



Reports of Cases

ORDER OF THE PRESIDENT OF THE COURT

3 March 2022 *

(Intervention – Article 40 of the Statute of the Court of Justice of the European Union –
Application by the High Representative of the Union for Foreign Affairs and Security Policy –
Interest in the result of the case – Allowed)

In Case C-551/21,

ACTION for annulment under Article 263 TFEU, brought on 7 September 2021,

European Commission, represented by A. Bouquet, B. Hofstätter and T. Ramopoulos and by
A. Stobiecka-Kuik, acting as Agents,

applicant,

v

Council of the European Union, represented by A. Antoniadis, F. Naert and B. Driessen, acting
as Agents,

defendant,

supported by:

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

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

Hungary, represented by M.Z. Fehér and K. Szijjártó, acting as Agents,

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

Portuguese Republic, represented by M. Pimenta, P. Barros da Costa and J. Ramos, acting as
Agents,

interveners,

THE PRESIDENT OF THE COURT,

* Language of the case: English.

having regard to the proposal of C. Lycourgos, Judge-Rapporteur,
after hearing the Advocate General, J. Kokott,
makes the following

Order

- 1 By its application, the European Commission seeks the annulment of Article 2 of Council Decision (EU) 2021/1117 of 28 June 2021 on the signing, on behalf of the European Union, and provisional application of the Implementing Protocol to the Fisheries Partnership Agreement between the Gabonese Republic and the European Community (2021-2026) (OJ 2021 L 242, p. 3), and of the designation by the Council of the European Union, through its President and based on that provision, of the Ambassador of Portugal as the person empowered to sign that protocol.
- 2 In support of its application for annulment, the Commission submits, inter alia, that the Council's practice consisting in having its President designate the person empowered to sign an international agreement on behalf of the European Union infringes the Commission's prerogative, conferred by Article 17(1) TEU, to ensure the external representation of the Union in matters not falling within the common foreign and security policy (CFSP).
- 3 By document lodged at the Court Registry on 6 January 2022, the High Representative of the Union for Foreign Affairs and Security Policy ('the High Representative') applied, on the basis of Article 40 of the Statute of the Court of Justice of the European Union and Article 130 of the Rules of Procedure of the Court, to intervene in the case, in support of the form of order sought by the Commission.
- 4 In support of his application to intervene, the High Representative submits, principally, that he is one of the 'institutions of the Union' for the purposes of the first paragraph of Article 40 of the Statute of the Court of Justice of the European Union and, in the alternative, that he must be regarded as a 'body', 'office' or 'agency' of the Union for the purposes of the second paragraph of Article 40 of that Statute and as establishing an 'interest in the result of the case' within the meaning of that provision. In this respect, the High Representative notes that the assessments made by the Court in the future judgment, concerning the prerogative invoked by the Commission will apply, *mutatis mutandis*, to the analogous prerogative which he holds under Article 27(2) TEU in the field of the CFSP.
- 5 By document lodged at the Court Registry on 13 January 2022, the Commission contended that that application to intervene should be allowed.
- 6 By document lodged at the Court Registry on 21 January 2022, the Council contended that the said application to intervene should be rejected.
- 7 The Council takes the view that the High Representative is not an 'institution of the Union' for the purposes of the first paragraph of Article 40 of the Statute of the Court of Justice of the European Union and that, notwithstanding the fact that he should be regarded as falling within the concept of 'body, office or agency of the Union' for the purposes of the second paragraph of Article 40 of that statute, he does not establish an 'interest in the result of the case' within the meaning of the latter provision.

8 The Council observes, in particular, that the dispute in this case does not concern the CFSP and that the solution to be provided by the Court cannot therefore affect the legal position of the High Representative. The latter's position in relation to the Council is, moreover, different from that of the Commission. In that regard, the Council submits that the High Representative chairs, in accordance with Article 27(1) TEU, the Foreign Affairs Council and that he may therefore himself designate the person empowered to conclude an international agreement in the field of the CFSP. The legal position of the High Representative thus differs from that of the Commission where, as in the case at hand, an international agreement is concluded in a matter which does not fall within the CFSP.

The application to intervene

9 The first paragraph of Article 40 of the Statute of the Court of Justice of the European Union provides that Member States and the institutions of the Union may intervene in cases before the Court.

10 The institutions of the Union, within the meaning of that provision, are only those exhaustively listed in Article 13(1) TEU (order of the President of the Court of 29 July 2019, *Commission and Council v Carreras Sequeros and Others*, C-119/19 P, not published, EU:C:2019:658, paragraph 6 and the case-law cited).

11 Therefore, not being listed in Article 13(1) TEU, the High Representative cannot be classified as an 'institution of the Union'. He cannot therefore rely on that status in order to claim the right to intervene in the present case (order of the President of the Court of 29 July 2019, *Commission and Council v Carreras Sequeros and Others*, C-119/19 P, not published, EU:C:2019:658, paragraph 7 and the case-law cited).

12 In those circumstances, it must be ascertained whether, in the case at hand, the High Representative may be admitted to intervene in the case, in support of the form of order sought by the Commission, pursuant to the second paragraph of Article 40 of the Statute of the Court of Justice of the European Union, as he maintains in the alternative.

13 According to the first sentence of the second paragraph of Article 40 of that statute, the right to intervene in a case submitted to the Court is open to 'the bodies, offices and agencies of the Union and to any other person', if they can establish an 'interest in the result of [the] case'. The second sentence of that second paragraph excludes the intervention of 'natural or legal persons' in cases between Member States, between institutions of the Union or between Member States and institutions of the Union. On the basis of the wording and scheme of that latter provision, that exclusion must be considered not to apply to the 'bodies, offices and agencies of the Union' (order of the President of the Court of 17 September 2021, *Parliament v Commission*, C-144/21, EU:C:2021:757, paragraphs 6 to 8).

14 Having regard to the mandate, intrinsically linked to the functioning of the Union, which is conferred on the High Representative in Article 27 TEU and, in particular, to the fact that, while he is assisted by the European External Action Service (EEAS), in accordance with Article 27(3) TEU, he is legally distinct from it, the High Representative must be equated with the 'bodies, offices and agencies of the Union' for the purpose of applying the second paragraph of Article 40 of the Statute of the Court of Justice of the European Union. Consequently, in the light of the

case-law cited in the preceding paragraph, the High Representative may intervene in the dispute between the Commission and the Council, provided that he can establish an ‘interest in the result of the case’.

- 15 As regards the existence of such an interest, it should be recalled that the concept of an ‘interest in the result of the case’, within the meaning of the second paragraph of that Article 40, must be understood as meaning a direct, existing interest in the ruling on the form of order sought, and not as an interest in relation to the pleas in law or arguments put forward. The words ‘result of the case’ refer to the final decision sought, as set out in the operative part of the future judgment (order of the President of the Court of 17 September 2021, *Parliament v Commission*, C-144/21, EU:C:2021:757, paragraph 10).
- 16 So far as concerns applications to intervene from bodies, offices and agencies of the Union, the requirement that the applicant have a direct and existing interest in the result of the case must be applied in a way that reflects the specificity of the mandate which such an applicant is called upon to fulfil pursuant to EU law (see, to that effect, order of the President of the Court of 17 September 2021, *Parliament v Commission*, C-144/21, EU:C:2021:757, paragraphs 11 and 12).
- 17 In the present case, it is important to note that Article 27(2) TEU vests the High Representative with the mandate to represent the Union for matters relating to the CFSP.
- 18 The Commission, for its part, ensures the Union’s external representation outside the CFSP and other cases provided for in the Treaties, in accordance with the sixth sentence of Article 17(1) TEU.
- 19 In the case at hand, the dispute concerns, in particular, the question whether the task of ensuring the external representation of the Union, referred to in the sixth sentence of Article 17(1) TEU, implies that it is for the Commission – and not for the President of the Council – to designate, with a view to the conclusion of an international agreement on behalf of the Union, the person empowered to sign that agreement.
- 20 The Court’s assessment of this question of institutional law will determine not only the outcome of the dispute in this case, but will also have a decisive influence, *mutatis mutandis*, on the choice of procedure followed and on the powers exercised by the High Representative when an international agreement must be signed in the field of the CFSP. Like the Commission in matters lying outside the CFSP, the High Representative is vested, in matters falling within the CFSP, with the mandate of ensuring the representation of the Union.
- 21 It is true that, in the case at hand, the High Representative bases his interest in the result of the case on the analogous prerogative relating to the representation of the Union which he holds under Article 27(2) TEU as compared with the prerogative held by the Commission under Article 17(1) TEU, for the purposes of representing the Union in areas which do not fall within the CFSP, whereas only the latter prerogative is at issue in the present case. However, it should be emphasised that that interest of the High Representative in the result of the case is based not on the fact that he is potentially in the same situation as the Commission in one or more similar cases, but, as has been stated in the preceding paragraph, on the fact that the result of the case in this instance will determine the scope of his role and of the powers which he derives from primary law, as regards the signing of any international agreement concluded by the Union in the field of the CFSP.

- 22 In view of that general scope of the interest invoked by the High Representative, as well as the fact that the latter is, in principle, the only person or entity able to invoke it, that interest must be classified as ‘direct’ and ‘existing’.
- 23 The direct and existing interest which the result of the case in this instance can thus have for the High Representative is not invalidated by the fact, highlighted by the Council, that the High Representative chairs, pursuant to Article 27(1) TEU, the Foreign Affairs Council. In that regard, it is sufficient to note, first, that, as the Council has pointed out, decisions authorising the signing of an international agreement in the field of the CFSP are not always taken by the Foreign Affairs Council and, second, that, irrespective of the precise role played by the High Representative in the conclusion of such an international agreement, the legal clarification provided by the Court as to the scope of the task of representation under Article 17(1) TEU is liable to define the scope of the representation mandate referred to in Article 27(2) TEU.
- 24 In the light of all the foregoing considerations, it is appropriate to allow, in accordance with the second paragraph of Article 40 of the Statute of the Court of Justice of the European Union and Article 131(3) of the Rules of Procedure, the High Representative’s application to intervene in support of the form of order sought by the Commission.

The intervener’s procedural rights

- 25 Since the application to intervene has been allowed, the High Representative will receive a copy of every procedural document served on the parties, pursuant to Article 131(3) of the Rules of Procedure.
- 26 As that application was submitted within the six-week period prescribed in Article 130 of the Rules of Procedure, the High Representative may, in accordance with Article 132(1) of those rules, submit a statement in intervention within one month after the communication referred to in the preceding paragraph.
- 27 Lastly, the High Representative will be able to submit oral observations if a hearing is organised.

Costs

- 28 Under Article 137 of the Rules of Procedure, a decision as to costs is to be given in the judgment or order which closes the proceedings.
- 29 In the present case, since the High Representative’s application to intervene has been granted, the costs relating to his intervention must be reserved.

On those grounds, the President of the Court hereby orders:

- 1. The High Representative of the Union for Foreign Affairs and Security Policy is granted leave to intervene in Case C-551/21 in support of the form of order sought by the European Commission.**
- 2. A copy of every procedural document shall be served on the High Representative of the Union for Foreign Affairs and Security Policy by the Registrar.**

- 3. A period shall be prescribed within which the High Representative of the Union for Foreign Affairs and Security Policy may submit a statement in intervention.**
- 4. Costs relating to the intervention by the High Representative of the Union for Foreign Affairs and Security Policy are reserved.**

Luxembourg, 3 March 2022.

A. Calot Escobar
Registrar

K. Lenaerts
President