 L 327, p. 49) and Joint Action 2012/174/CFSP (OJ 2012 L 89, p. 69); 'the Joint Action'.

8 — Treaty on European Union as amended by the Treaty of Nice.

9 — The United Nations Convention on the Law of the Sea was signed in Montego Bay on 10 December 1982. The European Union and all its Member States are Contracting Parties to the Convention. Under Article 100 of the Convention on the Law of the Sea, all States are to cooperate to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any State. Article 105 of the Convention on the Law of the Sea permits the seizure of pirate ships or aircraft and the arrest of persons and seizure of property on board; that provision also allows penalties to be imposed by the courts of the State which seized a pirate ship or aircraft. Lastly, Article 107 of the Convention on the Law of the Sea regulates which State ships and aircraft are entitled to seize ships and aircraft on account of piracy.

18. Article 12 of the Joint Action then sets out general conditions under which EU NAVFOR transfers the arrested persons to European Union Member States or to third States if the Member State or the third State of which the EU NAVFOR vessel concerned flies the flag cannot, or does not wish to, exercise its jurisdiction. The aim is prosecution with due regard to certain minimum standards. Under Article 12(3) of the Joint Action, the transfer of persons to a third State requires that 'the conditions for the transfer have been agreed with that third State in a manner consistent with relevant international law, notably international law on human rights, in order to guarantee in particular that no one shall be subjected to the death penalty, to torture or to any cruel, inhuman or degrading treatment'.

19. Against this background, following authorisation by the Council on 22 March 2010, the High Representative of the Union for Foreign Affairs and Security Policy negotiated the agreement with Tanzania on the conditions of transfer of suspected pirates and associated seized property from the European Union-led naval force to Tanzania, which is the subject of the present dispute.[10]

20. By the contested decision, which has Article 37 TEU as its sole substantive legal basis and Article 218(5) and (6) TFEU as its formal legal basis,[11] the Council approved the agreement on behalf of the Union without the consent or consultation of the Parliament and authorised its signature. The agreement was then signed on 1 April 2014.

21. The Parliament takes the view that, in respect of the contested decision, recourse should also have been had, alongside Article 37 TEU, to Articles 82 TFEU and 87 TFEU as additional substantive legal bases and the decision therefore required its consent in accordance with point (a)(v) of the second subparagraph of Article 218(6) TFEU.

22. As regards provision of information to the Parliament, the Council notified that institution by letter of 22 March 2010 of its decision to authorise negotiations with a view to an agreement under Article 37 TEU. The Council did not provide the Parliament with any information on the further progress of the negotiations. It was not until the procedure had been concluded that the Council informed the Parliament, by letter of 19 March 2014, that it had approved the disputed agreement and authorised its signature, although it did not apprise the Parliament of the wording of the contested decision or the text of the disputed agreement. The Parliament was able to ascertain their content only following the publication of the decision and the agreement in the *Official Journal of the European Union* on 11 April 2014.

23. In the Parliament's view, the Council did not therefore properly fulfil its duty under Article 218(10) TFEU to inform the representative body of the people immediately and fully.

IV – **Procedure before the Court and forms of order sought**

24. By written pleading of 28 May 2014, the Parliament brought the present action for annulment under the second paragraph of Article 263 TFEU.

25. Pursuant to Article 131(2) of the Rules of Procedure, the President of the Court of Justice granted the European Commission leave to intervene in support of the form of order sought by the Parliament and granted the Czech Republic, the Kingdom of Sweden and the United Kingdom of Great Britain and Northern Ireland leave to intervene in support of the form of order sought by the Council.

10 — Alongside the negotiations with Tanzania negotiations were also opened with Mauritius, Mozambique, South Africa and Uganda.

11 — See the first citation in the preamble to the contested decision.

26. The Parliament, supported by the Commission, claims that the Court should:

— annul Council Decision 2014/198/CFSP of 10 March 2014;

— order that the effects of that decision be maintained until it is replaced, and

— order the Council to pay the costs.

27. The Council, likewise supported by its interveners, contends that the Court should dismiss the application as unfounded. Furthermore, the Council and the Czech Republic claim that the Parliament should be ordered to pay the costs.

28. Should the contested decision be annulled, the Council further requests the Court to maintain effects of that decision

— either until such time as it is replaced, if the annulment is based on a finding that the choice of legal basis is incorrect in accordance with the first plea in law,

— or indefinitely, if the annulment is based solely on a finding that the Parliament was not informed adequately in accordance with the second plea in law.

29. The Czech Republic and the United Kingdom of Great Britain and Northern Ireland also expressly ask that in the event of the annulment of the contested decision,[12] its effects should be maintained; in that connection the Czech Republic simply requests that the Court use its power under the second paragraph of Article 264 TFEU, whilst the United Kingdom requests it to take the same course of action as in its judgment in Case C-658/11.

30. The Court received written submissions on the Parliament's action,[13] followed by oral argument on 22 September 2015.

V – **The relevant provisions of the disputed agreement**

31. According to Article 1, the disputed agreement defines the conditions and modalities for the transfer of suspected pirates detained by EU NAVFOR, and associated property seized by EU NAVFOR, to Tanzania, and the conditions for their treatment after such transfer.

32. The second sentence of Article 3(1) of the agreement provides that agreement on acceptance of a handover proposed by EU NAVFOR will be made on a case-by-case basis by Tanzania, taking into account all relevant circumstances including the location of the incident.

33. Under Article 3(3) and Article 4(1) of the agreement, the parties must treat the persons concerned, both prior to and following transfer, humanely and in accordance with international human rights obligations, including the prohibition of torture and cruel, inhuman and degrading treatment or punishment, the prohibition of unlawful detention, and in accordance with the requirement to have a fair trial. The second part of Article 4(1) of the agreement further states that transferred persons must receive reasonable accommodation and nourishment and access to medical treatment and must be able to carry out religious observance.

12 — The Kingdom of Sweden does not expressly request that the effects of the contested decision be maintained but it can be inferred from its statements that it supports the Council's claim to that effect.

13 — Whilst most of the parties make observations in their written pleadings on both pleas in law, the Czech Republic confines its observations to the second plea, whereas the Kingdom of Sweden and the Commission concentrate on the first plea.

34. Further rights of transferred persons are laid down in Article 4(2) to (7) of the agreement, in particular the right to an impartial tribunal and to trial within a reasonable time or to release.

35. Under Article 5 of the agreement, no transferred person may be tried for an offence which has a maximum punishment that is more severe than imprisonment for life.

36. Article 6 of the agreement regulates EU NAVFOR's duties to keep records in connection with the persons and property concerned and the way in which records are to be provided to the Tanzanian authorities.

37. Article 7 of the agreement deals with the Union and EU NAVFOR obligation to facilitate investigation and prosecution by the Tanzanian judicial authorities.

38. Lastly, regard should be had to the preamble to the agreement, which expressly mentions the Joint Action. Reference is also made to various instruments of international law, in particular the relevant United Nations Security Council resolutions and the United Nations Convention on the Law of the Sea.

VI – **Legal assessment**

39. The Parliament's action for annulment is based on two pleas in law, the first of which relates to the choice of the correct legal basis for the contested decision (see below, section B), whilst the second concerns the Council's duty to inform the Parliament fully and immediately at all stages of the procedure for the conclusion of an international agreement (see below, section C).

40. Before I turn to the substantive assessment of these two pleas in law, I will briefly consider the Court's jurisdiction to hear the present case (see immediately below, section A).

A – *The Court's jurisdiction*

41. In principle, the jurisdiction of the Court of Justice of the European Union has, since the Treaty of Lisbon, extended to all areas of EU law, the EU Courts being authorised to interpret all rules of EU law and to review the legality of all acts of the institutions, bodies, offices or agencies of the Union (first subparagraph of Article 19(1) TEU, first paragraph of Article 263 TFEU and first paragraph of Article 267 TFEU).

42. In derogation from that principle, the Court of Justice of the European Union does not have jurisdiction either with respect to the provisions of primary law relating to the CFSP or with respect to acts adopted on the basis of those provisions (see the sixth sentence of the second subparagraph of Article 24(1) TEU in conjunction with the first paragraph of Article 275 TFEU). However, the second paragraph of Article 275 TFEU makes an exception in so far as it establishes the jurisdiction of the EU Courts inter alia to monitor compliance with Article 40 TEU.

43. It is precisely the latter 'exception to the exception' that is the subject of the Parliament's first plea in law, which focuses on the choice of the correct legal basis. Even though, regrettably, the Parliament does not at any point refer expressly to Article 40 TEU, it clearly has in mind, from a substantive point of view, the problem addressed therein of the demarcation between the CFSP on the one hand and the 'communitarised' policies on the other. If, as the Parliament claims, the Council wrongly based the contested decision solely on the CFSP, rather than additionally relying on the rules on judicial

cooperation in criminal matters and police cooperation, it would have encroached on the powers of the other institutions in the area of freedom, security and justice, which is prohibited under the first paragraph of Article 40 TEU and may be reviewed by the Court under the second paragraph of Article 275 TFEU.

44. The second plea in law raised by the Parliament is based on the general duty to provide information under Article 218(10) TFEU, a rule which — as the Court has already held in Case C-658/11 [14] — is *not* as such among the provisions of primary law relating to the CFSP in Chapter 2 of Title V of the EU Treaty, but applies across the board to all Union procedures for the conclusion of international agreements. Consequently, that rule is *not* affected by the limitation on the Court's jurisdiction which applies to the CFSP under the sixth sentence of the second subparagraph of Article 24(1) TEU in conjunction with the first paragraph of Article 275 TFEU.

45. The Czech Republic requests the Court, in the present case, to reconsider, and if necessary nuance, its conclusions with regard to Article 218(10) TFEU as set out in the judgment in Case C-658/11.

46. However, contrary to the view taken by the Czech Republic, it certainly cannot be inferred from the sixth sentence of the second subparagraph of Article 24(1) TEU in conjunction with the first paragraph of Article 275 TFEU that the Court has only limited jurisdiction to hear an action based on Article 218(10) TFEU, such that it would have to confine itself simply to *declaring* a breach of the duty to inform the Parliament without *annulling* the contested decision.

47. The Court either has jurisdiction or it does not. Exceptions to its jurisdiction require an express provision and must be given a strict interpretation. Neither in the sixth sentence of the second subparagraph of Article 24(1) TEU nor in the first paragraph of Article 275 TFEU are there any gradations in respect of the EU Courts' powers to deal with actions for annulment concerning Article 40 TEU or Article 218(10) TFEU. [15]

48. Aside from this, it would be incompatible with the nature of the action for annulment to deliver a declaratory judgment, as the Czech Republic appears to have in mind. It would be contrary to Article 264 TFEU, which governs the legal consequences of a successful action and reflects the cassatory nature of the action for annulment. There are no grounds to waive Article 264 TFEU on the basis of either the sixth sentence of the second subparagraph of Article 24(1) TEU or the first paragraph of Article 275 TFEU.

49. All in all, the Court therefore has full jurisdiction to determine the present action, including the possible annulment of the contested decision. [16]

B – *The choice of the correct legal basis (first plea in law)*

50. By its first plea in law, which is the main focus of this case, the Parliament challenges the legal basis chosen by the Council for the contested decision.

51. The Parliament submits that it was an error in law to base the decision solely on the CFSP, and on Article 37 TEU to be precise. In the Parliament's view, recourse should also have been had to Articles 82 TFEU and 87 TFEU, two provisions in the fields of judicial cooperation in criminal matters and police cooperation, as additional legal bases. The Parliament thus ultimately advocates a

14 — Judgment in *Parliament* v *Council* (C-658/11, EU:C:2014:2025, paragraphs 72 and 73); see also the Opinion of Advocate General Bot in that case (EU:C:2014:41, points 137 and 138).

15 — Only in respect of reviewing the legality of decisions providing for restrictive measures is the Court's jurisdiction expressly limited under the second alternative in the second paragraph of Article 275 TFEU to proceedings brought in accordance with the fourth paragraph of Article 263 TFEU.

16 — See also the judgment in *Parliament* v *Council* (C-658/11, EU:C:2014:2025, in particular paragraph 87).

dual substantive legal basis, combining powers from the CFSP with powers from the area of freedom, security and justice. If a combination of legal bases from these two policy areas is impossible, because the respective procedures are mutually incompatible, the Parliament considers only Articles 82 TFEU and 87 TFEU to be relevant, as it stated at the hearing. [17]

Preliminary remark

52. It has already been made clear in case-law that a European Union measure — including a decision approving an international agreement [18] — may have a dual substantive legal basis. This is necessary wherever it is established that the measure concerned simultaneously pursues a number of objectives, or has several components, which are inseparably linked without one being incidental to the other, so that various provisions of the Treaty are equally applicable. [19]

53. Contrary to the view taken by the Council and its interveners, the Court has certainly not thus far rejected the possibility of such a dual legal basis in a case like the present one. In particular, the judgment in Case C-658/11 does not set a precedent in this regard.

54. That judgment does concern an international agreement — the agreement with Mauritius — whose content was essentially similar to the disputed agreement in this case. However, in that judgment the Court did not take a definitive view on the correct substantive legal basis, because on that occasion, unlike in the present case, the applicant, the Parliament, had not challenged the exclusive applicability of Article 37 TEU and even acknowledged that the approval of the EU/Mauritius agreement 'could legitimately be founded solely on Article 37 TEU, to the exclusion of any other substantive legal basis'. [20] Accordingly, in Case C-658/11 the Court concentrated on the interpretation of the special procedural rule in the first part of the second subparagraph of Article 218(6) TFEU, based on the complaints raised by Parliament at the time.

55. Even if it were to be assumed, like the Council and its interveners, that the Court has helped to determine the question of the correct substantive legal basis at least implicitly in Case C-658/11, [21] that would not permit a definitive assessment of the complaint raised by the Parliament in the present case. It is settled law that, in a review of the legal basis of the decision that is contested here, the legal basis used for the adoption of other European Union measures which might display similar characteristics is irrelevant. [22]

56. Consequently, in the present case an autonomous examination must be conducted of the choice of the substantive legal basis for the contested decision, including the possibility of a dual legal basis for that decision.

17 — Further still, the Commission takes the view that the contested decision falls exclusively in the field of judicial cooperation in criminal matters, with the result that Article 82 TFEU alone is a possible enabling provision.

18 — See in particular the judgments in *Commission* v *Council* (C-94/03, EU:C:2006:2, paragraphs 55 and 56) and *United Kingdom* v *Council* (C-81/13, EU:C:2014:2449, paragraph 35).

19 — Judgments in *Parliament* v *Council* (C-130/10, EU:C:2012:472, paragraphs 43 and 44); *Commission* v *Council* (C-377/12, EU:C:2014:1903, paragraph 34), and *Parliament* v *Council* (C-658/11, EU:C:2014:2025, paragraph 43).

20 — See the Court's statements on the submissions of the parties in the judgment in *Parliament* v *Council* (C-658/11, EU:C:2014:2025, paragraphs 44 and 45).

21 — The Council and its interveners rely in this regard in particular on paragraphs 58, 59 and 62 of the judgment in *Parliament* v *Council* (C-658/11, EU:C:2014:2025).

22 — Judgments in *Commission* v *Council* (C-94/03, EU:C:2006:2, paragraph 50); *Parliament* v *Council* (C-658/11, EU:C:2014:2025, paragraph 48); and *United Kingdom* v *Council* (C-81/13, EU:C:2014:2449, paragraph 36); see also the judgment in *United Kingdom* v *Council* (C-431/11, EU:C:2013:589, paragraph 66).

57. It is by no means impossible to rely on legal bases other than the CFSP for the Union's external action as the Parliament and the Commission argue. For example, it is expressly recognised in Article 21(3) TEU that, in addition to the CFSP, the Union's other policies can include 'external aspects'. It is therefore perfectly conceivable, in principle, to have recourse, for the approval of an international agreement for the European Union, to competences in the area of freedom, security and justice or to have a dual substantive legal basis by exercising additional competences.

58. That conclusion is not affected by the fact that the provisions of primary law concerning the area of freedom, security and justice — in particular the two relevant chapters of the FEU Treaty on judicial cooperation in criminal matters and police cooperation — do not include express enabling provisions for external action.[23] As we know, the Union institutions may, under certain circumstances, also have implicit external competences. Such powers were originally derived from the existing competences for internal action in accordance with the 'ERTA principle'.[24] Such external competences are now even expressly enshrined in the Treaties by Article 216(1) TFEU. If recourse is now had to the ERTA principle, Article 216(1) TFEU must also therefore be expressly cited in the Union measure concerned.[25]

59. The assessment whether additional legal bases from the fields of judicial cooperation in criminal matters (Article 82 TFEU) and police cooperation (Article 87 TFEU) were necessary in the case in point must, according to settled case-law, have regard to objective factors amenable to judicial review, which include in particular the aim and content of the contested decision,[26] but also the context of that decision.[27]

Insufficient connection with the area of freedom, security and justice

60. If regard is had only to the content of the disputed agreement, the Parliament and the Commission are right in stating that it contains a number of provisions that are typical of cross-border judicial cooperation in criminal matters and cross-border police cooperation. It deals with the transfer of persons and property for the purpose of prosecution[28] and the rights of the persons concerned with a view to humane treatment in accordance with the rule of law.[29] The agreement also governs the duties of the Union and EU NAVFOR in relation to records and notifications[30] and the form in which they provide assistance to the competent Tanzanian authorities with a view to investigating and prosecuting transferred persons.[31]

61. Against this background, the content of the disputed agreement undoubtedly has a certain affinity with the subject-matter regulated in the area of freedom, security and justice, in particular with regard to cooperation between authorities in relation to proceedings in criminal matters (point (d) of the second subparagraph of Article 82(1) TFEU), the collection, storage, processing, analysis and exchange

23 — One exception, which is not relevant here, is Article 79(3) TFEU, which contains an express legal basis for the conclusion of agreements for the readmission of illegally resident third-country nationals to their countries of origin or provenance.

24 — The ERTA principle stems from the judgment in *Commission* v *Council* ('*ERTA*', 22/70, EU:C:1971:32, paragraphs 15 to 19); a recent overview can be found, for example, in Opinion 1/03 (EU:C:2006:81, paragraphs 114 to 133).

25 — See my Opinion in *United Kingdom* v *Council* (C-81/13, EU:C:2014:2114, point 104); earlier, to the same effect, my Opinion in *United Kingdom* v *Council* (C-431/11, EU:C:2013:187, points 64 to 70).

26 — Judgments in *Commission* v *Council* (C-300/89, EU:C:1991:244, paragraph 10); *Parliament* v *Council* (C-130/10, EU:C:2012:472, paragraph 42); and *United Kingdom* v *Council* (C-81/13, EU:C:2014:2449, paragraph 35).

27 — Judgments in *United Kingdom* v *Council* (C-431/11, EU:C:2013:589, paragraph 48); *United Kingdom* v *Council* (C-656/11, EU:C:2014:97, paragraph 50); and *United Kingdom* v *Council* (C-81/13, EU:C:2014:2449, paragraph 38).

28 — Article 3(1) and (2) of the disputed agreement.

29 — Articles 3(3), 4 and 5 of the disputed agreement.

30 — Article 6 of the disputed agreement.

31 — Article 7 of the disputed agreement.

of relevant information (Article 87(2)(a) TFEU), the mutual recognition of evidence (point (a) of the second subparagraph of Article 82(2) TFEU), the rights of individuals in criminal procedure (point (b) of the second subparagraph of Article 82(2) TFEU), and the training of personnel of the competent authorities (point (c) of the second subparagraph of Article 82(1) TFEU).

62. It would be insufficient, however, to conclude solely from this similar content that recourse should have been had to Articles 82 TFEU and 87 TFEU as additional legal bases for the contested decision. The rules concerning the area of freedom, security and justice are not necessarily the *sedes materiae* in every case where measures having some connection with the subjects of judicial cooperation in criminal matters or police cooperation are to be adopted. [32]

63. As the Council and the Kingdom of Sweden very rightly state, the crucial factor is that the relevant rules in Articles 82 TFEU and 87 TFEU deal only with cooperation *within the Union*. This can be seen, on the one hand, from a glance at the wording of the two provisions, [33] but, on the other, it also follows from the concept of the area of freedom, security and justice, to the creation of which they contribute. It is the *Union* that provides *its citizens* with such an area and it is the *Union* that *constitutes* that area (Article 67(1) TFEU), with the emphasis on an area *without internal frontiers* (Article 3(2) TEU and 67(2) TFEU).

64. By contrast, the contested decision — or the disputed agreement which it approves — does not regulate judicial or police cooperation within the Union. Nor does it affect or alter such cooperation in accordance with the last variant of Article 216(1) TFEU. Rather, contrary to the claim made by the Parliament and the Commission, the Member States' power to prosecute international crimes like piracy is completely unaffected by the agreement. The sole subject of the agreement is cooperation with the authorities of Tanzania, a third State, and then only if the authorities of the Member States do not take on the prosecution themselves. [34]

65. There may certainly be cases where cooperation with a third State is also capable of helping to achieve the objectives of the area of freedom, security and justice within the Union (see the second variant of Article 216(1) TFEU) and thus of giving that area a genuine 'external dimension'. Examples are the inclusion of Norway, Iceland, Liechtenstein and Switzerland in the Schengen area or the Lugano Convention, which includes some of those States in certain aspects of judicial cooperation in civil matters. However, external action has no evident repercussions on the area within the Union in the case of cooperation like that with Tanzania, for which the contested decision and the disputed agreement lay the legal foundations.

66. That cooperation between the Union and Tanzania is intended solely to promote *international security* outside the territory of the Union. It makes an important contribution to combating piracy on the high seas in an effective and sustainable manner and thus to improving the general security situation worldwide if suspected pirates are effectively brought to a just prosecution in accordance with the rule of law.

67. On the other hand, a specific connection with *security within the European Union* or with the national security of its Member States is not evident. It would be only very indirect if it did exist, as the cooperation with Tanzania does not seek to combat and prosecute piracy off European coasts, but in the much more distant Horn of Africa, off the Somali coast.

32 — See the judgment in *Commission* v *Parliament and Council* (C-43/12, EU:C:2014:298, paragraphs 45 to 50); to the same effect — in relation to the definition of the rights of third-country nationals within the Union — judgments in *United Kingdom* v *Council* (C-431/11, EU:C:2013:589, paragraphs 62 to 67) and *United Kingdom* v *Council* (C-81/13, EU:C:2014:2449, paragraphs 40 to 46).

33 — They refer to 'judicial cooperation in criminal matters *in the Union*' (Article 82(1) TFEU) and 'police cooperation involving all the *Member States' competent authorities*' (Article 87(1) TFEU); my emphasis.

34 — See the second indent of Article 12(1) of the Joint Action.

68. Nor can an internal Union dimension be inferred from the mere fact that suspected pirates who are to be transferred to the Tanzanian authorities by EU NAVFOR are temporarily on board EU Member States' warships and are detained there. Although the persons concerned are thus temporarily subject to the sovereignty of the Member States and are therefore also able to benefit from guarantees laid down by EU law, in particular by the Charter of Fundamental Rights,[35] this does not mean that they come within the territory of the Union and thus within the geographical scope of the area of freedom, security and justice.

69. For the same reason, the present case is also not comparable with the situation of a readmission agreement in accordance with Article 79(3) TFEU. The latter case — unlike this instance — concerns the transfer to third States of persons who have resided illegally *within* the territory of the Union.

Foundation of the disputed agreement in the CFSP

70. Ultimately, the cooperation with Tanzania has a genuine foreign and security policy context. It is a 'mission outside the Union' 'strengthening international security in accordance with the principles of the United Nations Charter', the conduct of which the Union has set as an objective within the framework of the CFSP or, to be precise, within the framework of its common security and defence policy (second sentence of Article 42(1) TEU and 43(1) TEU).

71. According to its preamble and the preamble to the contested decision, the disputed agreement serves to implement several United Nations Security Council resolutions and clarifies the legal conditions for EU NAVFOR's activity as part of Operation Atalanta,[36] a joint military action falling within the scope *ratione materiae* of the CFSP.

72. The fact that the disputed agreement stipulates humane treatment of detained persons and certain principles connected with the rule of law as basic conditions for the cooperation with Tanzania does not in any way militate against its attribution to the CFSP. The rule of law and protection of human rights are, in general, among the principles governing the Union's external action which are to be observed and implemented not only, but also within the framework of the CFSP (first subparagraph of Article 21(1), Article 21(2)(b) and (3) TEU).[37]

73. All in all, the Council was therefore right to rely on the CFSP, and more precisely Article 37 TEU, as the sole legal basis for the contested decision.[38] Consequently, the first plea in law raised by the Parliament is unfounded.

C – *The provision of information to the Parliament (second plea in law)*

74. By the second plea in law, it is claimed that the Parliament was not informed immediately and fully at all stages of the procedure for the conclusion of the disputed agreement, in contravention of Article 218(10) TFEU.

35 — See to this effect the case-law of the European Court of Human Rights, in particular the judgments of 4 December 2014, Samatar and Others v France (Applications No 17110/10 and 17301/10, ECLI:CE:ECHR:2014:1204JUD001711010, paragraphs 41 to 59) and Hassan and Others v France (Applications No 46695/10 and 54588/10, ECLI:CE:ECHR:2014:1204JUD004669510, paragraphs 60 to 72 and 86 to 104), which each concern Article 5 ECHR.

36 — See in particular Articles 10(6) and 12(3) of the Joint Action.

37 — To this effect, Opinion of Advocate General Bot in *Parliament* v *Council* (C-130/10, EU:C:2012:50, point 64), in relation to the objectives of preserving international peace and security.

38 — See also the detailed analysis of the EU/Mauritius Agreement by Advocate General Bot in his Opinion in *Parliament* v *Council* (C-658/11, EU:C:2014:41, points 68 to 121), in which he reaches the same conclusion based on essentially similar arguments (see in particular points 83 and 109 to 115).

75. As the Court has held, Article 218(10) TFEU is applicable to all international agreements of the European Union, including those, like the disputed agreement, which relate exclusively to the CFSP.[39] However, the extent of the Council's duties vis-à-vis the Parliament under that provision is still hotly disputed.

General remarks

76. The wording used in Article 218(10) TFEU points to a very extensive duty for the Council to provide information. The Parliament must be informed 'immediately', 'fully' and 'at all stages of the procedure'. This is a reflection of the fundamental democratic principle applying to any decision-making process at EU level[40] (see Article 2 TEU), including in the field of foreign and security policy.

77. Unlike Advocate General Bot[41] and some of the parties in this case, I am decidedly not of the view that informing the Parliament under Article 218(10) TFEU is subject to more or less strict requirements depending on whether the Parliament must consent to an international agreement under Article 218(6) TFEU, is consulted on it or — as in the present case — has no formal rights to have a say with regard to the agreement.

78. Democratic control is not limited to the exercise of formal rights to have a say, and the purpose of informing the Parliament is not only to prepare for the exercise of such rights. Rather, the transparency created by informing the Parliament immediately and fully at all stages of the procedure is in itself an element of democratic control which is not to be underestimated and therefore has inherent value.

79. This transparency is a corollary of the fundamental principle that decisions in the European Union are taken as openly as possible and as closely as possible to the citizen (second paragraph of Article 1 TEU). It helps to encourage all those involved in the Union's external action to act responsibly. It also ensures that the elected representatives of the citizens of the Union have an opportunity, in full knowledge of the facts, to have a public debate on foreign policy matters of general European interest and to scrutinise the entire procedure for the conclusion of an international agreement critically through spontaneous expressions of opinion.[42] In this way they can also endeavour, entirely legitimately, to influence the content of the planned agreement, even if from a formal perspective the agreement can be concluded without their consent or consultation. Numerous controversial examples from the recent past show very clearly how important democratic control is in the field of the Union's external action and how much it depends on the Parliament being properly informed.[43]

39 — Judgment in *Parliament* v *Council* (C-658/11, EU:C:2014:2025, in particular paragraph 85).

40 — Judgments in *Roquette Frères* v *Council* (138/79, EU:C:1980:249, paragraph 33); *Parliament* v *Council* (C-130/10, EU:C:2012:472, paragraph 81); and *Parliament* v *Council* (C-658/11, EU:C:2014:2025, paragraph 81).

41 — Opinion of Advocate General Bot in *Parliament* v *Council* (C-658/11, EU:C:2014:41, in particular points 142 to 144).

42 — For example, the Parliament could, in a case like the present one, be interested in whether sufficient consideration has been given to the prohibition of the death penalty which applies in the Union (Article 2(2) of the Charter of Fundamental Rights). What if the Council had failed to take appropriate steps in the disputed agreement? Is it sufficient to lay down in the disputed agreement, not an express prohibition of the death penalty, but merely a hedged one? I would point out that, in Article 12(3), the Joint Action expressly makes the risk of being subjected to the death penalty an obstacle to the transfer of suspected pirates to third States, whereas Article 5 of the disputed agreement addresses this point only indirectly and with less symbolic force, stating that no transferred person is to be 'tried for an offence which has a maximum punishment that is more severe than imprisonment for life'.

43 — I am thinking in particular of the planned 'TTIP' free-trade agreement with the United States of America, the SWIFT agreement and the Passenger Name Records agreement, but also the Union's accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms, provided for in Article 6(2) TEU and in Article 218(6) and (8) TFEU.

80. An 'increase in the role of the European Parliament' which would be incompatible with the Declaration concerning the common foreign and security policy[44] does not follow from this interpretation of Article 218(10) TFEU. The same principles of democratic control and transparency that now find expression in Article 218(10) TFEU were enshrined in the system of the European Treaties even before the entry into force of the Treaty of Lisbon for all policies, including the common foreign and security policy.[45]

81. Aside from this, it is only the provision of full and immediate information at all stages of the procedure, in accordance with Article 218(10) TFEU, that ensures that the Parliament is able to examine critically the Council's choice of the — formal and substantive — legal basis and, if appropriate, make known its views on the matter.[46] Only if the Parliament has sufficient information on the subject and on the progress of negotiations on a planned international agreement can it form its own views in a timely manner of the choice of the correct legal basis and effectively assert any rights to have a say that might exist. The less the Council informs the Parliament, the more it is able to decide on a legal basis which is convenient for it without major political opposition.

82. Accordingly, I will now examine whether the Parliament was informed in the present case as required by Article 218(10) TFEU, namely *at all stages of the procedure*, *fully* and *immediately*.

The duty to inform the Parliament at all stages of the procedure

83. With regard, first, to the duty to inform the Parliament *at all stages of the procedure*, that duty undoubtedly covers information about the initiation and the conclusion of the procedure. In this respect, the Council fulfilled its duty under Article 218(10) TFEU, as it first informed the Parliament of the imminent commencement of negotiations with Tanzania by letter of 22 March 2010 and then of the approval of the final negotiated agreement by letter of 19 March 2014.

84. However, the Council's duties vis-à-vis the Parliament certainly do not end there. As is very clear from the wording 'at all stages of the procedure' in Article 218(10) TFEU, the Parliament must be informed not only at the beginning and the end of the procedure for the conclusion of an international agreement but also — and with some regularity — *during* the ongoing procedure as to its progress. This was even acknowledged in principle by the Council at the hearing before the Court.

85. Of course, informing the Parliament under Article 218(10) TFEU cannot have the same quality and intensity as, for example, informing a special committee under Article 218(4) TFEU, with which the Union negotiator must be 'in consultation' throughout negotiations with a third State. Nor does the Parliament have to be notified of purely preparatory internal processes within the other Union institutions, such as discussions in Council working groups or in the Committee of the Permanent Representatives of the Member States.

86. Contrary to the view taken by the Council, however, informing the Parliament cannot be confined solely to the stages of the procedure in which the Council takes formal decisions, in particular issuing a negotiating mandate and adopting directives for the negotiator. Rather, the Parliament must also be informed about intermediate results achieved, significant progress in the negotiations and any major difficulties arising during the negotiations. Information must always be provided — having regard to all the circumstances of the individual case and, if necessary, with appropriate steps being taken for the confidential treatment of sensitive information — in such a way as to allow the Parliament sufficient room effectively to exercise its powers of control.

44 — Declaration No 14 annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, signed on 13 December 2007 (OJ 2008 C 115, p. 343), states in its second paragraph that the provisions covering the common foreign and security policy in the Treaty of Lisbon do not 'increase the role of the European Parliament'.

45 — See in particular the second paragraph of Article 1 EU and Article 21 EU.

46 — Judgment in *Parliament* v *Council* (C-658/11, EU:C:2014:2025, paragraph 86).

87. Only through such ongoing provision of information can the Parliament fulfil its function of democratic control and, furthermore, ensure that the legal basis initially chosen by the Council is still correct. This function fulfilled by the Parliament is particularly important in the CFSP because, as has already been mentioned, judicial review is very limited in that area (sixth sentence of the second subparagraph of Article 24(1) TEU in conjunction with Article 275 TFEU). If the Parliament could not perform its role until the end of the procedure, on the basis of a final negotiated or even already approved international agreement, its democratic control would be much less effective.

88. As the Parliament did not receive any information about the current status during the ongoing procedure in this case, there is therefore a clear infringement of Article 218(10) TFEU.

89. In this connection, it cannot be claimed that it is not the Council but the High Representative of the Union for Foreign Affairs and Security Policy who holds the reins during the ongoing procedure. On the one hand, as the decision-making body, the Council is responsible for the proper conduct of the entire procedure. On the other, the Council must assume responsibility for any failures on the part of the High Representative, as the High Representative not only presides over the Foreign Affairs Council (Article 18(3) TEU) but is also responsible for carrying out the common foreign and security policy as mandated by the Council (second sentence of Article 18(2) TEU); in this particular case the High Representative was specifically authorised by the Council to open negotiations with Tanzania [47] (Article 218(3) TFEU).

The duty to inform the Parliament fully

90. With regard, second, to the duty to inform the Parliament *fully*, both letters from the Council to the Parliament in this case leave something to be desired.

91. First, the letter of 22 March 2010, by which the Parliament was informed of the imminent commencement of negotiations with Tanzania, does not state anything about possible negotiating directives in accordance with Article 218(4) TFEU.

92. This is contrary to Article 218(10) TFEU. Informing the Parliament fully logically requires that, in addition to simple notification of the commencement of negotiations, details of the Union's desired content for the planned international agreement are also communicated. Only then is effective democratic control possible.

93. As the Council itself has conceded with reference to earlier cases, there are no insurmountable obstacles to the communication of negotiating directives to the Parliament. In particular, appropriate steps can be taken, if necessary, to guarantee the confidential treatment of sensitive information, such as details of the Union's negotiating strategy or information affecting the foreign policy interests or the security of the European Union and its Member States.

94. Second, the texts of neither the contested decision nor the disputed agreement were enclosed with the letter of 19 March 2014 by which the Parliament was informed of the conclusion of the procedure. The Council failed to communicate those two texts officially to the Parliament even subsequently.

95. This likewise does not satisfy the requirements of Article 218(10) TFEU. [48]

47 — As is expressly stated in the letter of 22 March 2010.

48 — See also Opinion of Advocate General Bot in *Parliament* v *Council* (C-658/11, EU:C:2014:41, point 155).

96. In this connection, it cannot be claimed that the Parliament was aware of the context of the planned agreement with Tanzania, in particular because two similar agreements had already been concluded with other third States. As the Parliament rightly states, it is not acceptable that the elected representatives of the Union's citizens have to exercise their democratic control on the basis of speculation about the likely content of a proposed international agreement.

97. Contrary to the claim made by the Council, it is also not for the Parliament to request further information of its own motion. In contrast with other rules such as Article 319(2) TFEU, Article 218(10) TFEU does not impose on the Parliament any obligation to take the initiative itself. Such an obligation would place the Parliament at a serious disadvantage on account of its lack of knowledge of the details and the progress of the negotiations and make it significantly more difficult for it to exercise democratic control. Under Article 218(10) TFEU, the Council must inform the Parliament without being requested to do so. This is ultimately required by institutional balance and the principle of sincere cooperation among the institutions (Article 13(2) TEU).

98. *A fortiori* the Parliament cannot be required to rely, as it was in this case, on finding out the content of a Council decision and of the agreement approved by it from the *Official Journal of the European Union*. As the Court has held, publication in the Official Journal under Article 297 TFEU does not serve the same purpose as informing the Parliament under Article 218(10) TFEU. [49]

99. It is true that even publication in the Official Journal would still allow the Parliament sufficient time to have the legality of the decision, and thus also indirectly the disputed agreement, reviewed by way of an action for annulment (second paragraph of Article 263 TFEU). However, that is a *judicial review* by another EU institution, which is, moreover, limited to points of law. This must be distinguished sharply from the *democratic control* performed by the Parliament itself, which focuses on political assessments and questions of expediency. If that democratic control can only take place *ex post*, it is inevitably much less effective than during the ongoing procedure for the conclusion of an international agreement. If, on the other hand, it is allowed at an early stage, this may possibly even help to prevent subsequent legal disputes between the institutions.

The duty to provide information immediately

100. Finally, under Article 218(10) TFEU the Parliament must also be informed *immediately*. As is apparent in particular from other language versions (French: 'immédiatement', [German: 'unverzüglich']), this wording is directed at the Parliament being informed straight away, or at least as quickly as possible. [50]

101. Through the information sent by it regarding the imminent commencement of negotiations, the Council undoubtedly fulfilled that duty, as it sent its letter on 22 March 2010, the very date on which it had given the authorisation to open negotiations with Tanzania.

102. That is not the case, however, with the information about the conclusion of the procedure. The fact that the Council had approved the disputed agreement by the contested decision was notified to the Parliament only over a week later, by letter of 19 March 2014. Admittedly, this is a relatively short delay in comparison with Case C-658/11, in which the Council allowed three months to pass. [51] It is none the less an appreciable delay, especially in the age of modern communication. The Council has not put forward the slightest justification for this delay either in the extrajudicial procedure or in the

49 — Judgment in *Parliament* v *Council* (C-658/11, EU:C:2014:2025, paragraph 79).

50 — In German law it is assumed that the word 'unverzüglich' requires action 'without culpable delay' (see the first sentence of Paragraph 121(1) of the Bürgerliches Gesetzbuch (German Civil Code)).

51 — See the judgment in *Parliament* v *Council* (C-658/11, EU:C:2014:2025, paragraph 77 and paragraphs 15 to 17).

proceedings before the Court.[52] Under these circumstances, a delay of even one week, as in the present case, shows a lack of respect for the representative body of the people which is not consistent with the wording and spirit of Article 218(10) TFEU or the principle of sincere cooperation among the institutions (second sentence of Article 13(2) TEU).

Interim conclusion

103. All in all, in the present case the Council failed in several respects to fulfil its duty under Article 218(10) TFEU to inform the Parliament fully and immediately at all stages of the procedure. The Parliament's second plea in law is therefore well founded.

D – *Summary*

104. In conclusion, it can be stated that only the Parliament's second plea in law has prospect of success. However, because the Council infringed an essential procedural requirement under Article 218(10) TFEU, the second plea in law alone justifies the annulment of the contested decision[53] (Article 263(1) and (2) TFEU in conjunction with Article 264(1) TFEU).

E – *Maintenance of the effects of the contested decision*

105. If the Court annuls the contested decision, as I suggest, solely on the basis of the second plea in law, it should maintain its effects in accordance with the second paragraph of Article 264 TFEU, as all the parties unanimously agree.

106. The effects of the contested decision must be maintained for reasons of legal certainty so as not to impair the full effectiveness of the prosecution and trial of suspected pirates. In this way, with reference to Article 10(6) and Article 12(3) of the Joint Action,[54] the basis for any attempt to question EU NAVFOR's mandate in relation to the transfer to Tanzania of persons arrested off the Somali coast and suspected of piracy is removed from the outset. Similarly, the legal effects of actions already undertaken pursuant to the disputed agreement cannot be called into question. Furthermore, in general terms, maintaining the effects of the contested decision at international level will avoid any uncertainty over the continued application of the obligations in international law entered into by the Union when it approved and signed the disputed agreement.

107. Because the contested decision is annulled in connection with the second plea in law not by reason of an incorrect substantive or formal legal basis, but only for a failure to fulfil the duty to inform the Parliament, the effects of that decision should be maintained not just temporarily, but indefinitely,[55] as, in accordance with the first part of the second subparagraph of Article 218(6) TFEU, the Council's failure to provide information, even if it were properly remedied, would not be linked with any rights for the Parliament to have a say, not even a right of consultation. Under those circumstances, it would seem excessively formalistic still to require the Council to repeat its decision-making process within a reasonable time.

52 — In particular, the Council has not claimed translation problems. If an international agreement or the Council decision approving it are not immediately available in all the EU official languages, the Council must first communicate the available language versions to the Parliament and subsequently send outstanding translations without delay.

53 — See the judgment in *Parliament* v *Council* (C-658/11, EU:C:2014:2025, in particular paragraphs 80, 86 and 87).

54 — As we know, under those two provisions the transfer of persons to a third State requires the prior conclusion of an agreement with that third State in which the conditions for the transfer are established.

55 — See the judgment in *Parliament* v *Council* (C-658/11, EU:C:2014:2025, in particular paragraph 91).

108. It would be a different matter only if the Court (also) upheld the Parliament's first plea in law and found an error in law in the choice of the legal basis for the contested decision. Such action would have implications for the Parliament's rights to have a say. In that case, according to the Court's recent case-law,[56] the maintenance of the effects of the contested decision would not be granted indefinitely, but only for the period within which the Council can reasonably expect to remedy the unlawfulness established in respect of the choice of the legal basis, and properly involve the Parliament in so doing. A time-limit of 10 months would seem reasonable in this case to allow the Council to obtain the consent of the Parliament pursuant to point (a)(v) of the second subparagraph of Article 218(6) TFEU and to adopt a new decision on the correct legal bases.

VII – **Costs**

109. Under Article 138(1) 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, according to my proposed solution, the Council has been unsuccessful and the Parliament has applied for costs, the Council must be ordered to pay the costs. On the other hand, the Czech Republic, the Kingdom of Sweden, the United Kingdom of Great Britain and Northern Ireland and the European Commission, as interveners, must each bear their own costs in accordance with Article 140(1) of the Rules of Procedure.

VIII – **Conclusion**

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

(1) annul Council Decision 2014/198/CFSP of 10 March 2014;

(2) order that the effects of the annulled decision be maintained;

(3) order the Council of the European Union to bear its own costs and to pay the costs incurred by the European Parliament;

(4) order the Czech Republic, the Kingdom of Sweden, the United Kingdom of Great Britain and Northern Ireland and the European Commission each to bear their own costs.

56 — Judgments in *Parliament* v *Council* (C-355/10, EU:C:2012:516, paragraph 90); *Commission* v *Council* (C-137/12, EU:C:2013:675, in particular paragraph 81); and *Commission* v *Parliament and Council* (C-43/12, EU:C:2014:298, paragraph 56).