Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

14 June 2016*

(Action for annulment — Common foreign and security policy (CFSP) –Decision 2014/198/CFSP — 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 — Choice of legal basis — Obligation to inform the European Parliament immediately and fully at all stages of the procedure of negotiation and conclusion of international agreements — Maintenance of the effects of the decision in the event of annulment)

In Case C-263/14,

ACTION for annulment under Article 263 TFEU, brought on 28 May 2014,

European Parliament, represented by R. Passos, A. Caiola and M. Allik, acting as Agents, with an address for service in Luxembourg,

applicant,

supported by:

European Commission, represented by M. Konstantinidis, R. Troosters and D. Gauci, acting as Agents, with an address for service in Luxembourg,

intervener,

v

Council of the European Union, represented by F. Naert, G. Étienne, M. Bishop and M.-M. Joséphidès, acting as Agents,

defendant,

supported by:

Czech Republic, represented by M. Smolek, E. Ruffer, J. Vláčil, J. Škeřik and M. Hedvábná, acting as Agents,

Kingdom of Sweden, represented by A. Falk, C. Meyer-Seitz, U. Persson, M. Rhodin, E. Karlsson and L. Swedenborg, acting as Agents,

* Language of the case: English.

United Kingdom of Great Britain and Northern Ireland, represented by J. Kraehling and V. Kaye, acting as Agents, and by G. Facenna, Barrister,

interveners,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, A. Tizzano, Vice-President, L. Bay Larsen, T. von Danwitz, A. Arabadjiev, C. Toader, D. Šváby and C. Lycourgos, Presidents of Chambers, A. Rosas (Rapporteur), E. Juhász, M. Safjan, M. Berger, E. Jarašiūnas, C.G. Fernlund and K. Jürimäe, Judges,

Advocate General: J. Kokott,

Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 22 September 2015,

after hearing the Opinion of the Advocate General at the sitting on 28 October 2015,

gives the following

Judgment

1 By its application, the European Parliament asks the Court, first, to annul Council Decision 2014/198/CFSP of 10 March 2014 on the signature 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; 'the contested decision') and, second, to maintain the effects of that decision.

Legal context

International law

The United Nations Convention on the Law of the Sea

2 The United Nations Convention on the Law of the Sea, signed at Montego Bay on 10 December 1982, came into force on 16 November 1994. It was approved by Council Decision 98/392/EC of 23 March 1998 concerning the conclusion by the European Community of the United Nations Convention of 10 December 1982 on the Law of the Sea and the Agreement of 28 July 1994 relating to the implementation of Part XI thereof (OJ 1998 L 179, p. 1).

3 Within Section 1, headed 'General Provisions', of Part VII, headed 'High Seas', that convention contains Articles 100 to 107, which set out the legal framework for combating piracy. Article 100 of that convention imposes an obligation on all States to cooperate in the repression of piracy. Articles 101 and 103 of that convention respectively define the concepts of 'piracy' and 'pirate ship or aircraft'.

4 Article 105 of the United Nations Convention on the Law of the Sea, headed 'Seizure of a pirate ship or aircraft', provides:

'On the high seas, or in any other place outside the jurisdiction of any State, every State may seize a pirate ship or aircraft, or a ship or aircraft taken by piracy and under the control of pirates, and arrest the persons and seize the property on board. The courts of the State which carried out the seizure may decide upon the penalties to be imposed, and may also determine the action to be taken with regard to the ships, aircraft or property, subject to the rights of third parties acting in good faith.'

EU law

Joint Action 2008/851/CFSP

5 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 Council Decision 2012/174/CFSP of 23 March 2012 (OJ 2012, L 89, p. 69) ('Joint Action 2008/851'), is based on Article 14 EU, the third paragraph of Article 25 EU, and Article 28(3) EU. The operation is known as 'Operation Atalanta'.

6 Article 1(1) of Joint Action 2008/851, that article being headed 'Mission', provides:

'The European Union … shall conduct a military operation in support of Resolutions 1814 (2008), 1816 (2008), 1838 (2008), 1846 (2008) and 1851 (2008) of the United Nations Security Council … in a manner consistent with action permitted with respect to piracy under Article 100 et seq. of the United Nations Convention on the Law of the Sea ... and by means, in particular, of commitments made with third States, hereinafter called "Atalanta", in order to contribute to:

— the protection of vessels of the [World Food Programme] delivering food aid to displaced persons in Somalia, in accordance with the mandate laid down in [United Nations Security Council] Resolution 1814 (2008), and

— 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, in accordance with the mandate laid down in [United Nations Security Council] Resolutions 1846 (2008) and 1851 (2008).'

7 Article 2 of Joint Action 2008/851, headed 'Mandate', provides:

'Under the conditions set by the relevant international law, in particular the United Nations Convention on the Law of the Sea, and by [United Nations Security Council] Resolutions 1814 (2008), 1816 (2008) and 1838 (2008), Atalanta shall, as far as available capabilities allow:

...

(e) in view of prosecutions potentially being brought by the relevant States under the conditions in Article 12, 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 in the areas where it is present and 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;

...'

8 Article 10 of Joint Action 2008/851, headed ‘Participation by third States’, is worded as follows:

‘1. Without prejudice to the decision-making autonomy of the [European Union] or to the single institutional framework, and in accordance with the relevant guidelines of the European Council, third States may be invited to participate in the operation.

...

3. Detailed modalities for the participation by third States shall be the subject of agreements concluded in accordance with the procedure laid down in Article [37 TEU]. Where the [European Union] and a third State have concluded an agreement establishing a framework for the latter’s participation in [European Union] crisis management operations, the provisions of such an agreement shall apply in the context of this operation.

...

6. The conditions for the transfer to a [third] 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.’

9 Article 12 of Joint Action 2008/851, headed ‘Transfer of persons arrested and detained with a view to their prosecution’ provides:

‘1. On the basis of Somalia’s acceptance of the exercise of jurisdiction by Member States or by third States, on the one hand, and Article 105 of the United Nations Convention on the Law of the Sea, on the other hand, 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 in Somali territorial waters or on the high seas, who are arrested and detained, with a view to their prosecution, and property used to carry out such acts, shall be transferred:

— to the competent authorities of the Member State or of the third State participating in the operation, of which the vessel which took them captive flies the flag, or

— if this State cannot, or does not wish to, exercise its jurisdiction, to a Member State or any third State which wishes to exercise its jurisdiction over the aforementioned persons and property.

2. Persons suspected of intending, as referred to in Articles 101 and 103 of the United Nations Convention of the Law of the Sea, to commit, committing or having committed acts of piracy or armed robbery who are arrested and detained, with a view to their prosecution, by Atalanta in the territorial waters, the internal waters or the archipelagic waters of other States in the region in agreement with these States, and property used to carry out such acts, may be transferred to the competent authorities of the State concerned, or, with the consent of the State concerned, to the competent authorities of another State.

3. No persons referred to in paragraphs 1 and 2 may be transferred to a third State unless 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.’

The EU-Tanzania Agreement

10 Article 2 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. 3; 'the EU-Tanzania Agreement' or 'the Agreement'), that article being headed 'Definitions', provides:

'For the purpose of this Agreement:

(a) "*European Union-led naval force (EUNAVFOR)*" shall mean EU military headquarters and national contingents contributing to the EU operation "Atalanta", their ships, aircrafts and assets;

...

(f) "*Transferred person*" shall mean any person suspected of intending to commit, committing or having committed acts of piracy and transferred by EUNAVFOR to Tanzania under this Agreement'.

11 Article 1 of the Agreement, headed 'Aim', provides:

'This Agreement defines the conditions and modalities for the transfer from EUNAVFOR to Tanzania of persons suspected of intending to commit, committing or having committed acts of piracy and detained by EUNAVFOR, and associated property seized by EUNAVFOR, and for their treatment after such transfer.'

12 Article 3 of the Agreement sets out the general principles governing, inter alia, the conditions and modalities for the transfer to the Tanzanian authorities of suspected pirates detained by EUNAVFOR, including the principle that they should be treated in accordance with international human rights obligations. Further, Article 4 of the Agreement sets out the conditions in which persons transferred are to be treated, prosecuted and tried, while Article 5 thereof provides that such persons may not be tried for an offence which has a maximum punishment that is more severe than imprisonment for life.

13 Article 6 of the EU-Tanzania Agreement relates to exchanges of documents and information to take place in connection with the transfer of those persons. Article 7(1) of the Agreement provides that 'EU and EUNAVFOR, within their means and capabilities, are to provide all assistance to Tanzania with a view to investigating and prosecuting … transferred persons.'

14 Article 8 of the EU-Tanzania Agreement states that nothing in that agreement is intended to derogate from other rights that transferred persons may have under applicable domestic or international law. Article 9 of the Agreement concerns liaison between the Tanzanian authorities and those of the European Union, and on the settlement of disputes. Finally, Articles 10 and 11 of the Agreement govern the implementing arrangements and the entry into force of the Agreement.

Background to the dispute and the contested decision

15 During 2008, in particular in resolutions 1814 (2008), 1816 (2008) and 1838 (2008), the United Nations Security Council ('the Security Council') stated that it was gravely concerned by the threat that acts of piracy and armed robbery against vessels posed to the delivery of humanitarian aid to Somalia, international navigation and the safety of commercial maritime routes, and to other vulnerable ships, including those engaged in fishing activities in conformity with international law. Further, the Security Council stated, in the preamble of Resolution 1846 (2008), that acts of piracy and armed robbery

against vessels in the territorial waters of the Federal Republic of Somalia or on the high seas, off the Somali coast, exacerbate the situation in that country, that situation continuing to constitute a threat to international peace and security in the region.

16 Against that background, in Point 14 of Resolution 1846 (2008), the Security Council called upon all States, and in particular flag, port and coastal States, States of the nationality of victims and perpetrators of piracy and armed robbery, and other States with relevant jurisdiction under international law or national legislation, to cooperate in determining jurisdiction, and in the investigation and prosecution of persons responsible for acts of piracy or armed robbery off the coast of Somalia, consistent with applicable international law, including international human rights law, and to render assistance by, among other actions, providing 'disposition and logistics assistance' with respect to persons under their jurisdiction and control, such as victims and witnesses and persons detained as a result of operations conducted under that resolution.

17 In the ninth recital of the preamble to Resolution 1851 (2008), the Security Council noted with concern that the lack of capacity, domestic legislation and clarity about how to dispose of pirates after their capture hindered more robust international action against the pirates off the coast of Somalia and in some cases led to pirates being released without facing justice. The Security Council also, in point 3 of that resolution, invited all States and regional organisations fighting piracy off the coast of Somalia to conclude special agreements or arrangements with countries willing to take custody of pirates in order to embark law enforcement officials ('shipriders') from the latter countries, in particular countries in the region, to facilitate the investigation and prosecution of persons detained in the course of their operations.

18 In response to those various resolutions, the European Union adopted Joint Action 2008/851, pursuant to which it has conducted, since November 2008, Operation Atalanta, in support of, inter alia, combating piracy off the Somali coast.

19 In connection with that military operation, the Council of the European Union sent to the Parliament, on 22 March 2010, a letter stating that it was necessary to negotiate and conclude international agreements with certain third States. In that letter, the Council recalled that, in accordance with Article 12 of Joint Action 2008/851, persons who commit or are suspected of having committed acts of piracy or armed robbery in the territorial waters of the Federal Republic of Somalia or on the high seas, who are arrested and detained, with a view to their prosecution, and property used to carry out such acts, may be transferred to any third State which wishes to exercise its jurisdiction over those persons or that property, provided that the conditions for that transfer have been agreed with that third State in a manner consistent with relevant international law. Further, the Council informed the Parliament, in that letter, that the High Representative of the Union for Foreign Affairs and Security ('the High Representative') had been authorized, on the same date, to open negotiations, pursuant to Article 37 TEU, in order to conclude Transfer Agreements with the Republic of Mauritius, the Republic of Mozambique, the Republic of South Africa, the United Republic of Tanzania and the Republic of Uganda.

20 By letter of 19 March 2014, the Council informed the Parliament that, following the completion of negotiations with the United Republic of Tanzania, it had adopted, on 10 March 2014, the contested decision.

21 The EU-Tanzania Agreement was signed in Brussels on 1 April 2014. The text of that agreement and the contested decision were published in the *Official Journal of the European Union* on 11 April 2014.

Forms of order of the parties and the procedure before the Court

22 The Parliament claims that the Court should annul the contested decision, order that the effects of that decision be maintained until it is replaced, and order the Council to pay the costs.

23 The Council contends that the Court should dismiss the action as being unfounded and order the Parliament to pay the costs. In the alternative, in the event that the Court upholds the action for annulment of the contested decision, the Council requests that the effects of that decision be maintained either until the date of the entry into force of an act replacing that decision, if the annulment is based on the applicant's first plea in law, or indefinitely, if the annulment is based solely on the second plea in law.

24 By order of the President of the Court of 3 October 2014, the Czech Republic, the Kingdom of Sweden, and the United Kingdom of Great Britain and Northern Ireland were granted leave to intervene in support of the forms of order sought by the Council. The European Commission was granted leave to intervene in support of the forms of order sought by the Parliament.

The action

25 In support of its action, the Parliament puts forward two pleas in law. By the first plea in law, the Parliament claims that the contested decision is based, wrongly, on Article 37 TEU alone and that, accordingly, the decision ought not to have been adopted in accordance with the specific procedure for agreements that relate exclusively to the common foreign and security policy ('CFSP'), provided for in the first clause of the second subparagraph of Article 218(6) TFEU, which excludes any participation of the Parliament. Such a decision, for which the appropriate legal basis is, the Parliament alleges, Article 37 TEU and also Articles 82 and 87 TFEU, can be adopted only in accordance with the procedure laid down in point (a)(v) of the second subparagraph of Article 218(6) TFEU, which requires the consent of the Parliament. By the second plea in law, concerning the infringement of Article 218(10) TFEU, the Parliament claims that the Council failed to keep it immediately and fully informed at all stages in the negotiation and conclusion of the EU-Tanzania Agreement.

The first plea in law: error in the choice of legal basis

Arguments of the parties

26 By its first plea in law, the Parliament claims that the Council was wrong to hold that the contested decision concerned an international agreement relating 'exclusively to the [CFSP]' within the meaning of the first clause of the second paragraph of Article 218(6) TFEU. The Parliament claims that, for want of the Parliament's consent, the adoption of that decision was in breach of the provisions of the Treaties. The Parliament submits that the EU-Tanzania Agreement has a twofold purpose in that that agreement relates both to the CFSP and to the fields of judicial cooperation in criminal matters and police cooperation, fields which are subject to the ordinary legislative procedure. Consequently, the Parliament considers that the contested decision ought to have had as its legal bases Article 37 TEU and also Articles 82 and 87 TFEU, and, accordingly, should have been adopted under the procedure set out in point (a)(v) of the second subparagraph of Article 218(6) TFEU.

27 The Parliament states that the choice of the legal basis must rest on objective factors amenable to judicial review, which include in particular the aim and the content of the measure at issue. In that regard, the purpose of the EU-Tanzania Agreement is to ensure that the Member States concerned are not obliged themselves to conduct criminal proceedings, and to facilitate cooperation between the authorities of those Member States and those of the United Republic of Tanzania by establishing a legal framework for the surrender of suspects to that third State in order that it can take

responsibility for investigations and prosecutions. Further, that agreement contains provisions directly relating to judicial cooperation in criminal matters and police cooperation and, in particular, on the treatment, prosecution and trial of persons transferred.

28 The EU-Tanzania Agreement does not relate exclusively to the CFSP. In that regard, the Parliament considers that that agreement cannot be considered solely as part of the European Union's international mission to preserve peace, prevent conflict and strengthen international security. The aim of that agreement is also to transfer persons suspected of criminal activities, who are under the jurisdiction of the Member States and are on European Union territory, to the judicial and police authorities of a third State in order to enable them to exercise their powers to investigate and prosecute, with regard to those suspects.

29 The Parliament states, in that regard, that the judicial and police authorities of the Member States could themselves exercise those powers. If the detained persons were to be transferred not to the Tanzanian authorities, but to the competent authorities of the Member States, EUNAVFOR would not be conducting a military operation but would rather be acting as an administrative authority. In that regard, the mere fact that such transfers are to be undertaken by a naval force does not mean that they can be categorized as military or security activities, and, consequently, lead to the conclusion that those transfers fall exclusively within the scope of the CFSP.

30 Furthermore, neither international law, nor the Security Council resolutions, nor the mandate of Operation Atalanta laid down in Joint Action 2008/851 impose any obligation to transfer pirates, detained by EUNAVFOR, to third States. In that regard, the Parliament claims that the primary option provided for in Article 12(1) of that Joint Action is that suspected pirates should be transferred to the competent authorities of the Member States, their transfer to a third State being only an alternative option.

31 The Parliament states, in support of its assertion that the Agreement and the area of freedom, security and justice, within the meaning of Title V of the FEU Treaty, are directly and closely linked, that persons arrested and detained, suspected of acts of piracy, and property seized, are subject to the jurisdiction of the Member States participating in EUNAVFOR. The transfer of such persons and such property from the European Union to a third State, in this case to the United Republic of Tanzania, has the effect of depriving the competent authorities of those Member States of the right to exercise their powers of investigation, prosecution and trial, according to their own law. Piracy is within the scope of the campaign to combat international crime, a subject that is related to the area of freedom, security and justice and, in particular, the provisions pertaining to that area with respect to judicial cooperation in criminal matters and police cooperation. That being the case, there cannot be inserted, in an international agreement such as the EU-Tanzania Agreement, instruments of cooperation relevant to the area of freedom, security and justice, unless the legal basis used is related to that area.

32 The Parliament accepts that Operation Atalanta and the EU-Tanzania Agreement contribute to the realization of some of the objectives of the external action of the European Union referred to in Article 21(1) and (2) TEU. Nonetheless, the Parliament submits that the mere fact that a measure pursues those objectives does not necessarily mean that those objectives fall exclusively within the scope of the CFSP. Likewise, while the strengthening of international security is also a specific objective of the Common Security and Defence Policy, the content of the EU-Tanzania Agreement does not fall under any of the specific tasks of that policy referred to in Article 42(1) and Article 43(1) TEU. The reason why Member States are involved in combating piracy is the fact that this phenomenon constitutes a threat to the internal security of the European Union.

33 In its defence, the Council contends that the contested decision was correctly based on Article 37 TEU and on Article 218(5) TFEU and the first clause of the second subparagraph of Article 218(6) TFEU, and that the adoption of the EU-Tanzania Agreement, which relates exclusively to the CFSP, did not need the consent of the Parliament.

34 First, in the judgment of 24 June 2014, *Parliament* v *Council* (C-658/11, EU:C:2014:2025), delivered after the lodging of the present action for annulment, the Court held that Council Decision 2011/640/CFSP of 12 July 2011 on the signing and conclusion of the Agreement between the European Union and the Republic of Mauritius on the conditions of transfer of suspected pirates and associated seized property from the European Union-led naval force to the Republic of Mauritius and on the conditions of suspected pirates after transfer (OJ 2011 L 254, p. 1), the content of which is almost identical to that of the contested decision and which concerns the signature of an agreement the terms of which are very similar to those of the EU-Tanzania Agreement, could legitimately be based on Article 37 TEU alone.

35 Second, the Council considers that the plea claiming an error in the choice of the substantive legal basis of the contested decision must be rejected as being unfounded. While the Parliament claims that the EU-Tanzania Agreement has two objectives which relate, first, to the CFSP and, second, to the fields of judicial cooperation in criminal matters and police cooperation and, consequently, that Articles 82 TFEU and 87 TFEU ought, together with Article 37 TEU, to have constituted the legal bases of the contested decision, the Parliament does not however specify whether that second objective is or is not incidental. The Council submits that, in so far as the Parliament recognized, in the procedure that gave rise to the judgment of 24 June 2014, *Parliament* v *Council* (C-658/11, EU:C:2014:2025), that, with respect to the agreement of 14 July 2011 between the European Union and the Republic of Mauritius, the objectives that did not fall within the scope of the CFSP pursued by that agreement were only incidental, the identical objectives pursued by the EU-Tanzania Agreement have the same character. Consequently, the legal basis of the contested decision is Article 37 TEU.

36 Third, the Council submits that the contested decision and the EU-Tanzania Agreement fall exclusively within the scope of the CFSP and do not pursue any incidental objective in relation to judicial cooperation in criminal matters or police cooperation. The EU-Tanzania Agreement, which was concluded in connection with a military crisis management operation conducted under the CFSP and designed to combat piracy in accordance with the relevant Security Council resolutions, does not concern the area of freedom, security and justice within the European Union. The detention and transfer of suspected pirates is no more than a mere consequence of Operation Atalanta's security mission. In addition, since an aim of that agreement, to which its content corresponds, is to promote the rule of law and respect for human rights, the Agreement falls fully within the scope of the CFSP.

37 Further, the campaign to combat international crime falls within the scope of the CFSP. In that regard, the EU-Tanzania Agreement is not designed to protect the area of freedom, security and justice, whether the perspective is internal or external to the European Union. In particular, that agreement does not deprive the competent authorities of the Member States either of their investigative powers or of their power to prosecute and try persons arrested and detained by the forces deployed as part of Operation Atalanta, but instead is designed to ensure that offences do not go unpunished, by providing the possibility of transferring such persons to a State in the region where that operation is being conducted, when no competent Member State authority wishes to prosecute them.

38 In its reply, the Parliament argues that the Court did not give a ruling, in the judgment of 24 June 2014, *Parliament* v *Council* (C-658/11, EU:C:2014:2025), on whether Decision 2011/640 should have been founded solely on the legal basis of Article 37 TEU or whether, additionally, it should have been based on other Treaty provisions. While the Parliament concedes that the elimination of piracy with the objective of protecting vessels is undeniably the main objective of Operation Atalanta, in accordance with Joint Action 2008/851, it submits that all the activities which follow on from that

operation do not automatically fall within the scope of the CFSP. Unless the view is to be taken that all international agreements concluded by the European Union concerning the transfer of persons suspected of criminal activities and taken captive by the armed forces of the Member States fall exclusively within the scope of the CFSP, the transfers of suspected pirates and their prosecution under the EU-Tanzania Agreement cannot be treated as the equivalent of military activities. That being the case, the EU-Tanzania Agreement pursues a twofold objective and, consequently, should have been founded on a dual legal basis.

39 In its rejoinder, the Council adds that the aim of Operation Atalanta is to strengthen international security, that it is conducted as part of the Common Security and Defence Policy, and that the EU-Tanzania Agreement was concluded pursuant to Article 12 of Joint Action 2008/851. Accordingly, the detention and transfer of suspected pirates is a consequence of performance of that mission and does not constitute a distinct police or judicial cooperation activity. Under Article 2 of Joint Action 2008/851, the principal tasks of Operation Atalanta consist in the protection of ships chartered by the World Food Programme and other vulnerable vessels, keeping watch over certain zones, and taking measures, including the use of force, to deter, prevent and repress acts of piracy and armed robbery committed at sea. On the other hand, the detention and transfer of suspected pirates, collection of their personal data, transmission to Interpol of that data and provision of the data compiled on fishing activities are incidental to the principal tasks.

40 The Council states that the measures concerning the area of freedom, security and justice, whether of an internal nature within the European Union or having an external dimension, must be adopted with the objective of promoting freedom, security and justice inside the European Union or at its borders. The EU-Tanzania Agreement has nothing to do with the objectives of the area of freedom, security and justice. When a person suspected of acts of piracy is transferred to the United Republic of Tanzania, no Member State is exercising its jurisdiction. Moreover, a warship that is within the exclusive jurisdiction of its flag State is not to be treated as being part of the territory of that State. Further, the Parliament does not explain in what way piracy constitutes a threat to the internal security of the European Union.

41 At the hearing before the Court, the Parliament stated, in response to a question put by the Court, that, if the legal bases relating to the CFSP and the area of freedom, security and justice could not be combined because of the incompatibility of the relevant procedures, Articles 82 TFEU and 87 TFEU should constitute, alone, the legal basis of the contested decision.

Findings of the Court

42 As regards acts adopted on the basis of a provision relating to the CFSP, it is the task of the Court to ensure, in particular, under the first clause of the second subparagraph of Article 275 TFEU and under Article 40 TEU, that the implementation of that policy does not impinge upon the application of the procedures and the extent of the powers of the institutions laid down by the Treaties for the exercise of the Union's competences under the FEU Treaty. The choice of the appropriate legal basis of a European Union act has constitutional significance, since to proceed on an incorrect legal basis is liable to invalidate such an act, particularly where the appropriate legal basis lays down a procedure for adopting acts that is different from that which has in fact been followed (see, to that effect, Opinion 2/00, of 6 December 2001, EU:C:2001:664, paragraph 5).

43 In accordance with settled case-law, the choice of the legal basis of a European Union act, including one adopted in order to conclude an international agreement such as that at issue in this case, must rest on objective factors amenable to judicial review, which include the aim and content of that measure (see, to that effect, judgments of 26 March 1987, *Commission* v *Council*, 45/86, EU:C:1987:163, paragraph 11, and of 11 June 1991, *Commission* v *Council*, '*Titanium dioxide*',

C-300/89, EU:C:1991:244, paragraph 10; Opinion 2/00 of 6 December 2001, EU:C:2001:664, paragraph 22, and judgment of 19 July 2012, *Parliament* v *Council*, C-130/10, EU:C:2012:472, paragraph 42).

44 If an examination of a European Union measure reveals that it pursues a twofold purpose or that it comprises two components and if one of these is identifiable as the main or predominant purpose or component, whereas the other is merely incidental, the act must be based on a single legal basis, namely that required by the main or predominant purpose or component. Exceptionally, if it is established, however, that the act simultaneously pursues a number of objectives, or has several components, which are inextricably linked without one being incidental to the other, such that various provisions of the Treaty are applicable, such a measure will have to be founded on the various legal bases corresponding to those components (see, to that effect, judgments of 10 January 2006, *Commission* v *Parliament and Council*, C-178/03, EU:C:2006:4, paragraphs 42 and 43, and of 24 June 2014, *Parliament* v *Council* , C-658/11, EU:C:2014:2025, paragraph 43).

45 As regards, first, the content of the EU-Tanzania Agreement, it is clear that the provisions of that agreement define, as stated in Article 1 thereof, the conditions and modalities for the transfer to the United Republic of Tanzania of persons suspected of intending to commit, committing or having committed acts of piracy, detained by EUNAVFOR, and associated property seized by EUNAVFOR, and for the treatment of those persons after that transfer.

46 Pursuant to Articles 3 and 4 of the Agreement, those conditions and modalities extend to compliance with general principles, in particular the principle that persons should be treated in accordance with international human rights obligations. The Agreement also governs the treatment, prosecution and trial of the persons transferred, providing, in Article 5 thereof, that such persons may not be tried for an offence which has a maximum punishment that is more severe than life imprisonment. Further, Article 6 of the Agreement provides for the keeping of records and for notification of documents pertaining to those persons, while Article 7(1) thereof provides that the European Union and EUNAVFOR are to provide all assistance, within their means and capabilities, to the United Republic of Tanzania with a view to investigating and prosecuting the persons transferred.

47 Admittedly, as stated by the Advocate General in point 60 of her Opinion, some of the obligations laid down by the EU-Tanzania Agreement appear, at first sight, to relate to the field of cross-border judicial cooperation in criminal matters and police cooperation, when they are considered individually. However, as also observed by the Advocate General, the fact that certain provisions of such an agreement, taken individually, have an affinity with rules that might be adopted within a European Union policy area is not, in itself, sufficient to determine the appropriate legal basis of the contested decision. As regards, in particular, provisions of the EU-Tanzania Agreement concerning compliance with the principles of the rule of law and human rights, as well as respect for human dignity, it must be stated that such compliance is required of all actions of the European Union, including those in the area of the CFSP, as is clear from the provisions, read together, set out in the first subparagraph of Article 21(1), Article 21(2)(b) and (3) TEU, and Article 23 TEU. That being the case, the Court must also assess that agreement in the light of its aim.

48 Secondly, as regards that aim, it is apparent from, inter alia, recital 3 of the preamble to the contested decision that the Agreement was concluded pursuant to Article 12 of Joint Action 2008/851, which falls within the scope of the CFSP, in order to permit the transfer, in the framework of Operation Atalanta, of persons arrested and detained by EUNAVFOR, together with property seized, to a third State, in this case the United Republic of Tanzania, that is willing to exercise jurisdiction over those persons and that property. As is apparent from the very title of that Joint Action, its aim is to contribute to, inter alia, preventing acts of piracy and armed robbery off the Somali coast.

49 The EU-Tanzania Agreement is thus designed to establish a mechanism that is an essential element in the effective realization of the objectives of Operation Atalanta, in particular in that it strengthens, in a lasting way, international cooperation with respect to preventing acts of piracy, by defining a legal framework for the transfer of persons who are arrested and detained, which makes it possible to ensure that those persons do not go unpunished, in accordance with the mandate laid down by the relevant Security Council resolutions.

50 In that regard, it must be recalled that the Security Council, particularly in point 14 of Resolution 1846 (2008), requested all States to cooperate in determining jurisdiction, and in taking action to investigate and prosecute the perpetrators of acts of piracy and armed robbery off the coast of Somalia. Reflecting the cooperation envisaged by Article 100 of the United Nations Convention on the Law of the Sea, which imposes on the contracting States an obligation to cooperate in the repression of piracy on the high seas, it is an element of that international policy of combating acts of piracy and, in particular, of ensuring that the perpetrators of such acts do not go unpunished, that the contested decision was adopted with a view to the signature and conclusion of the EU-Tanzania Agreement.

51 That agreement, concluded pursuant to Article 12 of Joint Action 2008/851, is intimately linked to Operation Atalanta, and consequently, were there to be no such operation, that agreement would be devoid of purpose. Since the existence of the EU-Tanzania Agreement is merely ancillary to the EUNAVFOR action, that agreement will be rendered devoid of purpose as soon as that force ceases its activities.

52 The Parliament's argument that, were there no EU-Tanzania Agreement, the Member States themselves would be in a position to ensure that criminal proceedings were brought against the persons taken into custody is of no relevance, since the aim of that agreement is, inter alia, to render such prosecutions more effective by ensuring the transfer of the persons concerned to the United Republic of Tanzania precisely when the Member State with jurisdiction cannot or will not exercise jurisdiction. In fact, were such transfer agreements, expressly referred to in Article 12(3) of Joint Action 2008/851, whose purpose is to ensure that the treatment of the persons transferred complies with the requirements of international human rights law, not to be concluded in advance, no one arrested by EUNAVFOR could be transferred to the third States in the region where Operation Atalanta is being conducted, which would be likely to make more difficult, or indeed to impede, the effective conduct of that operation and the attainment of its objectives.

53 Further, EUNAVFOR may only transfer persons, suspected of acts of piracy, that it has itself arrested and detained as part of Operation Atalanta. That being the case, the argument of the Parliament to the effect that the actions undertaken by that naval force can be treated as equivalent to actions of the judicial or police authorities of the Member States cannot be accepted. Those actions take place exclusively within the framework of a specific operation that falls within the scope of the CFSP, to the performance of which those actions are inseparably linked.

54 Accordingly, an examination of the aim of the EU-Tanzania Agreement confirms that the procedure of transferring persons arrested or detained by EUNAVFOR established by the Agreement constitutes an instrument whereby the European Union pursues the objectives of Operation Atalanta, namely to preserve international peace and security, in particular by making it possible to ensure that the perpetrators of acts of piracy do not go unpunished.

55 Since the Agreement falls predominantly within the scope of the CFSP, and not within the scope of judicial cooperation in criminal matters or police cooperation, the contested decision could legitimately be based on Article 37 TEU alone. Consequently, its adoption in accordance with the procedure laid down in the first clause of the second subparagraph of Article 218(6) TFEU was correct.

56 In the light of the foregoing, the first plea must be rejected as being unfounded.

The second plea in law: infringement of Article 218(10) TFEU

Arguments of the parties

57 According to the Parliament, the obligation laid down in Article 218(10) TFEU, to the effect that the Parliament must be 'immediately and fully informed at all stages of the procedure', constitutes an essential procedural rule that applies to all international agreements concluded by the European Union, including those within the scope of the CFSP. The Council was in breach of that rule since it informed the Parliament only of the opening of negotiations on the EU-Tanzania Agreement, on 22 March 2010, and of the adoption of the contested decision, on 19 March 2014, nine days after that adoption. Further, neither the High Representative nor the Council kept the Parliament informed of the discussions that preceded that adoption. Last, the Council failed to communicate to the Parliament either the negotiating directives, or the text of that decision, or, what is more, the text of the EU-Tanzania Agreement.

58 The Parliament submits that that absence of information prevented it from deciding on a political position with respect to the content of the EU-Tanzania Agreement and, more generally, impeded parliamentary scrutiny of the activities of the Council. The Parliament maintains that, unless the obligation established by that provision is to be treated as non-binding, that obligation enhances the separate obligation, that Parliament should be consulted on the CFSP, under Article 36 TEU. Further, the effectiveness of Article 218(10) TFEU would be affected if the Parliament was informed of the negotiation and conclusion of international agreements solely through the publication of those agreements in the *Official Journal of the European Union*.

59 The Council does not dispute that Article 218(10) TFEU applies also to international agreements relating exclusively to the CFSP, but contends that the provision was not infringed in this case. In that regard, the Council explains that the Parliament is informed of all relevant decisions that the Council adopts under Article 218 TFEU with respect to, inter alia, the authorization to open negotiations, the negotiating directives, the signature and conclusion of an international agreement and, when appropriate, the provisional application of such an agreement.

60 As regards the EU-Tanzania Agreement, the Council states, first, that it duly notified the Parliament of the negotiating directives. On 22 March 2010, the date of adoption of the decision authorizing the opening of negotiations, the Council sent a letter to the Parliament in which the Council explained that, under Article 12 of Joint Action 2008/851, Transfer Agreements were to be concluded with certain third States and that the High Representative had been authorized to open negotiations, under Article 37 TEU, with a number of States, one of those States being the United Republic of Tanzania. As regards the content of the proposed EU-Tanzania Agreement, the knowledge that the Parliament had of the transfer agreements concluded previously with other States in connection with Operation Atalanta enabled the Parliament to exercise its prerogatives, which are, in any event, limited with respect to international agreements that fall exclusively within the scope of the CFSP.

61 As regards, secondly, the communication to the Parliament of the text of the contested decision and that of the EU-Tanzania Agreement, the Council contends that the primary objective of the limited prerogatives of the Parliament in the context of the procedure for the negotiation and conclusion of international agreements concerning the CFSP is to enable the Parliament to scrutinize the legal basis of those agreements and that, in this case, that objective was achieved, in that the Parliament was in a position to undertake such scrutiny after it received the Council's letter of 22 March 2010 informing it of the opening of negotiations. Further, the texts of the contested decision and of the EU-Tanzania Agreement were necessarily communicated to the Parliament by means of their publication in the *Official Journal of the European Union* on 11 April 2014, the date which is the starting point for the running of the period of time within which the Parliament could bring an action for annulment under Article 263 TFEU.

62 Last, the Council contends that, in so far as information ought to be provided on the progress of negotiations, that task falls to the High Representative and, consequently, the plea claiming an infringement of Article 218(10) TFEU is unfounded. For the sake of completeness, the Council states that it is in practice impossible to keep the Parliament informed, throughout negotiations concerning the CFSP, of all developments, which can occur rapidly and unexpectedly. The Council states that, in any event, the Parliament was provided with information, within the broader framework of Operation Atalanta to which the contested decision relates.

63 In its reply, the Parliament accepts that it was 'immediately' informed, within the meaning of Article 218(10) TFEU, by the Council of its decision to authorize the opening of negotiations, on the day when that decision was adopted. The Parliament submits, however, that, with respect to the contested decision, it was not so informed, since that decision was notified to it only nine days after its adoption. Further, the Council did not at any time communicate to the Parliament the texts of that decision and the EU-Tanzania Agreement. The requirement to inform the Parliament 'fully', within the meaning of Article 218(10) TFEU, cannot be satisfied solely because the Council previously concluded similar agreements. In any event, scrutiny, by the Parliament, of the legal basis of the contested decision could not be carried out where there was no communication of a text enabling the Parliament to identify the factors relevant to that scrutiny, such as the aim and the content of the envisaged agreement. According to the Parliament, the Council should have sent to it the text of the draft Council decision and the text of the draft agreement, by 4 April 2012 at the latest, the date when, on the conclusion of negotiations, the Foreign Relations Counsellors Working Party of the Council agreed those texts. After that date, the Council was simply waiting for the approval of that draft agreement by the United Republic of Tanzania, which was notified to it in February 2014.

64 Last, the Parliament disputes the distinction made by the Council between the responsibilities of the Council itself and the responsibilities of the High Representative, on the ground that the latter presides over the Foreign Affairs Council, the Council configuration responsible for the CFSP. Referring to the judgment of 24 June 2014, *Parliament* v *Council* (C-658/11, EU:C:2014:2025), the Parliament submits that respect for Article 218(10) TFEU is a prerequisite for the validity of a decision on the adoption of international agreements and that it is the duty of the Council to ensure, before adoption, that the Parliament has been duly informed.

65 In its rejoinder, the Council submits that, while a delay of several months or of several weeks may not meet the requirement that the Parliament should be informed 'immediately', within the meaning of Article 218(10) TFEU, a delay of a few days, in this case nine days, corresponding to seven working days, cannot be regarded as unreasonable.

66 As regards the progress of the negotiations that preceded the conclusion of the EU-Tanzania Agreement, the Council considers that its letter of 22 March 2010 provided to the Parliament sufficient information to enable the Parliament, at the very least, to form an initial opinion on the merits of the legal basis stated by the Council and to express any concerns on that subject. In that regard, the Council adds that, while the fact that it had previously concluded similar agreements is not sufficient, in itself, to justify a conclusion that the requirements stemming from Article 218(10) TFEU were met, that fact and the information given in the letter of 22 March 2010, taken together, are sufficient. Further, the Council states that the negotiating mandate described in that letter remained unchanged.

67 As regards the allocation of responsibilities between the Council and the High Representative, while accepting that the latter presides over the Foreign Affairs Council, the Council asserts that the High Representative does not act in that capacity when representing the European Union in the context of negotiation of agreements relating to the area of the CFSP. Accordingly, to the extent that the conduct of negotiations was the responsibility of the High Representative and not that of the Council, the obligation to inform the Parliament of those negotiations could fall only on the High Representative. The Council considers, further, that the obligation to provide information in the

course of negotiations cannot extend to every document produced or every negotiating session, or indeed to the preparatory work that takes place within the Council. Last, the Council considers that it is not incumbent on it to verify, prior to the adoption of a decision on the conclusion of an international agreement, whether Article 218(10) TFEU has in fact been respected and whether the Parliament has therefore been duly informed of the conduct of the negotiations preceding the adoption of such an agreement.

Findings of the Court

68 In accordance with the Court's case-law, the obligation imposed by Article 218(10) TFEU, under which the Parliament is to be 'immediately and fully informed at all stages of the procedure' for negotiating and concluding international agreements, applies to any procedure for concluding an international agreement, including agreements relating exclusively to the CFSP (judgment of 24 June 2014, *Parliament* v *Council*, C-658/11, EU:C:2014:2025, paragraph 85). Article 218 TFEU, in order to satisfy the requirements of clarity, consistency and rationalisation, lays down a single procedure of general application concerning the negotiation and conclusion of international agreements by the European Union in all the fields of its activity, including the CFSP which, unlike other fields, is not subject to any special procedure (see, to that effect, judgment of 24 June 2014, *Parliament* v *Council*, C-658/11, EU:C:2014:2025, paragraphs 52 and 72).

69 While, admittedly, the role conferred on the Parliament in relation to the CFSP remains limited, since the Parliament is excluded from the procedure for negotiating and concluding agreements relating exclusively to the CFSP, the fact remains that the Parliament is not deprived of any right of scrutiny in respect of that European Union policy (see, to that effect, judgment of 24 June 2014, *Parliament* v *Council*, C-658/11, EU:C:2014:2025, paragraphs 83 and 84).

70 In that regard, it must be borne in mind that participation by the Parliament in the legislative process is the reflection, at Union level, of a fundamental democratic principle that the people should participate in the exercise of power through the intermediary of a representative assembly (see, to that effect, judgments of 29 October 1980, *Roquette Frères* v *Council*, 138/79, EU:C:1980:249, paragraph 33; of 11 June 1991, *Titanium dioxide*, C-300/89, EU:C:1991:244, paragraph 20, and 19 July 2012, *Parliament* v *Council*, C-130/10, EU:C:2012:472, paragraph 81). As regards the procedure for negotiating and concluding international agreements, the information requirement laid down in Article 218(10) TFEU is the expression of that democratic principle, on which the European Union is founded (see, to that effect, judgment of 24 June 2014, *Parliament* v *Council*, C-658/11, EU:C:2014:2025, paragraph 81).

71 The aim of that information requirement is, inter alia, to ensure that the Parliament is in a position to exercise democratic control over the European Union's external action and, more specifically, to verify that the choice made of the legal basis for a decision on the conclusion of an agreement was made with due regard to the powers of the Parliament (see, to that effect, judgment of 24 June 2014, *Parliament* v *Council*, C-658/11, EU:C:2014:2025, paragraph 79). In that regard, while the purpose of the requirement to inform the Parliament fully and immediately is not to enable the Parliament to participate in the negotiation and conclusion of agreements concerning the CFSP, that requirement allows it, in addition to undertaking a check of the appropriate legal basis for measures adopted as part of the CFSP, to exercise its own powers with full knowledge of the European Union's external action as a whole.

72 Indeed, the European Union must ensure, in accordance with Article 21(3) TEU, consistency between the different areas of its external action, and the duty to inform which the other institutions owe to the Parliament under Article 218(10) TFEU contributes to ensuring the coherence and consistency of that action (see, by analogy, as regards the cooperation between the EU institutions and the Member States,

judgment of 2 June 2005, *Commission* v *Luxembourg*, C-266/03, EU:C:2005:341, paragraph 60; Opinion 1/08, of 30 November 2009, EU:C:2009:739, paragraph 136, and judgment of 20 April 2010, *Commission* v *Sweden*, C-246/07, EU:C:2010:203, paragraph 75).

73 The Court must, at the outset, reject the Council's argument that the obligation to inform the Parliament of the conduct of negotiations is the responsibility of the High Representative and not that of the Council itself. Since Article 218(2) TFEU provides that it is for the Council to authorize the opening of negotiations, to adopt negotiating directives, and to authorize the signing and conclusion of the agreements, it follows that it is also incumbent on the Council, not least in the context of agreements exclusively concerning the CFSP, to ensure that the obligation laid down by Article 218(10) TFEU is fulfilled.

74 In this case, the Parliament complains that the Council, first, failed to inform it of the progress of the negotiations, second, failed to transmit to it either the final text of the EU-Tanzania Agreement or that of the contested decision and, third, informed it of the adoption of the latter decision only nine days after its adoption.

75 As regards, first, the submission that no information was given to the Parliament by the Council on the progress of negotiations, it is clear that, in this case, the Council provided information to the Parliament only at the time when the opening of negotiations was authorized and when they were concluded. Yet the Court has held, in paragraph 86 of the judgment of 24 June 2014, *Parliament* v *Council* (C-658/11, EU:C:2014:2025), that the obligation, prescribed in Article 218(10) TFEU, to ensure that the Parliament is immediately and fully informed at all stages of the procedure for the conclusion of an international agreement also extends to the stages that precede the conclusion of such an agreement, and therefore covers, in particular, the negotiation phase.

76 In that regard, with respect to the scope of the information obligation covered by that provision, it must be stated that the procedure for negotiating and concluding international agreements laid down in Article 218 TFEU includes, inter alia, the authorization to open negotiations, the definition of the negotiating directives, the nomination of the Union negotiator and, in some cases, the designation of a special committee, the completion of negotiations, the authorization to sign the agreement, where necessary, the decision on the provisional application of the agreement before its entry into force and the conclusion of the agreement.

77 While, under Article 218(10) TFEU, the Parliament must be informed at all stages of the procedure, the fact that its participation in the negotiation and conclusion of agreements falling exclusively within the scope of the CFSP is specifically excluded means that that information requirement does not extend to stages that are part of the internal preparatory process within the Council. That said, as observed by the Advocate General in point 86 of her Opinion, the requirement to inform the Parliament cannot be limited solely to stages in the procedure referred to in the preceding paragraph of this judgment, but extends also to the intermediate results reached by the negotiations. In that regard, as argued by the Parliament, that information requirement made it necessary that the Council should communicate to it the text of the draft agreement and the text of the draft decision approved by the Council's Foreign Relations Counsellors who are responsible for the negotiations, when the text of those drafts was communicated to the Tanzanian authorities with a view to the conclusion of the agreement.

78 Further, in this case the Council provided no information to the Parliament on the progress of the negotiations that preceded the conclusion of the EU-Tanzania Agreement, except by sending the letter of 22 March 2010 advising the Parliament of the opening of those negotiations. Since the Parliament's exercise of its right of scrutiny is conceivable only by reference to the content of the contemplated agreement itself, and not in relation to that of other agreements which might, in certain cases, display similar characteristics (see, by analogy, judgment of 6 November 2008, *Parliament* v *Council*, C-155/07, EU:C:2008:605, paragraph 74), the existence of agreements concluded with other

States of which the Parliament might have knowledge is, for that purpose, of no relevance. That being the case, the Council's argument that the Parliament was, by reason of the existence of such similar earlier agreements, sufficiently informed of the conduct of the negotiations that led to the EU-Tanzania Agreement must be rejected.

79 Further, as regards the submission that the Council failed to transmit the texts of the EU-Tanzania Agreement and the contested decision to the Parliament, the Court must reject the Council's argument that the Parliament was in a position to exercise its prerogatives when it became aware of the content of the texts adopted on their being published in the *Official Journal of the European Union*.

80 As the Court has previously stated, the publication of the decision concerning the signature and conclusion of an agreement in the *Official Journal of the European Union* is not capable of remedying an infringement of Article 218(10) TFEU. Such publication is prescribed in Article 297 TFEU and satisfies the publicity requirements to which a European Union act is subject if it is to enter into force, whereas the information requirement arising under Article 218(10) TFEU is prescribed in order to ensure that the Parliament is in a position to exercise democratic scrutiny of the European Union's external action and, more particularly, to verify that its powers are respected specifically as a result of the choice of legal basis for a decision on the conclusion of an agreement (judgment of 24 June 2014, *Parliament* v *Council*, C-658/11, EU:C:2014:2025, paragraph 79).

81 Last, as regards the submission concerning a breach by the Council of Article 218(10) TFEU on the ground that the Council's provision of information to the Parliament was late, namely nine days after the adoption of the contested decision, it is clear that such a period fails, as a general rule, to satisfy the requirement to inform the Parliament 'immediately', within the meaning of that provision.

82 Admittedly, it is conceivable that, in some circumstances, information delivered to the Parliament after a period of a few days could be described as 'immediate', within the meaning of that provision. Nonetheless, since the Council failed to transmit to the Parliament, in this case, either the text of the contested decision or that of the EU-Tanzania Agreement, it is clear that, in any event, the Council did not inform the Parliament immediately and fully in the course of the procedure by which that agreement was negotiated and concluded.

83 It follows from the foregoing that the Council infringed Article 218(10) TFEU.

84 Since the Parliament was not immediately and fully informed at all stages of the procedure in accordance with Article 218(10) TFEU, it was not in a position to exercise the right of scrutiny conferred on it by the Treaties with regard to the CFSP and, where appropriate, to state its position with respect to, in particular, the correct legal basis on which the act at issue should be based. Disregard for that information requirement, in those circumstances, is detrimental to the ability of the Parliament to perform its duties in the area of the CFSP and therefore constitutes an infringement of an essential procedural requirement (judgment of 24 June 2014, *Parliament* v *Council*, C-658/11, EU:C:2014:2025, paragraph 86).

85 That being the case, the second plea is well founded and the contested decision must be annulled.

Whether the effects of the contested decision should be maintained

86 The Parliament and the Council, supported by the United Kingdom Government and the Commission, request that, should the Court annul the contested decision, the effects of that decision should be maintained until it is replaced.

87 Under the second paragraph of Article 264 TFEU the Court may, if it considers this necessary, state which of the effects of an act which it has declared void are to be considered as definitive.

88 It must be acknowledged that annulment of the contested decision without maintenance of its effects would be liable to hamper the conduct of operations carried out on the basis of the EU-Tanzania Agreement and, in particular, to jeopardise the prosecutions and trial of suspected pirates arrested by EUNAVFOR.

89 Consequently, the effects of the contested decision which is annulled by the present judgment must be maintained.

Costs

90 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. However, under Article 138(3), the parties are to bear their own costs where each party succeeds on some and fails on other heads.

91 Since the Parliament and the Council have each been partially unsuccessful in this case, they must be ordered to bear their own costs.

92 In accordance with Article 140(1) of the Rules of Procedure, the Czech Republic, the Kingdom of Sweden, the United Kingdom and the Commission, which intervened in the proceedings, must bear their own costs.

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

1. **Annuls Council Decision 2014/198/CFSP of 10 March 2014 on the signature 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;**

2. **Orders that the effects of Decision 2014/198 be maintained in force;**

3. **Orders the European Parliament and the Council of the European Union each to bear their own costs;**

4. **Orders 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.**

[Signatures]