



Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

1 March 2022*

(Action for annulment – Decision (EU) 2020/470 – Extension of the period of entitlement for audiovisual co-productions as provided for in Article 5 of the Protocol on Cultural Cooperation to the Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part – Procedural legal basis – Article 218(7) TFEU – Applicable procedure and voting rule)

In Case C-275/20,

ACTION for annulment under Article 263 TFEU, brought on 23 June 2020,

European Commission, represented by J.-F. Brakeland, M. Afonso and D. Schaffrin, acting as Agents,

applicant,

v

Council of the European Union, represented by P. Plaza García and B. Driessen, acting as Agents,

defendant,

supported by:

French Republic, represented by J.-L. Carré, T. Stehelin, E. de Moustier and A. Daniel, acting as Agents,

Kingdom of the Netherlands, represented by M.K. Bulterman, C.S. Schillemans and J. Langer, acting as Agents,

interveners,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, L. Bay Larsen, Vice-President, A. Arabadjiev, A. Prechal, K. Jürimäe, C. Lycourgos, E. Regan, I. Jarukaitis (Rapporteur), I. Ziemele and J. Passer, Presidents of Chambers, M. Ilešič, T. von Danwitz, F. Biltgen, P.G. Xuereb and N. Wahl, Judges,

* Language of the case: English.

Advocate General: J. Richard de la Tour,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after hearing the Opinion of the Advocate General at the sitting on 28 October 2021,

gives the following

Judgment

- 1 By its application, the European Commission seeks the annulment of Council Decision (EU) 2020/470 of 25 March 2020 as regards the extension of the period of entitlement for audiovisual co-productions as provided for in Article 5 of the Protocol on Cultural Cooperation to the Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part (OJ 2020 L 101, p. 1; ‘the contested decision’).

Legal context

Protocol on Cultural Cooperation

- 2 The Protocol on Cultural Cooperation (OJ 2011 L 127, p. 1418; ‘the Protocol’), which is annexed to the Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part (OJ 2011 L 127, p. 6; ‘the Agreement’), provides in Article 5, headed ‘Audiovisual co-productions’, for the entitlement for audiovisual co-productions to benefit from the respective schemes for the promotion of local/regional cultural content (‘the entitlement at issue’). That article is worded as follows:

‘...

3. The Parties, in conformity with their respective legislation, shall facilitate co-productions between producers from the EU Party and Korea, including through [the entitlement at issue].

...

8. (a) The [entitlement at issue] is established for a period of three years following the application of this Protocol. Upon advice from the Domestic Advisory Groups, six months before the expiry, the Committee on Cultural Cooperation will coordinate in order to assess the results of the implementation of the entitlement in terms of enhancement of cultural diversity and mutually beneficial cooperation on co-produced works.

- (b) The entitlement will be renewed for a duration of three years and shall thereafter be automatically renewed for further successive periods of the same duration, unless a Party terminates the entitlement by giving notice in writing at least three months before the expiry of the initial or any subsequent period. Six months before the expiry of each renewed period, the Committee on Cultural Cooperation will conduct an assessment on similar terms as described in subparagraph (a).

...'

Decision 2011/265/EU

- 3 Recital 6 of Council Decision 2011/265/EU of 16 September 2010 on the signing, on behalf of the European Union, and provisional application of the Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part (OJ 2011 L 127, p. 1), states:

'Pursuant to Article 218(7) [TFEU], it is appropriate for the Council [of the European Union] to authorise the Commission to approve certain limited modifications to the Agreement. The Commission should be authorised to bring about the termination of the [entitlement at issue] unless the Commission determines that the entitlement should be continued and this is approved by the Council pursuant to a specific procedure necessitated both by the sensitive nature of this element of the Agreement and by the fact that the Agreement is to be concluded by the Union and its Member States. ...'

- 4 Article 4(1) of Decision 2011/265 provides:

'The Commission shall provide notice to [the Republic of] Korea of the Union's intention not to extend the period of [the entitlement at issue] following the procedure set out in Article 5(8) [of the Protocol] unless, on a proposal from the Commission, the Council agrees four months before the end of such period of entitlement to continue the entitlement. If the Council agrees to continue the entitlement this provision shall again become applicable at the end of the renewed period of entitlement. For the specific purposes of deciding on the continuation of the period of entitlement, the Council shall act by unanimity.'

Implementing Decision 2014/226/EU

- 5 By Council Implementing Decision 2014/226/EU of 14 April 2014 as regards the extension of the period of entitlement for audiovisual co-productions as provided for in Article 5 of the Protocol on Cultural Cooperation to the Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part (OJ 2014 L 124, p. 25), the period of the entitlement at issue was extended for a duration of three years, from 1 July 2014 to 30 June 2017.

Decision (EU) 2015/2169

- 6 By Council Decision (EU) 2015/2169 of 1 October 2015 on the conclusion of the Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part (OJ 2015 L 307, p. 2), the Agreement was approved on behalf

of the European Union. Recital 6 of that decision has the same wording as recital 6 of Decision 2011/265. Likewise, Article 3(1) of Decision 2015/2169 is couched in terms similar to those of Article 4(1) of Decision 2011/265.

Decision (EU) 2017/1107

- 7 By Council Decision (EU) 2017/1107 of 8 June 2017 as regards the extension of the period of entitlement to audiovisual co-productions as provided for in Article 5 of the Protocol on Cultural Cooperation to the Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part (OJ 2017 L 160, p. 33), the period of the entitlement at issue was extended for a duration of three years, from 1 July 2017 to 30 June 2020.

The contested decision

- 8 The contested decision, which was adopted on the basis of Article 3(1) of Decision 2015/2169, provides that the period of the entitlement at issue is extended for a duration of three years, from 1 July 2020 to 30 June 2023.

Forms of order sought and procedure before the Court

- 9 The Commission claims that the Court should annul the contested decision and order the Council to pay the costs.
- 10 The Council contends that the Court should dismiss the action and order the Commission to pay the costs. In the alternative, should the contested decision be annulled, it requests the Court to maintain its effects until the grounds for annulment established have been remedied.
- 11 By decisions of the President of the Court of 7 December 2020, the French Republic and the Kingdom of the Netherlands were granted leave to intervene in support of the form of order sought by the Council.

The action

Arguments of the parties

- 12 In support of its action for annulment, the Commission puts forward a single plea in law, alleging that the use of Article 3(1) of Decision 2015/2169 as a legal basis for the contested decision is contrary to the Treaties and the Court's case-law.
- 13 In this single plea, the Commission contends that, by having recourse to that legal basis, which requires the Council to act by unanimity and excludes the European Parliament's involvement, instead of choosing, as the procedural legal basis, Article 218(6)(a)(v) TFEU which, read in conjunction with the first subparagraph of Article 218(8) TFEU, provides for qualified majority voting in the Council after obtaining the consent of the Parliament, as the Commission had proposed, the Council altered the applicable voting rule and did not respect the Parliament's prerogatives as regards the extension of the application of a part of an international agreement.

- 14 The Commission submits that Article 3(1) of Decision 2015/2169 constitutes a ‘secondary legal basis’, the use of which is contrary to the principle of conferral of powers set out in Article 13(2) TEU and the principle of institutional balance.
- 15 Furthermore, in the Commission’s submission, it is inconsistent to require the Council to act by unanimity for the renewal of the entitlement at issue when its establishment was decided on by a qualified majority, on the adoption of Decision 2011/265, and the European Union has accepted, under international law, that it will in principle be renewed automatically. The application of a stricter internal rule and the requirement that the Council must agree to the renewal of that entitlement run counter to the objective of the automatic renewal agreed by the parties to the Agreement and are therefore contrary to the case-law concerning the primacy of international agreements over EU secondary legislation.
- 16 In its reply, the Commission adds, in response to the Council’s line of argument that the contested decision is founded not on a ‘secondary legal basis’ but on Article 218(7) TFEU, that it agrees with the Council that the contested decision concerns a modification to an agreement, within the meaning of that provision, since it extends the application of a provision in the Protocol. Nevertheless, it takes the view that Article 3(1) of Decision 2015/2169 cannot be considered to be a case where Article 218(7) TFEU is applicable, because the Protocol, by providing for automatic renewal of the entitlement at issue for further successive periods of the same duration, does not prescribe any particular procedural step for the renewal of that entitlement, with the result that there is no need for the Council to authorise the Commission to approve the renewal.
- 17 Furthermore, the procedural conditions attached to the authorisation allegedly granted to the Commission are incompatible with Article 218 TFEU and the use of a ‘secondary legal basis’ requiring a vote by unanimity in the Council is unlawful.
- 18 Moreover, Article 3(1) of Decision 2015/2169 does not confer an authorisation to approve modifications to the agreement on the European Union’s behalf, within the meaning of Article 218(7) TFEU, but simply reflects the Commission’s power, in the case of a decision opposing renewal of the entitlement at issue, to ensure the European Union’s external representation in accordance with Article 17 TEU, while the Council nevertheless still retains the power to decide on that renewal. Thus, there has been no actual transfer of decision-making power, coupled with specific conditions, in favour of the Commission.
- 19 The Council, supported by the French Republic and the Kingdom of the Netherlands, contests the Commission’s arguments, contending in its primary submission that the procedure applied in order to adopt the contested decision is founded on Article 218(7) TFEU, as is made very clear by the explicit reference to that provision in recital 6 of Decision 2015/2169, and that that procedure is compatible with Article 218(7) TFEU.
- 20 The Council submits that the conditions for the applicability of Article 218(7) TFEU are met since, first, the renewal of the entitlement at issue constitutes a modification of a specific and independent part of the Agreement by means of a simplified procedure established in Article 5(8) of the Protocol. The Commission is authorised in particular, in its capacity as negotiator, to amend the entitlement at issue by terminating it on the expiry of the ongoing three-year period and to give notice of that decision to the Republic of Korea. Secondly, the procedure laid down in Article 3(1) of Decision 2015/2169 attaches valid conditions to that authorisation granted to the Commission.

- 21 Indeed, as regards the requirement for a vote by unanimity in the Council, the Council maintains that renewal of the entitlement at issue is a derogation from the general rule that that entitlement is terminated if no decision is taken to the contrary, a fact which justifies the application of stricter conditions.
- 22 In the alternative, the Council submits, should the Court find that it was not possible to prescribe such unanimity voting among the conditions under Article 218(7) TFEU, that it would be only the requirement to act by unanimity that would be invalid. However, since the contested decision was adopted by unanimity, it would necessarily have obtained a qualified majority in the Council and should therefore, according to the Council, be regarded as having been validly adopted.
- 23 In its rejoinder, the Council contests, in particular, the Commission's line of argument that the entitlement at issue can be renewed by the European Union without recourse to an internal procedure when the intention of the Commission is to renew it, whereas a decision-making procedure is necessary in order to terminate it. In the Council's submission, the automatic character of the renewal of the entitlement at issue vis-à-vis each of the parties to the Agreement cannot preclude any kind of internal decision-making procedure since, given that the duration of that entitlement is limited to three years, a decision needs to be taken every three years in accordance with the appropriate internal decision-making procedures. If those decision-making procedures were not observed, the autonomy of the EU legal order as well as the institutional balance established by the framers of the Treaties would be compromised.
- 24 The Council maintains that Article 218(7) TFEU constitutes an appropriate legal basis for the procedure laid down in Article 3(1) of Decision 2015/2169. It states, in particular, that Article 5(8) of the Protocol establishes a simplified procedure for modifying the Protocol by requiring tacit consent for renewal of the entitlement at issue and prior notification for terminating that entitlement.
- 25 The French Republic submits that the contested decision applies a procedure based on Article 218(7) TFEU and that the Commission is therefore wrong in claiming that the Council founded that decision on a legal basis not provided for by the FEU Treaty. In the first place, it contends that the arrangements for renewal of the entitlement at issue constitute a case where Article 218(7) TFEU is applicable. In its submission, first, renewal of the entitlement at issue extends the temporal application of the provisions relating to that entitlement, which constitute a specific and autonomous component of the Protocol and, conversely, failure to renew that entitlement essentially amounts to depriving those provisions of legal effects. Thus, renewal of the entitlement at issue constitutes a modification of the Protocol.
- 26 Secondly, the automatic renewal of the entitlement at issue where the parties are silent falls, according to the French Republic, within the category of provisions derogating from the procedure for amending international agreements under the general law and constitutes a simplification of that procedure.
- 27 In the second place, the French Republic submits that the mechanism laid down in Article 3(1) of Decision 2015/2169 correctly implements Article 218(7) TFEU in so far as it provides that the Council has to approve the Commission's decision not to give notice of termination of the entitlement at issue. It notes, in that regard, that Article 3(1) of Decision 2015/2169 confers on the Commission a genuine decision-making power as regards the choice to be made every three years, while attaching specific conditions to that authorisation, within the meaning of Article 218(7) TFEU. That restriction is legitimate given that Article 218(7) TFEU constitutes a

derogation from Article 218(5), (6) and (9) TFEU and renewal of the entitlement at issue is one of the measures by which policy of the European Union is made and its external action is elaborated. Recourse to unanimity voting constitutes merely an arrangement for the grant of approval, by the Council, of the Commission's decision not to oppose the renewal of that entitlement and the lawfulness or unlawfulness of that arrangement has no bearing on the validity of the requirement for such approval.

- 28 In the third and last place, the French Republic maintains that, in any event, having regard to the principle of autonomy of the EU legal order, the entitlement at issue could not have been renewed in the absence of an EU act specifically so providing, regardless of the fact that such express renewal is not necessary under international law.
- 29 The Kingdom of the Netherlands states that it concurs fully with the Council's position and all the arguments relied on in support of that position.

Findings of the Court

- 30 It is apparent from the contested decision that it was adopted on the basis of Article 3(1) of Decision 2015/2169, which provides in particular, like Article 4(1) of Decision 2011/265, that the Commission is to provide notice to the Republic of Korea of the European Union's intention not to extend the period of the entitlement at issue unless, on a proposal from the Commission, the Council unanimously agrees four months before the end of the period of entitlement to continue the entitlement.
- 31 The Commission contends, in support of the single plea in law, that, by founding the contested decision on Article 3(1) of Decision 2015/2169, the Council unlawfully used a 'secondary legal basis'.
- 32 In that regard, it should be recalled that the rules regarding the manner in which the EU institutions arrive at their decisions are laid down in the Treaties and are not within the discretion of the Member States or of those institutions themselves. Consequently, the Treaties alone may, in particular cases, empower an institution to amend a decision-making procedure established by the Treaties. Accordingly, to acknowledge that an institution can establish secondary legal bases, whether for the purpose of strengthening or easing the detailed rules for the adoption of an act, is tantamount to according that institution a legislative power which exceeds that provided for by the Treaties. It would also enable the institution concerned to undermine the principle of institutional balance which requires that each of the institutions must exercise its powers with due regard for the powers of the other institutions (see, to that effect, judgments of 6 May 2008, *Parliament v Council*, C-133/06, EU:C:2008:257, paragraphs 54 to 57, and of 22 September 2016, *Parliament v Council*, C-14/15 and C-116/15, EU:C:2016:715, paragraph 47).
- 33 In the present case, according to recital 6 of Decision 2015/2169, the legal basis of the decision-making procedure laid down in Article 3(1) of that decision is Article 218(7) TFEU, that recital stating that, pursuant to that provision of the FEU Treaty, it is appropriate for the Council to authorise the Commission to approve certain limited modifications to the Agreement and that the Commission should be authorised to bring about the termination of the entitlement at issue unless it determines that the entitlement should be continued and this is approved by the

Council pursuant to a specific procedure necessitated both by the sensitive nature of this element of the Agreement and by the fact that the Agreement is to be concluded by the European Union and its Member States.

- 34 It follows that the single plea put forward by the Commission will have to be dismissed if the procedure established in Article 3(1) of Decision 2015/2169 and applied by the contested decision falls within the scope of Article 218(7) TFEU and it complies with Article 218 TFEU in so far as it requires a vote by unanimity in the Council in order for the entitlement at issue to be renewed.
- 35 Article 218(7) TFEU provides that, when concluding an agreement, the Council may, by way of derogation from Article 218(5), (6) and (9) TFEU, authorise the negotiator to approve on the European Union's behalf modifications to the agreement where the agreement provides for them to be adopted by a simplified procedure or by a body set up by the agreement. Article 218(7) TFEU further provides that the Council may attach specific conditions to such authorisation.
- 36 It should, consequently, be examined, in the first place, whether Article 3(1) of Decision 2015/2169 authorises the Commission to approve a modification to the Protocol on behalf of the European Union and whether the Protocol provides for such a modification to be adopted by a simplified procedure or by a body set up by the Agreement or the Protocol.
- 37 As regards, first, the issue whether, by Article 3(1) of Decision 2015/2169, the Council authorises the Commission to approve a modification to the Protocol on behalf of the European Union, it should be pointed out that it is clear from Article 5(8)(a) and (b) of the Protocol that every three years the parties to the Agreement and, by extension, to the Protocol must, following an assessment conducted by the Committee on Cultural Cooperation established pursuant to Article 3(1) of the Protocol, determine whether or not they propose to renew the entitlement at issue for a further period of three years.
- 38 Article 3(1) of Decision 2015/2169 lays down, in that regard, an internal EU procedure in that it empowers the Commission to terminate the entitlement at issue at the end of each three-year period or, if it considers that that entitlement must be renewed, to submit a proposal to that effect to the Council before the expiry of each period. As the Advocate General has observed in point 60 of his Opinion, failure to renew that entitlement amounts to removing an entitlement which was established by the Protocol and is in principle renewed tacitly and automatically every three years, with the result that such removal must be regarded as a modification to the Protocol.
- 39 Accordingly, although a decision such as the contested decision, which is intended to renew the entitlement at issue for a period of three years, cannot, as such, be regarded as designed to modify the Protocol, the fact remains that the procedure laid down in Article 3(1) of Decision 2015/2169, applicable for the purpose of adopting such a decision, authorises the Commission to assess every three years whether that entitlement should be renewed or terminated, to decide by itself on such termination, or to decide to bring the matter before the Council for the purpose of renewal of that entitlement. That procedure thus authorises the Commission to adopt decisions relating to the modification of the Protocol.

- 40 Consequently, it must be held that Article 3(1) of Decision 2015/2169, applied by the contested decision, does constitute an authorisation, given to the Commission by the Council when the Agreement and, by extension, the Protocol, annexed thereto, was concluded, to approve on behalf of the European Union ‘modifications to the agreement’ within the meaning of Article 218(7) TFEU.
- 41 So far as concerns, secondly, the issue whether the Protocol provides for modifications thereto to be adopted by a simplified procedure or by a body set up by the Agreement or the Protocol, as Article 218(7) TFEU requires, it must be stated that Article 5(8)(a) and (b) of the Protocol does not give the Committee on Cultural Cooperation power to make modifications to the Protocol, but gives it only the task of conducting assessments of the results of the implementation of the entitlement at issue, as has been noted in paragraph 37 of the present judgment. On the other hand, the latter provision does lay down a simplified procedure in that, as the Advocate General has observed in point 67 of his Opinion, it is sufficient, to terminate that entitlement, for a party to the Agreement to do so by giving notice in writing three months before the expiry of the initial or any subsequent period, failing which the entitlement is renewed automatically.
- 42 It should, moreover, be added that the rules laid down in Article 3(1) of Decision 2015/2169 may be regarded as making use of the possibility, provided for in Article 218(7) TFEU, for the Council to attach specific conditions to the authorisation given to the Commission, since that provision of Decision 2015/2169 requires the Commission, if it considers that the entitlement at issue should not be terminated but renewed for a period of three years, to submit a proposal to that effect to the Council four months before the end of the ongoing period.
- 43 It follows that, contrary to the Commission’s assertions, the procedure established in Article 3(1) of Decision 2015/2169 and applied by the contested decision falls within the scope of Article 218(7) TFEU, with the result that that decision did not have to be adopted in accordance with the procedure laid down in Article 218(6)(a) TFEU.
- 44 As regards, in the second place, the issue whether the procedure established in Article 3(1) of Decision 2015/2169 complies with Article 218 TFEU in so far as it requires a vote by unanimity in the Council in order for the entitlement at issue to be renewed, it should be pointed out that Article 218(7) TFEU does not lay down any voting rule for the purpose of the adoption by the Council of the decisions in respect of which, in the context of the authorisation that it has given to the Commission on the basis of that provision, it has retained its competence.
- 45 In those circumstances, 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, of 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. That being so, the applicable voting rule must, in each individual case, be determined according to whether or not it falls within one of those situations (see, by analogy, judgment of 2 September 2021, *Commission v Council (Agreement with Armenia)*, C-180/20, EU:C:2021:658, paragraph 29).
- 46 In particular, the first case in which the second subparagraph of Article 218(8) TFEU requires the Council to act unanimously, which is the only case relevant here, concerns the situation where the agreement covers a field for which unanimity is required for the adoption of an EU act, thereby establishing a link between the substantive legal basis of a decision adopted under that article and

the voting rule applicable to the decision's adoption (see, to that effect, judgment of 4 September 2018, *Commission v Council (Agreement with Kazakhstan)*, C-244/17, EU:C:2018:662, paragraph 29).

- 47 The link thereby ensured between the substantive legal basis of decisions adopted in the context of an agreement and the applicable voting rule for adopting those decisions helps to preserve symmetry between procedures relating to internal activity of the European Union and procedures relating to its external activity, in compliance with the institutional balance established by the framers of the Treaties (see, to that effect, judgment of 4 September 2018, *Commission v Council (Agreement with Kazakhstan)*, C-244/17, EU:C:2018:662, paragraph 30).
- 48 Such symmetry must also be ensured when a decision relating to a modification to an agreement, as provided for in Article 218(7) TFEU, is adopted.
- 49 Since the entitlement at issue does not fall within a field for which a vote by unanimity in the Council is required for the adoption of an EU act, the procedure established in Article 3(1) of Decision 2015/2169, contrary to the Council's assertions, does not comply with Article 218 TFEU in so far as it requires such a vote by unanimity. The applicable voting rule for the adoption of decisions such as the contested decision must accordingly be that laid down in the first subparagraph of Article 218(8) TFEU, namely qualified majority voting in the Council.
- 50 Since recital 6 of Decision 2015/2169 states that continuation of the entitlement at issue is approved by the Council pursuant to a specific procedure necessitated both by the sensitive nature of this element of the Agreement and by the fact that the Agreement is to be concluded by the European Union and its Member States, it should be added, first, that the sensitive nature of the matter concerned cannot warrant the adoption of a secondary legal basis establishing a special procedure (see, to that effect, judgment of 6 May 2008, *Parliament v Council*, C-133/06, EU:C:2008:257, paragraph 59). Secondly, those justifications cannot enable the Council to dispense with compliance with the voting rules laid down in Article 218 TFEU (see, to that effect, judgment of 28 April 2015, *Commission v Council*, C-28/12, EU:C:2015:282, paragraph 55) and, in particular, to derogate from them in the context of the specific conditions which it may attach to the authorisation given to the negotiator pursuant to Article 218(7) TFEU.
- 51 In the light of all the foregoing considerations, the single plea put forward by the Commission must be upheld and, consequently, the contested decision must be annulled.

Maintenance of the effects of the contested decision

- 52 The Council requests the Court, should it annul the contested decision, to maintain its effects until the grounds for annulment established have been remedied.
- 53 As provided in 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 definitive.

- 54 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, by analogy, judgment of 2 September 2021, *Commission v Council (Agreement with Armenia)*, C-180/20, EU:C:2021:658, paragraph 62 and the case-law cited).
- 55 In the present case, the annulment of the contested decision without its effects being maintained would be liable to cast doubt on the commitment of the European Union regarding the extension of the period of the entitlement at issue for a duration of three years, from 1 July 2020 to 30 June 2023, and thus to hinder the proper implementation of the Agreement (see, by analogy, judgment of 2 September 2021 *Commission v Council (Agreement with Armenia)*, C-180/20, EU:C:2021:658, paragraph 63 and the case-law cited).
- 56 Consequently, on grounds of legal certainty, the effects of the contested decision, which is annulled by the present judgment, should be maintained until the grounds for annulment established have been remedied.

Costs

- 57 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.
- 58 Under Article 140(1) of the Rules of Procedure, Member States which have intervened in the proceedings are to bear their own costs. The French Republic and the Kingdom of the Netherlands should therefore be ordered to bear their own costs.

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

- 1. Annuls Council Decision (EU) 2020/470 of 25 March 2020 as regards the extension of the period of entitlement for audiovisual co-productions as provided for in Article 5 of the Protocol on Cultural Cooperation to the Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part;**
- 2. Orders that the effects of Decision 2020/470 be maintained in force until the grounds for annulment established have been remedied;**
- 3. Orders the Council of the European Union to pay the costs;**
- 4. Orders the French Republic and the Kingdom of the Netherlands to bear their own costs.**

Lenaerts

Bay Larsen

Arabadjiev

Prechal

Jürimäe

Lycourgos

Regan

Jarukaitis

Ziemele

Passer

Ilešič

von Danwitz

Biltgen

Xuereb

Wahl

Delivered in open court in Luxembourg on 1 March 2022.

A. Calot Escobar
Registrar

K. Lenaerts
President