Reports of Cases

OPINION OF ADVOCATE GENERAL
WATHELET
Delivered on 5 June 2018 [1]

Case C-73/17

French Republic
v

European Parliament

(Action for annulment — Seat of the institutions — European Parliament — Exercise of budgetary powers — Ordinary plenary part-sessions in Strasbourg or additional plenary part-sessions in Brussels — Request to maintain legal effects in the case of annulment)

I. Introduction

1. By its action, brought on 9 February 2018, the French Republic, supported by the Grand-Duchy of Luxembourg, requests the Court to annul four acts of the European Parliament concerning the adoption of the general budget of the EU for the financial year 2017, namely:

– The agenda for the sitting of 30 November 2016, in so far as it includes the debates on the joint text on the draft general budget [document P8_OJ(2016)11-30];

– The agenda for the sitting of 1 December 2016, in so far as it includes a vote followed by explanations of votes on the joint text on the draft general budget [document P8_OJ(2016)12-01];

– The Parliament legislative resolution of 1 December 2016 on the joint text on the draft general budget [document T8-0475/2016, P8_TA-PROV(2016)0475, in its provisional version]; and

– The act by which the President of the European Parliament declared that the general budget of the EU for the financial year 2017 had been definitively adopted (together, 'the contested acts').

2. According to the French Republic, the debates on the joint text on the draft general budget, the Parliament's vote on that text and the act of the President of the Parliament which declared that the budget had been adopted should have taken place at an ordinary plenary part-session of the Parliament in Strasbourg (France) and not at the additional plenary part-session which was held in Brussels (Belgium) on 30 November and 1 December 2016.

1 Original language: French.

3. These proceedings therefore are one more in the list of cases relating to the seat of the Parliament.[2] I am of course not unaware of the political considerations and the environmental or budgetary concerns, even the issue of national pride, which surround the partition of the Parliament's activities between Strasbourg and Brussels and accompany the monthly moves between those two cities. However, as Advocate General Mengozzi aptly emphasised in the case which gave rise to the judgment of 13 December 2012, *France* v *Parliament* (C-237/11 and C-238/11, EU:C:2012:796), 'although the Court cannot be unaware of the strong criticism surrounding the Parliament's obligation to sit in Strasbourg …, it is important to bear in mind that … it is called upon to give a ruling on the legal position',[3] and solely on the legal position.

II. Legal context

4. On 12 December 1992, the governments of the Member States adopted, on the basis of Article 216 EEC, Article 77 ECSC and Article 189 EAEC, a decision taken by common agreement on the location of the seats of the institutions and of certain bodies and departments of the European Communities[4] ('the Edinburgh Decision').

5. After being included in Protocol No 12 annexed to the EU Treaty, the EC Treaty, ECSC Treaty and the EAEC Treaty, the text of Article 1(a) of the Edinburgh Decision is now included in Protocol No 6 annexed to the TEU and TFEU and Protocol No 3 annexed to the EAEC Treaty, relating to the location of the seats of the institutions and of certain bodies, offices, agencies and departments of the EU ('the protocols concerning the seats of the institutions').

6. In accordance with paragraph (a) of the sole article of the protocols concerning the seats of the institutions: 'The European Parliament shall have its seat in Strasbourg where the 12 periods of monthly plenary part-sessions, including the budget session, shall be held. The periods of additional plenary part-sessions shall be held in Brussels. The committees of the European Parliament shall meet in Brussels. The General Secretariat of the European Parliament and its departments shall remain in Luxembourg.'

III. Background to the dispute

7. On 18 July 2016, the European Commission published a draft annual budget for the financial year 2017. On 12 September 2016, the Council of the European Union forwarded to the Parliament its position on that draft. After a vote in the Budget Committee and debates during the ordinary plenary part-session held in Strasbourg from 24 to 27 October 2016, the Parliament adopted, on 26 October 2016, a legislative resolution by which it presented amendments to that draft. On 27 October 2016, the budgetary reconciliation procedure between the Parliament and the Council began, resulting in an agreement on a joint text, on 17 November 2016, which was forwarded to the Parliament and the Council on that day.

8. The Council approved the joint text on 28 November 2016. The Parliament did not include the debate and vote on that draft in the agenda for the ordinary plenary part-session which was held in Strasbourg from 21 to 24 November 2016, but in that of the additional plenary part-session which was held in Brussels on 30 November and 1 December 2016.

2 See the judgments of 10 February 1983, *Luxembourg* v *Parliament* (230/81, EU:C:1983:32); of 28 November 1991, *Luxembourg* v *Parliament* (C-213/88 and C-39/89, EU:C:1991:449); of 1 October 1997, *France* v *Parliament* (C-345/95, EU:C:1997:450); and of 13 December 2012, *France* v *Parliament* (C-237/11 and C-238/11, EU:C:2012:796).

3 Opinion of Advocate General Mengozzi in *France* v *Parliament* (joined cases C-237/11 and C-238/11, EU:C:2012:545, point 44).

4 OJ 1992 C 341, p. 1.

9. By the legislative resolution of 1 December 2016, the Parliament approved the joint text. On the same day, the President of the Parliament declared, still in Brussels, that the budget of the EU for the financial year 2017 had been definitively adopted. The last ordinary plenary part-session of 2016 was held in Strasbourg from 12 to 15 December 2016.

IV. Procedure before the Court and forms of order sought

10. On 9 February 2017, the French Republic brought the present action. It requests the Court to::

– annul the contested acts;

– maintain the effects of the act by which the President of the European Parliament declared that the general budget of the EU for the financial year 2017 had been definitively adopted until that budget is definitively adopted by an act in conformity with the Treaties within a reasonable period of time after the date of judgment, and

– order the Parliament to pay the costs.

11. It bases its action on a single plea alleging that the contested acts are contrary to the protocols concerning the seats of the institutions.

12. The Parliament requests the Court to:

– declare that the action is inadmissible in so far as it concerns the two contested agendas and the contested resolution;

– dismiss the action, and

– order the appellant to pay the costs;

– in the alternative, to maintain the effects of the act by which the President of the Parliament declared that the general budget had been definitively adopted until the entry into force, within a reasonable period of time, of a new act intended to replace it.

13. The Grand-Duchy of Luxembourg was granted leave to intervene in support of the form of order sought by the French Republic by order of the President of the Court of 7 June 2017.

V. Analysis

A. Admissibility

14. The Parliament considers that the action is inadmissible in so far as it concerns the two agendas of the sittings of Parliament of 30 November 2016 and of 1 December 2016 and of the resolution of 1 December 2016 on the joint text on the draft general budget. The agendas are only measures of purely internal organisation of the Parliament with no legal effects vis-à-vis third parties; the resolution is only a preparatory act for the adoption of the act by which the President of the Parliament declared that the general budget of the EU for the financial year 2017 had been definitively adopted.

15. The Court has frequently dismissed such arguments on the ground that the assessment of the legal effects of the acts at issue was inseparably associated with consideration of their content and, in consequence, with consideration of the merits of the actions. [5]

16. That said, I note that the acts at issue in the judgments concerned were not agendas or resolutions adopted in the context of the budgetary procedure. The problem seems to me to have a different angle on that last hypothesis. The two contested agendas are necessary formalities for the Parliament to be able to debate and vote on the joint text on the draft general budget within the Conciliation Committee in accordance with the procedures and within the time limits set out in Article 314(6) and (7) TFEU. As for the resolution of 1 December 2016 on the joint text on the draft general budget, it formalises the Parliament's approval which followed those debates. It is on that basis in particular that the President of the Parliament may, in accordance with Article 314(9) TFEU, declare that the budget has been definitively adopted. Each of the contested acts therefore seems to me to be budgetary in nature.

17. On the basis of Article 314(10) TFEU — which specifies that each insitution involved in adopting the annual budget of the EU 'shall exercise the powers conferred upon it under [Article 314 TFEU] in compliance with the Treaties and the acts adopted thereunder' — the Court has ruled that the budgetary nature of an act does not prevent an action for annulment being brought against it. [6] Indeed, 'if it were not possible to refer the acts of the budgetary authority for review by the Court, the institutions of which that authority is composed could encroach upon the powers of the Member States or of the other institutions or exceed the limits which have been set to their own powers.' [7]

18. I am therefore of the view that the action brought by the French Republic is admissible in so far as it concerns not only the act by which the President of the Parliament declared that the general budget of the EU for the financial year 2017 had been definitively adopted, [8] but also the agendas for the sittings of the Parliament of 30 November 2016 and 1 December 2016 and the legislative resolution of the Parliament of 1 December 2016 on the joint text on the draft general budget.

B. Substance

1. The principle of the organisation of the budgetary sessions in Strasbourg

19. According to paragraph (a) of the sole article of the protocols concerning the seats of the institutions, 'the European Parliament shall have its seat in Strasbourg where the 12 periods of monthly plenary sessions, including the budget session, shall be held.'

20. The French Government considers that that reference to 'the budget session' cannot be interpreted as referring specifically to the part-session during which the initial draft budget, as amended by the Council, is examined and generally amended by the Parliament, in accordance with Article 314(4) TFEU. Even if that concept refers to a unique and specific part-session, nothing suggests that it refers specifically to that period rather than to the period during which the joint text adopted by the Conciliation Committee is debated and voted on.

5 See judgments of 10 February 1983, *Luxembourg* v *Parliament* (230/81, EU:C:1983:32, paragraph 30); of 22 September 1988, *France* v *Parliament* (358/85 and 51/86, EU:C:1988:431, paragraph 15); of 28 November 1991, *Luxembourg* v *Parliament* (C-213/88 and C-39/89, EU:C:1991:449, paragraph 16); and of 13 December 2012, *France* v *Parliament* (C-237/11 and C-238/11, EU:C:2012:796, paragraph 20).

6 See judgment of 3 July 1986, *Council* v *Parliament* (34/86, EU:C:1986:291, paragraph 13).

7 Judgment of 3 July 1986, *Council* v *Parliament* (34/86, EU:C:1986:291, paragraph 12).

8 No party disputes that the act by which the President of the Parliament declared that the general budget of the EU for the financial year 2017 had been definitively adopted is a measure open to challenge for the purpose of Article 263 TFEU. In that connection, see the judgment of 17 September 2013, *Council* v *Parliament* (C-77/11, EU:C:2013:559, paragraph 60).

21. Following a textual and historic interpretation of the protocols concerning the seats of the institutions, considered in their different language versions and in the light of the case-law of the Court, the Parliament submits on the contrary that the term 'the budget session' must be read as referring to the part-session during which the Parliament exercises the powers which were initially conferred on it by Article 203 of the EEC Treaty to propose amendments to the initial draft budget as amended by the Council.

22. The Parliament considers that it follows from the use of the term 'the budget session' in the singular that that phrase refers to one single, specific part-session. By the Edinburgh Decision, the Member States wished only to enshrine the Parliament's previous practice of organising, towards the end of October or at the beginning of November, a plenary part-session in Strasbourg, the so-called 'period of session October II', which was additional to the periods of ordinary monthly plenary part-sessions and was used, essentially, for the first reading of the annual budget. In contrast, nothing in the protocols concerning the seats of the institutions requires the Parliament also to hold the debates and subsequent votes on the joint text adopted by the Conciliation Committee during a period of ordinary plenary part-session in Strasbourg.

23. That interpretation cannot be upheld.

24. The Court has consistently held that, in interpreting a provision of EU law, it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it is part.[9]

25. After all, while 'the wording of a provision … is invariably the starting point of and at the same time the limit of any interpretation',[10] a teleological interpretation becomes optional only where the text in question is absolutely clear and unambiguous.[11] In the present case, it must be noted that the wording of paragraph (a) of the sole article of the protocols concerning the seats of the institutions does not, of itself, enable the scope of the term 'the budget session' to be determined.

26. The use in the French version of the singular definite article 'la' rather than the plural 'les' suggests a single plenary session. However, that restrictive interpretation is not compatible with the procedure for adopting the budget as organised by Article 314 TFEU. If the Council does not approve the admendments adopted by the Parliament following its examination of the draft budget, Article 314(6) TFEU provides for a new parliamentary debate on the agreement on a joint text reached in the Conciliation Committee.

27. Admittedly, it is the Treaty of Lisbon which first involved a Conciliation Committee in the procedure for adopting the annual budget of the EU. On the other hand, the possibility of a second parliamentary session dedicated to adopting the budget is not a novelty. The possiblity of a second reading of the annual budget already existed under Article 203 EEC,[12] namely well before the Edinburgh Decision was adopted and enshrined in the protocols concerning the seats of the institutions.

9 See, in particular, judgments of 16 July 2015, *Lanigan* (C-237/15 PPU, EU:C:2015:474, paragraph 35); of 25 January 2017, *Vilkas* (C-640/15, EU:C:2017:39, paragraph 30); and of 15 March 2017, *Flibtravel International and Leonard Travel International* (C-253/16, EU:C:2017:211, paragraph 18).

10 Opinion of Advocate General Trstenjak in *Agrana Zucker* (C-33/08, EU:C:2009:99, point 37).

11 See, to that effect, the Opinion of Advocate General Léger in *Schulte* (C-350/03, EU:C:2004:568, point 88).

12 See Article 4 of the Treaty amending Certain Budgetary Provisions of the Treaties establishing the European Communities and of the Treaty establishing a Single Council and a Single Commission of the European Communities, signed in Luxembourg on 22 April 1970 (JO 1971, L 2, p. 1), and Article 12 of the Treaty amending certain financial provisions of the Treaties establishing the European Economic Communities and of the Treaty establishing a single Council of the European Communities, signed in Brussels on 22 July 1975 (OJ 1977 L 359, p. 1).

28. Consequently, in the absence of precision, it is impossible for one session to prevail over the other. If the Member States had wished to limit the requirement to organise the debates on the draft EU budget in Strasbourg to one of the two parliamentary stages, they should have so specified.

29. On the contrary, by stating simply that '*the* budget session' is to be held in Strasbourg, it may legitimately be supposed that the governments of the Member States 'intended that *the Parliament exercise its budgetary powers in plenary sitting*, in accordance with Article 203 of the EC Treaty, during one of the ordinary plenary part-sessions held at the seat of the institution.'[13] It is not therefore one of the specific stages of the adoption of the budget which is meant, but rather the exercise of the powers as a whole.

30. In its judgment of 1 October 1997, *France* v *Parliament* (C-345/95, EU:C:1997:450), the Court moreover interpreted the Edinburgh Decision 'as defining the seat of the Parliament as the place where 12 ordinary plenary part-sessions must take place on a regular basis, including *those* during which the Parliament is to exercise the budgetary powers'.[14]

31. That interpretation may be explained by the importance of the adoption of the annual EU budget from a democratic perspective. As the Court has already emphasised, 'the exercise by the Parliament of its budgetary powers in plenary sitting constitutes … a fundamental event in the democratic life of the European Union and must therefore be carried out with all the attention, rigour and commitment which such a responsibility demands. The exercise of those powers requires, inter alia, a public debate in plenary sitting enabling the citizens of the European Union to acquaint themselves with the various political orientations expressed and, as a result, to form a political opinion on the European Union's actions'.[15]

32. Since the protocols concerning the seats of the institutions replicate the Edinburgh Decision, there is no reason to depart from that interpretation. It is justified all the more since the new conciliation procedure introduced by Article 314(5) TFEU is not public and simply involves the participation of 28 members of the Parliament. A debate, in a public and plenary sitting, by the Parliament on the joint text adopted by the Conciliation Committee reinforces the Parliament's role and consequently assumes an increased importance for the democratic legitimacy of the EU.

2. The exception linked to the good functioning of the institution

33. However, the protocols concerning the seats of the institutions are predicated on mutual respect on the part of the Member States and the Parliament for each other's areas of competence.[16] That means that paragraph (a) of the sole provision of those protocols cannot be applied without regard to the duties of loyal cooperation to which the Member States and the EU institutions are subject. Specifically, while the Parliament is required to respect the protocols concerning the seats of the institutions when it determines its internal organisation, that cannot lead to the proper functioning of that institution,[17] or a fortiori that of the EU, being impeded.

13 Judgment of 1 October 1997, *France* v *Parliament* (C-345/95, EU:C:1997:450, paragraph 28); my emphasis.

14 Paragraph 29 of that judgment. See also judgment of 13 December 2012, *France* v *Parliament* (C-237/11 and C-238/11, EU:C:2012:796, paragraph 40).

15 Judgment of 13 December 2012, *France* v *Parliament* (C-237/11 and C-238/11, EU:C:2012:796, paragraph 68).

16 Judgment of 13 December 2012, *France* v *Parliament* (C-237/11 and C-238/11, EU:C:2012:796, paragraph 60).

17 See, to that effect, judgments of 10 February 1983, *Luxembourg* v *Parliament* (230/81, EU:C:1983:32, paragraphs 37 and 38); of 22 September 1988, *France* v *Parliament* (358/85 and 51/86, EU:C:1988:431, paragraphs 34 and 35); of 1 October 1997, *France* v *Parliament* (C-345/95, EU:C:1997:450, paragraphs 31 and 32); and of 13 December 2012, *France* v *Parliament* (C-237/11 and C-238/11, EU:C:2012:796, paragraphs 41 and 42).

34. It is on the basis of those considerations that the Court has held that the provisional decisions of the governments of the Member States relating to the seats of the institutions do not prevent the Parliament, in exercising its power to determine its own internal organisation, from being able to decide to hold a plenary part-session away from Strasbourg, provided that such a decision on the one hand remains exceptional and on the other hand is justified by objective reasons connected with the proper functioning of the Parliament.[18] In the case which was then before it, the reasons relied on by the Parliament concerned the necessity to be able to organise short sessions at short notice, in particular as part of the budgetary procedure, which the Court accepted.[19]

35. While the judgment of 22 September 1988, *France* v *Parliament* (358/85 and 51/86, EU:C:1988:431), predates the adoption of the Edinburgh Decision, the principle and the methodology followed do not seem to me to have lost their relevance. On the one hand, the Edinburgh Decision is based on the decision of 8 April 1965 signed at the same time as the Treaty establishing a single Council and single Commission of the European Communities, which was explicitly referred to and confirmed by the preamble to the protocols concerning the seats of the institutions. On the other hand, the possibility of holding additional plenary part-sessions in Brussels is expressly enshrined in paragraph (a) of the sole article of the protocols concerning the seats of the institutions.

36. In that context, the possibility of holding the second parliamentary session concerning the budget during an additional plenary session in Brussels does not seem to me to infringe the protocols concerning the seats of the institutions provided that that method of proceeding is exceptional and justified by the desire to ensure that the budget is adopted in accordance with the procedure and time limits laid down in Article 314 TFEU.

37. In a democratic EU, the interest for the functioning of the EU — and therefore for the citizens! — in having available a genuine annual budget rather than having recourse to the system of 'provisional twelfths' laid down in Article 315 TFEU must necessarily prevail over the rigid respect of the seat of the Parliament since an additional plenary part-session of the Parliament in Brussels provides the same democratic guarantees that the debates are serious and open to the public as an ordinary plenary part-session in Strasbourg.

38. As emphasised by Article 13 TEU, while the EU has an institutional framework, it is 'to promote its values, advance its objectives, serve its interests, those of its citizens and those of the Member States, and ensure the consistency, effectiveness and continuity of its policies and actions'. To that end, in accordance with the third subparagraph of Article 4(3) TEU, the Member States 'are to facilitate the achievement of the European Union's tasks and refrain from any measure which could jeopardise the attainment of the Union's objectives'. The institutions are thus instruments in the service of the EU, its citizens and its Member States, not obtacles to its functioning.

3. Application to the present case

39. In order to respect the protocols concerning the seats of the institutions, organisation of the debate and vote on the joint text at an additional plenary session of the Parliament in Brussels must therefore be exceptional and justified by the desire to ensure that the budget is adopted in accordance with the procedure and time limits laid down in Article 314 TFEU.

18 See, to that effect, judgment of 22 September 1988, *France* v *Parliament* (358/85 and 51/86, EU:C:1988:431, paragraph 36).

19 See judgment of 22 September 1988, *France* v *Parliament* (358/85 and 51/86, EU:C:1988:431, paragraph 39).

40. With regard to the first condition, the exceptional nature of that method of proceeding seems to me to be indisputable. Since the Edinburgh Decision, the annual budget of the EU has been voted on by the Parliament (or its adoption declared by the President of the Parliament) at an additional plenary part-session in Brussels on only six occasions. [20]

41. As for the second condition, that must be assessed in the light of Article 314(6) TFEU, which requires the Parliament and the Council to adopt the joint text on the draft budget within fourteen days of the date when the Conciliation Committee reach agreement.

42. In the present case, since the joint text on the draft budget was adopted on 17 November 2016, it could not have been considered at the ordinary plenary part-session of the Parliament scheduled in Strasbourg from 12 to 15 December 2016. The ordinary plenary part-session which was held in Strasbourg from 21 to 24 November 2016 was thus the only period during which the Parliament could, in theory, have debated and voted on the joint text on the draft budget for the financial year 2017.

43. However, the Parliament submits that before forwarding the joint text for approval by the Council and the Parliament, it is necessary to 'transpose' what is still only a political agreement into budgetary and legal texts. It is also essential to have it translated into the 24 official EU languages. The Council and Parliament services were informed by the Commission that the relevant documents were available only by an email dated 24 November 2016 at 16.42, namely less than one hour before the end of the period of ordinary part-session of the Parliament. [21]

44. That circumstance appears to me to be an objective reason justifying a derogation from the principle that the annual budget of the EU must be discussed and voted on by the Parliament at an ordinary plenary session in Strasbourg.

45. To repeat the terms used by the French Government in its written observations, the debates and votes on the joint text that resulted from the conciliation constitute, to the same extent as the examination of the Council's position on the draft budget, a fundamental moment in the democratic life of the EU. [22] Referring to the judgment of 13 December 2012, *France* v *Parliament* (C-237/11 and C-238/11, EU:C:2012:7), the French Government considers, correctly, that both must be carried out with all the attention, rigour and commitment that such a responsibility requires.

46. In those circumstancs, it cannot be maintained that 'today, the debates and vote on the joint text constitute a new fundamental stage of the budgetary procedure, and [that] it cannot therefore be considered that that stage is less important than that during which the institutions reach a decision for the first time on the draft budget [of the EU]', [23] and to assert, at the same time, that the availability in all the official EU languages of the joint text in the correct legal and budgetary texts is not the precondition for the Parliament being able to exercise its budgetary powers with the attention, rigour and all the commitment that such a responsibility requires.

20 According to the Parliament's defence, those occasions were the adoption of the budgets for the financial years 1996, 1997, 2007, 2012, 2017 and 2018. Moreover, I note that the French Republic has brought an action for annulment solely against the acts adopted by the Parliament in Brussels at the budgetary sessions 2016 and 2017 (that is to say, the present proceedings and those pending under number C-92/18).

21 The email, concerning the English version of the relevant documents, specifies that the documents in all other official languages are being transmitted directly by the Publications Office of the European Union to the Secretariats of the Budgetary Committee of the Council and the 'BUDG' Committee of the Parliament.

22 See paragraph 53 of the French Republic's reply.

23 See paragraph 52 of the French Republic's reply.

47. In those circumstances, it does seem that the only way in which the general budget for the 2017 financial year could have been adopted within the time limits set out in Article 314(6) TFEU, without impeding the proper functioning of the Parliament, was to include the topic on the agenda of the additional plenary part-session which had been scheduled in Brussels on 30 November and 1 December 2016 when the calendar of plenary part-sessions for 2016 was adopted on 20 May 2015.

48. With regard to the act by which the President of the Parliament, in his capacity as the organ of that institution, confers binding force on the EU budget, it is indisputable that that act is an integral part of the budgetary procedure [24] even if it is only Rule 91 of the Rules of Procedure of the Parliament, and not the Treaty, which provides that, where the President considers that the budget has been adopted in accordance with the provisions of Article 314 TFEU, 'he or she shall declare in Parliament that the budget has been definitively adopted'.

49. That said, while Article 314(9) TFEU imposes no formality for that declaration, neither does it impose any time limit on the President of the Parliament for making it. Consequently, it cannot legitimately be maintained that that 'act' could not take place at the last ordinary plenary part-session of the Parliament which was held in Strasbourg from 12 to 15 December 2016.

50. It follows from the foregoing considerations that the act by which the President of the Parliament declared that the general budget of the EU for the financial year 2017 had been definitively adopted must be annulled.

VI. On maintaining the temporal effects of the act by which the President of the Parliament declared that the general budget of the EU for the financial year 2017 had been definitely adopted

51. If the Court were to annul the act by which the President of the Parliament declared that the general budget of the EU for the financial year 2017 had been definitely adopted, the French Government requests the Court to maintain the effects of that act until the said budget has been definitively adopted by an act which complies with the Treaties.

52. The effect of the annulment of the act of the President of the Parliament is to deprive the 2017 budget of its validity. [25] Where the declaration that the EU budget is illegal comes at a time when a substantial part of the financial year at issue has already elapsed, the need to guarantee the continuity of the European public service and also important reasons of legal certainty justify the Court in specifying the effects of the budget which must be considered to be definitive. [26] Application of the second paragraph of Article 264 TFEU is all the more relevant in the present case since the financial year 2017 has entirely elapsed.

53. In those circumstances, it is justified to maintain the effects of the act by which the President of the Parliament declared that the general budget of the EU had been definitely adopted until the entry into force, within a reasonable time, of a new act validly adopted and intended to replace it.

24 In the case which gave rise to the judgment of 3 July 1986, *Council* v *Parliament* (34/86, EU:C:1986:291, paragraphs 7 and 8), the Court expressly rejected the Parliament's argument that the President of the Parliament intervened *only after* the end of the budgetary procedure.

25 See, to that effect, judgment of 3 July 1986, *Council* v *Parliament* (34/86, EU:C:1986:291, paragraph 46).

26 See, to that effect, judgment of 3 July 1986, *Council* v *Parliament* (34/86, EU:C:1986:291, paragraph 48).

VII. Costs

54. Under Article 138(1) of the Rules of Procedure of the Court, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. However, according to Article 138(3), the parties are to bear their own costs where each party succeeds on some and fails on other heads. Since the action brought by the French Republic was unfounded with regard to three of the four contested acts, it is appropriate to apply that provision.

55. In accordance with Article 140(1) of the Rules of Procedure, the Grand Duchy of Luxembourg should be ordered to bear its own costs.

VIII. Conclusion

56. Having regard to the foregoing considerations, I propose that the Court should rule as follows:

(1) . The act by which the President of the European Parliament declared that the general budget of the European Union for the financial year 2017 had been definitively adopted is annulled.

(2) The effects of the act by which the President of the Parliament declared that the general budget had been definitively adopted are maintained until the entry into force, within a reasonable time, of a new act validly adopted and intended to replace it.

(3) The action is dismissed as to the remainder.

(4) The parties shall bear their own costs.