



Reports of Cases

Case C-137/12

European Commission
v
Council of the European Union

(Action for annulment — Council Decision 2011/853/EU — European Convention on the legal protection of services based on, or consisting of, conditional access — Directive 98/84/EC — Legal basis — Article 207 TFEU — Common commercial policy — Article 114 TFEU — Internal market)

Summary — Judgment of the Court (Grand Chamber), 22 October 2013

1. *Acts of the institutions — Choice of legal basis — Criteria — EU measure pursuing a twofold purpose or having a twofold component — Reference to the main or predominant aim or component — Decision 2011/853 on the signing, on behalf of the Union, of the European Convention on the legal protection of services based on, or consisting of, conditional access — Objective having a specific connection to the common commercial policy — Ancillary objective of improving the functioning of the internal market — Adoption purely on the basis of Article 207(4) TFEU, together with Article 218(5) TFEU*

(Arts 114 TFEU, 207(4) TFEU and 218(5) TFEU; European Parliament and Council Directive 98/84; Council Decision 2011/853)

2. *Action for annulment — Judgment annulling a measure — Effects — Limitation by the Court — Maintaining the effects of the contested measure until the replacement of that measure within a reasonable period — Justification on the grounds of legal certainty*

(Art. 264, second para. TFEU)

1. In the context of the European Union's distribution of powers, the choice of the legal basis for a measure must rest on objective factors amenable to judicial review, which include the aim and content of that measure. If examination of that measure reveals that it pursues a twofold purpose or that it has a twofold component and if one of those is identifiable as the main or predominant purpose or component, whereas the other is merely incidental, that measure must be based on a single legal basis, namely, that required by the main or predominant purpose or component.

In that regard, Decision 2011/853 on the signing, on behalf of the Union, of the European Convention on the legal protection of services based on, or consisting of, conditional access primarily pursues an objective that has a specific connection to the common commercial policy, which means that, for the purposes of the adoption of that decision, Article 207(4) TFEU, together with Article 218(5) TFEU, must be cited as the legal basis and which also means that the signing of the Convention on behalf of the European Union falls within the exclusive competence of the European Union, pursuant to Article 3(1)(e) TFEU. By contrast, the improvement of the conditions for the functioning of the internal market is an ancillary objective of that decision that provides no justification for its adoption on the basis of Article 114 TFEU.

An EU act falls within the common commercial policy if it relates specifically to international trade in that it is essentially intended to promote, facilitate or govern trade and has direct and immediate effects on trade. It follows that only those acts of the European Union with a specific link to international trade are capable of falling within the field of the common commercial policy. In that regard, while Directive 98/84 on the legal protection of services based on, or consisting of, conditional access is intended to ensure adequate legal protection at EU level for the services concerned in order to promote trade in those services within the internal market, Decision 2011/853, by authorising the signing of the Convention on behalf of the European Union, is intended to introduce similar protection in European non-member countries, in order to promote the supply of such services to those States by EU service providers. That objective, which can be seen from the recitals to that decision, read in conjunction with the Convention, to be the primary objective of that decision, therefore has a specific connection with international trade in those services, by dint of which it can legitimately be linked to the common commercial policy.

(see paras 52, 53, 57, 58, 64, 65, 76)

2. See the text of the decision.

(see paras 78-81)