



Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

2 September 2021 *

(Action for annulment – Decisions (EU) 2020/245 and 2020/246 – Position to be taken on behalf of the European Union within the Partnership Council established by the Comprehensive and Enhanced Partnership Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Armenia, of the other part – Agreement, certain provisions of which may be linked with the common foreign and security policy (CFSP) – Adoption of the Rules of Procedure of the Partnership Council, of the Partnership Committee, subcommittees and other bodies – Adoption of two separate decisions – Choice of legal basis – Article 37 TEU – Article 218(9) TFEU – Voting rules)

In Case C-180/20,

ACTION for annulment under Article 263 TFEU, brought on 24 April 2020,

European Commission, represented by M. Kellerbauer and T. Ramopoulos, acting as Agents,

applicant,

supported by:

Czech Republic, represented by K. Najmanová, M. Švarc, J. Vláčil and M. Smolek, acting as Agents,

intervener,

v

Council of the European Union, represented by P. Mahnič, M. Balta and by M. Bishop, acting as Agents,

defendant,

supported by:

French Republic, represented by T. Stehelin, J.-L. Carré and by A.-L. Desjonquères, acting as Agents,

intervener,

* Language of the case: English.

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, R. Silva de Lapuerta, Vice-President, J.-C. Bonichot, A. Arabadjiev, A. Prechal, N. Piçarra and A. Kumin, Presidents of Chambers, C. Toader (Rapporteur), M. Safjan, D. Šváby, S. Rodin, F. Biltgen, P.G. Xuereb, L.S. Rossi and I. Jarukaitis, Judges,

Advocate General: G. Pitruzzella,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after hearing the Opinion of the Advocate General at the sitting on 17 June 2021,

gives the following

Judgment

- 1 By its action, the European Commission seeks the annulment of Council Decision (EU) 2020/245 of 17 February 2020 on the position to be taken on behalf of the European Union within the Partnership Council established by the Comprehensive and Enhanced Partnership Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Armenia, of the other part, as regards the adoption of the Rules of Procedure of the Partnership Council and those of the Partnership Committee, subcommittees and other bodies set up by the Partnership Council, and the establishment of the list of Sub-Committees, for the application of that Agreement with the exception of Title II thereof (OJ 2020 L 52, p. 3) and of Council Decision (EU) 2020/246 of 17 February 2020 on the position to be taken on behalf of the European Union within the Partnership Council established by the Comprehensive and Enhanced Partnership Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Armenia, of the other part, as regards the adoption of the Rules of Procedure of the Partnership Council and those of the Partnership Committee, subcommittees and other bodies set up by the Partnership Council, and the establishment of the list of Sub-Committees, for the application of Title II of that Agreement (OJ 2020 L 52, p. 5) (together ‘the contested decisions’).

The Comprehensive and Enhanced Partnership Agreement and the contested decisions

- 2 On 20 November 2017, the Council adopted Decision (EU) 2018/104 on the signing, on behalf of the Union, and provisional application of the Comprehensive and Enhanced Partnership Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Armenia, of the other part (OJ 2018 L 23, p. 1). That decision was based on Article 37 TEU and on Article 91, Article 100(2) and Articles 207 and 209 TFEU, in conjunction with Article 218(5), (7) and (8), second subparagraph, TFEU.
- 3 That partnership agreement (‘the Partnership Agreement with Armenia’) was signed on 24 November 2017 and has been applied provisionally since 1 June 2018. It entered into force on 1 March 2021.

- 4 Articles 362 and 363 of the Partnership Agreement with Armenia establish a Partnership Council and a Partnership Committee respectively, whilst Article 364 of that agreement provides for the option of setting up, as required, subcommittees and other bodies. In addition, pursuant to the combined provisions of Article 362(4) and Article 363(4) of that agreement, it is for the Partnership Council to establish its own rules of procedure and to determine therein the duties and functioning of the Partnership Committee, which is responsible *inter alia* for preparing the meetings of the Partnership Council.
- 5 For the purposes of implementing Articles 362 to 364 of the Partnership Agreement with Armenia, the Commission and the High Representative of the European Union for Foreign Affairs and Security Policy jointly adopted, on 29 November 2018, a proposal for a Council Decision on the position to be taken on behalf of the European Union within the Partnership Council established by the Partnership Agreement with Armenia, as regards the adoption of decisions on the rules of procedure of the Partnership Council, the Partnership Committee and those of specialised subcommittees or any other body. That proposal was based on Article 37 TEU and Article 91, Article 100(2) and Articles 207 and 209 TFEU, in combination with Article 218(9) TFEU.
- 6 However, in its amended proposal of 19 July 2019, the Commission deleted the reference to Article 37 TEU as a substantive legal basis. That amended proposal was a response to findings made by the Court in the judgment of 4 September 2018, *Commission v Council (Agreement with Kazakhstan)* (C-244/17, EU:C:2018:662), which annulled Council Decision (EU) 2017/477 of 3 March 2017 on the position to be adopted on behalf of the European Union within the Cooperation Council established under the Enhanced Partnership and Cooperation Agreement between the European Union and its Member States, of the one part, and the Republic of Kazakhstan, of the other part as regards the working arrangements of the Cooperation Council, the Cooperation Committee, specialised subcommittees or any other bodies (OJ 2017 L 73, p. 15), on the ground that the Council had wrongly relied on Article 31(1) TEU as a basis for the adoption of that decision.
- 7 At the meeting of 4 December 2019, the Permanent Representatives' Committee (Coreper) decided to split the legal act as to the position to be adopted into two Council decisions, namely, first, Decision 2020/245, intended to ensure the application of the Partnership Agreement with Armenia with the exception of Title II thereof, based on a substantive legal base constituted by Article 91 and Articles 207 and 209 TFEU, and, secondly, Decision 2020/246, intended to ensure the application of Title II of that agreement, based on a substantive legal basis constituted solely by Article 37 TEU. On 17 February 2020, the Council adopted the contested decisions on those same substantive legal bases. Whereas Decision 2020/245 was adopted by qualified majority, its procedural legal basis being constituted in particular by the first subparagraph of Article 218(8) TFEU, and by Article 218(9) TFEU, Decision 2020/246 was adopted by unanimity. The procedural legal basis for that decision includes, in addition to Article 218(9) TFEU, the second subparagraph of Article 218(8) TFEU, pursuant to which the Council acts unanimously where the agreement covers a field for which unanimity is required for the adoption of an act of the European Union.
- 8 Thus, Article 1(1) of Decision 2020/245 provides that the position to be taken on the European Union's behalf within the Partnership Council established by the Partnership Agreement with Armenia, as regards the adoption of the Rules of Procedure of the Partnership Council and those of the Partnership Committee, subcommittees and other bodies set up by the Partnership Council, and the establishment of the list of Sub-Committees, for the application of that Agreement with

the exception of Title II thereof, is to be based on the draft Decision of the Partnership Council. Likewise, the content of Article 1(1) of Decision 2020/246 is identical as regards the application of Title II of that agreement.

- 9 The Commission expressed its objections in a statement recorded in the minutes of the Council meeting, submitting that the addition of Article 37 TEU as a legal basis of Decision 2020/246 and the division of the act of the Council into two decisions was unlawful. The Czech Republic also recorded a statement in the minutes of the meetings of Coreper and of the Council, according to which that introduction was wrong in the light of the judgment of 4 September 2018, *Commission v Council (Agreement with Kazakhstan)* (C-244/17, EU:C:2018:662). Similarly, Hungary expressed its reservations with regard to the adoption of two separate decisions. Those two Member States abstained from voting when the contested decisions were adopted.

Forms of order sought by the parties

- 10 The Commission claims that the Court should annul the contested decisions, maintain their effects, and order the Council to pay the costs.
- 11 The Council contends that the action should be dismissed and that the Commission should be ordered to pay the costs. In the alternative, in the event that the contested decisions are annulled, it requests that the Court maintain the effects of those decisions.
- 12 By decisions of the President of the Court of 25 August 2020 and of 25 September 2020, the Czech Republic and the French Republic were granted leave to intervene in support of the forms of order sought by the Commission and by the Council, respectively.

The action

- 13 The Commission raises two pleas in law alleging, first, incorrect use of Article 37 TEU as a substantive legal base for Decision 2020/246 and, secondly, the unlawful division, by the adoption of the contested decisions, of the act on the position to be taken on the European Union's behalf within the Partnership Council established by the Partnership Agreement with Armenia into two separate decisions.

The first plea in law

Arguments of the parties

- 14 By its first plea in law, the Commission, supported by the Czech Republic, criticises the Council for having included Article 37 TEU and the second subparagraph of Article 218(8) TFEU in the legal base of Decision 2020/246, leading to the application of the rule requiring a unanimous vote by the Council. According to the Commission, the links with the common foreign and security policy (CFSP) that Title II of the Partnership Agreement with Armenia presented are insufficient to justify that inclusion.

- 15 In support of that plea, the Commission submits that a Council decision pursuant to Article 218(9) TFEU on the implementation of an international agreement as a whole must be adopted by a qualified majority where the centre of gravity of that agreement concerns a field for which the substantive legal bases require such a majority. Thus, the choice of legal base must rest on objective factors amenable to judicial review, which include in particular the content and the aim of the measure concerned.
- 16 In that context, while general objectives may be set out in the preamble or in the initial articles of the measure concerned, it is the scope of the obligations effectively provided for in order to pursue the objectives in question, and the predominance of certain matters covered that are decisive for determining the field that it covers. Where a measure whose adoption is envisaged concerns, in general, the functioning of bodies created on the basis of an international agreement, the field covered by that measure must be determined in the light of the agreement as a whole. An institution's practice that is contrary to those rules cannot alter them or justify derogations from them.
- 17 In the present case, according to the Commission, the Partnership Agreement with Armenia is predominantly concerned with trade, development cooperation and trade in transport services, to which the vast majority of the provisions of the agreement are dedicated. The links with the CFSP presented by the nine articles comprising Title II of that agreement are, according to the Commission, purely incidental to those components and are not sufficiently significant to warrant recourse to a different substantive legal basis.
- 18 For the remainder, those nine articles are comparable, in content and in number, with the provisions of the Partnership Agreement with the Republic of Kazakhstan which were examined in the case that gave rise to the judgment of 4 September 2018, *Commission v Council (Agreement with Kazakhstan)* (C-244/17, EU:C:2018:662), which the Court did not find to be sufficient to justify the addition of a specific substantive legal base relating to the CFSP and, since the titles of both agreements could be connected to the CFSP, establishes, in any event, the same limited extent of its engagement.
- 19 In addition, the sole fact that the Partnership Agreement with Armenia was concluded in a complex geopolitical context, characterised by the Nagorno-Karabakh conflict, does not warrant the attribution to that agreement of a CFSP dimension that is not apparent from its content.
- 20 The Czech Republic supports the forms of order sought by the Commission. According to that Member State, the objectives in the Partnership Agreement with Armenia that may relate to the CFSP may equally be integrated within the development cooperation policy or commercial policy. Moreover, the accumulation of several provisions in a substantive legal base should remain the exception. Having regard to the low qualitative and quantitative significance of the components of Title II of that agreement that may be linked with the CFSP, such an exception is not justified in the present case.
- 21 In its defence, the Council alleges that the aims of an international agreement are crucial for establishing the relationship between the provisions covering various policies, the content of the agreement being required to be examined only in a second step. However, in the present case, the Commission's arguments do not sufficiently take into account the aims of the Partnership Agreement with Armenia. An analysis of the objectives of that agreement and the content of

Title II thereof show that the provisions connected with the CFSP are not incidental in comparison with the fields of trade and development cooperation but constitute an independent component of that agreement.

- 22 In that regard, the Council submits that, unlike the partnership agreement at issue in the judgment of 4 September 2018, *Commission v Council (Agreement with Kazakhstan)* (C-244/17, EU:C:2018:662), the Partnership Agreement with Armenia included at least one additional substantive objective, namely the enhancement of the comprehensive political partnership (Article 1(a)) and the promotion the development of close political relations between the parties (Article 1(b)).
- 23 The Council concludes therefore that the Partnership Agreement with Armenia is not an instrument merely in the field of development cooperation and trade. In fact, Article 3 thereof translates some of the general objectives laid down in Article 1 thereof into a set of more precise objectives, pursued specifically by the provisions of Title II on political dialogue, domestic reform and cooperation in the field of the CFSP. It is not clear from the case-law of the Court, according to the Council, that the provisions providing for cooperation in the form of political dialogue cannot constitute such an implementation of the CFSP objectives.
- 24 In addition, as regards the Commission's argument that almost all of the provisions of the Partnership Agreement with Armenia cover fields unconnected with the CFSP, the Council observes that the criterion relating to the size of Title II does not relate to either the aim or the content of the measures adopted, such that it cannot be determinative for the choice of legal base for the European Union's action. In particular, that criterion is irrelevant for the purposes of determining the relationship between the provisions concerned and the other parts of the agreement.
- 25 The French Republic, which intervenes in support of the Council's arguments, observes that the determination of the objectives pursued by a measure must be carried out by analysing the content of that measure and that, at the same time, the examination of the content must be made in the light of the aims of the measure. That approach is particularly important where the measure in part falls within the scope of the CFSP, since the CFSP is subject to specific rules and procedures under Article 24(1) TEU. Thus, the fact that there are numerically fewer provisions falling within the CFSP cannot, in the presence of aims clearly falling within it, make it possible to conclude that the latter is merely incidental by comparison with the other policies covered. Economic cooperation, by its nature, requires a greater amount of detail than the establishment of political dialogue does for its implementation.
- 26 The context of the Partnership Agreement with Armenia must also be taken into account and shows, likewise, that that agreement falls within the CFSP, given that it was concluded in the specific political and security context characterised by regional crises, such as the conflict in the Nagorno-Karabakh.

Findings of the Court

- 27 At the outset it should be recalled that, in order to satisfy requirements of clarity, consistency and rationalisation, Article 218 TFEU lays down a single procedure of general application concerning, in particular, the negotiation and conclusion of international agreements which the European

Union is competent to conclude in the fields of its activity, including the CFSP, except where the Treaties lay down special procedures (judgment of 4 September 2018, *Commission v Council (Agreement with Kazakhstan)*, C-244/17, EU:C:2018:662, paragraph 21 and the case-law cited).

- 28 As regards Article 218(9) TFEU, that provision lays down a simplified procedure for the purpose, in particular, of deciding on the positions to be adopted on behalf of the European Union in the context of its participation in the adoption, within a decision-making body set up by the international agreement concerned, of acts applying or implementing that agreement. It is clear, however, from combined reading of paragraphs 6, 9 and 10 of Article 218 TFEU that the simplification of that procedure, which applies only in respect of acts that do not supplement or amend the institutional framework of the agreement, consists solely in a limitation of the European Parliament's participation (see, to that effect, judgment of 4 September 2018, *Commission v Council (Agreement with Kazakhstan)*, C-244/17, EU:C:2018:662, paragraphs 25 and 26).
- 29 As Article 218(9) TFEU does not, by contrast, lay down any voting rule for the purpose of adoption by the Council of the categories of decisions which it covers, the applicable voting rule must be determined in each individual case by reference to Article 218(8) TFEU. In view of the use, first, of the phrase 'throughout the procedure' in the first subparagraph of that provision and, secondly, the word 'however' at the start of the second subparagraph of that provision, it must be held that, as a general rule, the Council acts by a qualified majority and that it is only in the situations set out in the second subparagraph that it acts by unanimity. In those circumstances, the applicable voting rule must, in each individual case, be determined according to whether or not it falls within one of those situations.
- 30 Thus, the Court has already had occasion to hold that, where a decision by which the Council establishes the position to be adopted on behalf of the European Union in a body set up by an international agreement does not correspond to any of the situations in which the second subparagraph of Article 218(8) TFEU requires a unanimous vote, the Council must, in principle, in accordance with the first subparagraph of Article 218(8) TFEU read in conjunction with Article 218(9) TFEU, act by qualified majority when adopting that decision (judgment of 4 September 2018, *Commission v Council (Agreement with Kazakhstan)*, C-244/17, EU:C:2018:662, paragraph 27 and the case-law cited).
- 31 In the first of those cases, the second subparagraph of Article 218(8) TFEU requires that a decision pursuant to paragraph 9 of that article is to be adopted unanimously where it covers a field for which unanimity is required for the adoption of a European Union act. In order to determine, in that context, whether a decision adopted within the framework of that paragraph does cover a field for which unanimity is required, it is necessary to refer to its substantive legal basis (judgment of 4 September 2018, *Commission v Council (Agreement with Kazakhstan)*, C-244/17, EU:C:2018:662, paragraph 35).
- 32 According to settled case-law, the choice of the legal basis for an EU measure must rest on objective factors amenable to judicial review, which include the aim and content of that measure (judgment of 4 September 2018, *Commission v Council (Agreement with Kazakhstan)*, C-244/17, EU:C:2018:662, paragraph 36 and the case-law cited).

- 33 In that regard, contrary to the submissions made in essence by the Council, and as the Advocate General observed in points 28 and 29 of his Opinion, it does not follow from the case-law of the Court that one of those criteria prevails over the other. Indeed, it is by having regard to all the objectively identifiable factors pertaining to one or to the other of those criteria that, in each specific case, the field covered by the act must be determined.
- 34 If 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 measure must be founded on a single legal basis, namely, that required by the main or predominant purpose or component. It is only exceptionally, where it is established that the measure simultaneously pursues a number of objectives or has several components that are inextricably linked, without one being incidental in relation to the other, that such a measure must be founded on the various corresponding legal bases (see, to that effect, judgment of 4 September 2018, *Commission v Council (Agreement with Kazakhstan)*, C-244/17, EU:C:2018:662, paragraph 37 and the case-law cited). The use of two legal bases is not possible, however, where the procedures laid down for each legal basis are incompatible with one another (see, to that effect, judgment of 6 November 2008, *Parliament v Council*, C-155/07, EU:C:2008:605, paragraph 37).
- 35 Thus, just as is the case for decisions concerning the conclusion of an international agreement by the European Union, a decision by which the Council establishes the position to be adopted on behalf of the European Union in a body set up by an agreement, pursuant to Article 218(9) TFEU, and which concerns exclusively a field for which unanimity is required, must, in principle – by way of derogation from the general rule of qualified majority laid down in the first subparagraph of Article 218(8) TFEU – be adopted unanimously, in accordance with the second subparagraph of that provision. That is so as regards the CFSP, since the first subparagraph of Article 31(1) TEU provides in particular that decisions under Chapter 2 of Title V of the EU Treaty are to be taken unanimously, except where that chapter provides otherwise. By contrast, if such a decision comprises several components or pursues a number of objectives, some of which fall within the CFSP, the voting rule applicable for its adoption must be determined in the light of its main or predominant purpose or component. If the main or predominant purpose or component of the decision covers a field for which unanimity is not required for the adoption of an EU measure, that decision must, in accordance with the first subparagraph of Article 218(8) TFEU, be adopted by qualified majority (see, to that effect, judgment of 4 September 2018, *Commission v Council (Agreement with Kazakhstan)*, C-244/17, EU:C:2018:662, paragraph 38).
- 36 It is in the light of the considerations set out in paragraphs 27 to 35 of this judgment that it must be examined whether the contested decisions cover a field, such as the CFSP, for which unanimity is required, or whether they fall within the framework of European Union policies for which it is necessary, in principle, to act by qualified majority, which includes, in particular, the fields of transport, the common commercial policy and development cooperation, within the meaning of Articles 91, 207 and 209 TFEU.
- 37 In that regard, the contested decisions were adopted for the purpose of establishing the position to be taken on the European Union's behalf within the Partnership Council established by the Partnership Agreement with Armenia, as regards the adoption of the rules of procedure of the Partnership Council, the Partnership Committee, subcommittees and other bodies set up by the Partnership Council, and the establishment of the list of sub-committees, for the application of

that agreement. In particular, Decision 2020/245 concerns the whole of the Partnership Agreement with Armenia, except for Title II thereof, whereas Decision 2020/246 covers only that Title II.

- 38 It is necessary, nevertheless, to state that, even though those decisions formally concern different titles of the Partnership Agreement with Armenia, the field that they cover and, hence, the substantive legal basis of the European Union external action at issue must be assessed with regard to that agreement as a whole.
- 39 The contested decisions concern, overall, the functioning of the international bodies created on the basis of the Partnership Agreement with Armenia.
- 40 As the Advocate General observed, in essence, in point 43 of his Opinion, the adoption of two separate decisions of the Council, based on different legal bases, but which seek to establish the single position to be adopted on behalf of the European Union on the functioning of the bodies established by that agreement, can be justified only if the agreement, considered as a whole, contains distinct components corresponding to the different legal bases used for the adoption of those decisions.
- 41 As regards, first, the content of the Partnership Agreement with Armenia, it is true that Title II thereof, entitled, ‘Political dialogue and reform; Cooperation in the field of foreign and security policy’, which comprises Articles 3 to 11 of that agreement, contains provisions concerning the promotion of political dialogue in the field of security and, therefore, covers questions that may be linked to the CFSP.
- 42 Thus, Article 3 of the Partnership Agreement with Armenia recalls the aims of political dialogue and lists, in paragraph 2, the 11 objectives pursued in the context of that dialogue, which include: the enhancement of the political partnership; the promotion of international peace, stability and security; the strengthening of cooperation as regards crisis management; the strengthening of cooperation in the fight against the proliferation of arms; the strengthening of respect for democratic principles, the rule of law, good governance and human rights and fundamental freedoms; the development of dialogue and deepening of cooperation between the Parties in the field of security and defence; and, the development of good neighbourly relations.
- 43 In addition, Article 4 of that agreement, entitled ‘Domestic reform’, lists a series of general objectives pursued by the cooperation of the parties to the agreement, which include the development, consolidation and increase of the stability and effectiveness of democratic institutions and the rule of law, and ensuring respect for human rights and fundamental freedoms.
- 44 For its part, Article 5 of that agreement, entitled ‘Foreign and security policy’, provides, in paragraph 1 thereof, that ‘the Parties shall intensify their dialogue and cooperation in the area of [the CFSP], including the common security and defence policy, recognising the importance that the Republic of Armenia attaches to its participation in international organisations and cooperation formats and its existing obligations arising therefrom, and shall address in particular issues of conflict prevention and crisis management, risk reduction, cybersecurity, security-sector reform, regional stability, disarmament, non-proliferation, arms control and export control’. That same Article 5 states, in paragraph 2 thereof, that ‘the Parties reaffirm their commitment to the principles and norms of international law, including those enshrined in the [United Nations (UN)] Charter and the [Organisation for Security and Cooperation in Europe (OSCE)] Helsinki Final Act, and their commitment to the promotion of those principles in their bilateral and

multilateral relations'. As for Articles 6 to 11 of that agreement, those articles reaffirm the commitment of the parties to the prevention of serious crimes of international concern, to conflict prevention and to crisis management, to regional stability and to the peaceful resolution of conflicts, to disarmament, to the fight against the illicit trade in small arms and light weapons and to the fight against terrorism, and to their desire for cooperation and dialogue in those fields.

- 45 However, the characterisation of an agreement as a development cooperation agreement must be determined having regard to its essential object and not in terms of its individual clauses, provided that those clauses do not impose such extensive obligations, in the specific areas that they cover, that those obligations in fact constitute objectives distinct from those of development cooperation (see, to that effect, judgments of 11 June 2014, *Commission v Council*, C-377/12, EU:C:2014:1903, paragraph 39, and of 14 June 2016, *Parliament v Council*, C-263/14, EU:C:2016:435, paragraph 47).
- 46 While it is true that the provisions of Title II of the Partnership Agreement with Armenia cover subjects capable of falling within the CFSP and reaffirm the will of the parties to collaborate in that area, it must be held, as the Advocate General observed in points 65 and 70 of his Opinion, that those same provisions, which are few in number compared with the total of 386 articles of that agreement, most of which concern the fields of trade and development cooperation, are for the main part limited to declarations by the contracting parties of a programmatic nature, which merely describe the relationship between them and their common future intentions, without establishing a programme of action or determining the concrete terms governing their cooperation.
- 47 As regards, secondly, the aims of that agreement, it is apparent from an analysis of the whole of its preamble, the objectives listed in its Article 1, and the vast majority of its provisions, that that agreement seeks principally to establish the framework for cooperation in matters of transport, trade and development between the European Union and its Member States, of the one part, and the Republic of Armenia, of the other part.
- 48 In particular, Article 1 of that agreement sets out its aims in several objectives, which include: the enhancement of the comprehensive political and economic partnership and of cooperation between the parties; the strengthening of the framework for political dialogue on all areas of mutual interest, promoting the development of close political relations between the parties; the contribution to the strengthening of democracy and political, economic and institutional stability in Armenia; the promotion, preservation and strengthening of peace and stability at both regional and international level; the enhancement of cooperation in the field of freedom, security and justice; the enhancement of mobility and people-to-people contacts; the support of the Republic of Armenia's efforts to develop its economic potential via international cooperation; the establishment of enhanced trade cooperation; and, the establishment of conditions for increasingly close cooperation in other areas of mutual interest.
- 49 In that regard, it should be recalled that European Union policy in the field of development cooperation within the meaning of Article 208 TFEU, which is one of the principal components of the Partnership Agreement with Armenia, is not limited to measures directly aimed at the eradication of poverty, but also pursues the general objectives of the European Union's external action, referred to in Article 21 TEU, such as the objective, set out in its paragraph 2(c), of preserving peace, preventing conflicts and strengthening international security, and likewise that, set out in its paragraph 2(d), of fostering the sustainable economic, social and environmental development of developing countries (see, to that effect, judgment of 11 June 2014, *Commission v*

Council, C-377/12, EU:C:2014:1903, paragraph 37). The Court has also had occasion to point out, before the entry into force of the Treaty of Lisbon, that the fight against the proliferation of small arms and light weapons may be regarded as serving the objectives of the development cooperation policy in that it can contribute to the elimination or reduction of obstacles to the economic and social development of the country concerned (see, to that effect, judgment of 20 May 2008, *Commission v Council*, C-91/05, EU:C:2008:288, paragraph 68).

- 50 Furthermore, the objectives of development cooperation are broad in the sense that it must be possible for the measures required for their pursuit to concern a variety of specific areas. That is so in particular in the case of an agreement establishing the framework for that cooperation (judgment of 3 December 1996, *Portugal v Council*, C-268/94, EU:C:1996:461, paragraph 37).
- 51 In that context, to require a development cooperation agreement also to be based on a provision other than the provision relating to that policy whenever the agreement touches on a specific area would in practice be liable to render devoid of substance the competence and procedure prescribed in that latter provision (see, to that effect, judgments of 3 December 1996, *Portugal v Council*, C-268/94, EU:C:1996:461, paragraph 38, and of 11 June 2014, *Commission v Council*, C-377/12, EU:C:2014:1903, paragraph 38).
- 52 In the present case, Article 1 of the Partnership Agreement with Armenia expresses the will of the parties to ‘strengthen the framework for political dialogue’ that they intend to maintain, whereas Article 3(2) of that agreement sets out the objectives of that dialogue by listing a series of more specific aims. As the Council submits, some of those specific aims, in particular that set out in Article 3(2)(b) of the agreement which is to increase the effectiveness of cooperation in the area of foreign and security policy, may be linked to the CFSP. However, the enumeration of those specific aims is not, as has been underlined in essence in paragraph 46 of this judgment, accompanied by any programme of action or concrete terms governing cooperation in that field, which may be capable of establishing that the CFSP constitutes one of the distinct components of that same agreement, outside the scope of those aspects connected with trade and development cooperation.
- 53 Having regard to the broad understanding of the objectives of development cooperation within the framework of European Union policies, as recalled in paragraphs 49 and 50 of this judgment, and to the fact that the Partnership Agreement with Armenia as a whole principally pursues objectives connected with trade and development cooperation in relation to that State, it must be held that the principal components of that agreement, which are the common commercial policy, trade in transport services and development cooperation, encompass the elements that it contains of political dialogue which may be linked to the CFSP, with the result that the CFSP cannot be regarded as constituting a distinct component of that agreement but is, on the contrary, incidental to the principal components referred to above (see, by analogy, judgment of 4 September 2018, *Commission v Council (Agreement with Kazakhstan)*, C-244/17, EU:C:2018:662, paragraph 46).
- 54 Furthermore, the context of a measure may certainly also be taken into account in order to determine its legal basis (see, to that effect, judgment of 18 December 2014, *United Kingdom v Council*, C-81/13, EU:C:2014:2449, paragraph 38 and the case-law cited). In that regard, the French Republic points out, in particular, the contextual element represented by the Nagorno-Karabakh conflict. It must be observed, however, that the Partnership Agreement with Armenia does not envisage any concrete or specific measure with a view to addressing that situation which puts international security in issue.

- 55 That finding is corroborated by the fact that, as is apparent from paragraphs 38 to 40 of this judgment, the contested decisions have as their object the functioning of the international bodies created on the basis of that agreement, with the result that those decisions cannot be regarded as pertaining to concrete measures which may potentially be taken on the basis of that agreement.
- 56 It follows from all of the foregoing that the components or declarations of intention in the Partnership Agreement with Armenia which may be linked to the CFSP are not sufficient to constitute an autonomous component of that agreement. Therefore, the Council was wrong to choose Article 37 TEU as the substantive legal basis and the second subparagraph of Article 218(8) TFEU as the procedural legal basis of Decision 2020/246.
- 57 Consequently, the Commission's first plea in law must be upheld and the Decision 2020/246 must be annulled.
- 58 As regards Decision 2020/245, it must be held that, as is apparent from recital 10 and from Article 1 thereof, that decision does not relate to the position to be adopted on behalf of the European Union within the Partnership Council established by the Partnership Agreement with Armenia in so far as that position is covered by the application of Title II of that agreement. However, it follows from the examination of the first plea that the provisions comprising that title do not constitute a distinct component of that agreement, obliging the Council to use, *inter alia*, Article 37 TEU and the second subparagraph of Article 218(8) TFEU as a basis for establishing that same position. In accordance with what is stated in paragraph 40 of this judgment, it must therefore be held that there is nothing to justify the Council excluding the position in question from the object of Decision 2020/245, in so far as it covers the application of Title II of that same agreement, and adopting a separate decision pursuant to Article 218(9) TFEU, which has as its object the establishment of that position in so far as it covers that same application. It follows that Decision 2020/245 must also be annulled.

The second plea in law

- 59 As the first plea in law has been upheld and the contested decisions annulled, it is unnecessary to examine the second plea in law.

Maintenance of the effects of the contested decisions

- 60 The Council, the Commission, and the Czech Republic concur in requesting, in the event that the contested decisions are annulled, that their effects be maintained, in order to avoid any negative consequence for the implementation of the Partnership Agreement with Armenia.
- 61 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.
- 62 In that regard, it is apparent from the case-law of the Court that, on grounds of legal certainty, the effects of such an act may be maintained, in particular where the immediate effects of its annulment would give rise to serious negative consequences for the parties concerned (see, to that effect, judgment of 28 July 2016, *Council v Commission*, C-660/13, EU:C:2016:616, paragraph 51).

- 63 In the present case, the annulment of the contested decisions without their effects being maintained would be liable to disrupt the functioning of the bodies established by the Partnership Agreement with Armenia, to cast doubt on the commitment of the European Union in relation to the legal measures adopted by those bodies and thus to hinder the proper implementation of that agreement (see, by analogy, judgment of 4 September 2018, *Commission v Council (Agreement with Kazakhstan)*, C-244/17, EU:C:2018:662, paragraph 51, and the case-law cited).
- 64 Consequently, the effects of the contested decisions which are annulled by the present judgment, must be maintained on grounds of legal certainty pending a new decision to be taken by the Council which complies with this judgment.

Costs

- 65 Under Article 138(1) of the Rules of Procedure of the Court of Justice, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for costs and the Council has been unsuccessful, the Council must be ordered to pay the costs.
- 66 Under Article 140(1) of the Rules of Procedure, Member States which intervene in proceedings are to bear their own costs. The French Republic and the Czech Republic should therefore be ordered to bear their own costs.

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

1. **Annuls Council Decision (EU) 2020/245 of 17 February 2020 on the position to be taken on behalf of the European Union within the Partnership Council established by the Comprehensive and Enhanced Partnership Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Armenia, of the other part, as regards the adoption of the Rules of Procedure of the Partnership Council and those of the Partnership Committee, subcommittees and other bodies set up by the Partnership Council, and the establishment of the list of Sub-Committees, for the application of that Agreement with the exception of Title II thereof, and Council Decision (EU) 2020/246 of 17 February 2020 on the position to be taken on behalf of the European Union within the Partnership Council established by the Comprehensive and Enhanced Partnership Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Armenia, of the other part, as regards the adoption of the Rules of Procedure of the Partnership Council and those of the Partnership Committee, subcommittees and other bodies set up by the Partnership Council, and the establishment of the list of Sub-Committees, for the application of Title II of that Agreement;**
2. **Orders that the effects of Decisions 2020/245 and 2020/246 be maintained;**
3. **Orders the Council of the European Union to pay the costs;**
4. **Orders the French Republic and the Czech Republic to bear their own costs.**

Lenaerts	Silva de Lapuerta	Bonichot
Arabadjiev	Prechal	Piçarra
Kumin	Toader	Safjan
Šváby	Rodin	Biltgen
Xuereb	Rossi	Jarukaitis

Delivered in open court in Luxembourg on 2 September 2021.

A. Calot Escobar
Registrar

K. Lenaerts
President