Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

15 October 2014*

(Action for annulment — Regulation (EU) No 492/2011 — Implementing Decision 2012/733/EU — EURES network — Implementing power of the European Commission — Scope — Article 291(2) TFEU)

In Case C-65/13,

ACTION for annulment under Article 263 TFEU, brought on 7 February 2013,

European Parliament, represented by A. Tamás and J. Rodrigues, acting as Agents, with an address for service in Luxembourg,

applicant,

v

European Commission, represented by J. Enegren and C. Zadra, acting as Agents, with an address for service in Luxembourg,

defendant,

THE COURT (Second Chamber),

composed of R. Silva de Lapuerta, President of the Chamber, K. Lenaerts (Rapporteur), Vice-President of the Court, J.-C. Bonichot, A. Arabadjiev and J.L. da Cruz Vilaça, Judges,

Advocate General: P. Cruz Villalón,

Registrar: V. Tourrès, Administrator,

having regard to the written procedure and further to the hearing on 30 April 2014,

after hearing the Opinion of the Advocate General at the sitting on 10 July 2014,

gives the following

* Language of the case: French.

Judgment

1 By its application, the European Parliament seeks the annulment of Commission Implementing Decision 2012/733/EU of 26 November 2012 implementing Regulation (EU) No 492/2011 of the European Parliament and of the Council as regards the clearance of vacancies and applications for employment and the re-establishment of EURES (OJ 2012 L 328, p. 21; 'the contested decision').

Legal context

Regulation No 492/2011

2 Recitals 8 and 9 in the preamble to Regulation No 492/2011 state:

'(8) The machinery for vacancy clearance, in particular by means of direct cooperation between the central employment services and also between the regional services, as well as by coordination of the exchange of information, ensures in a general way a clearer picture of the labour market. Workers wishing to move should also be regularly informed of living and working conditions.

(9) Close links exist between freedom of movement for workers, employment and vocational training, particularly where the latter aims at putting workers in a position to take up concrete offers of employment from other regions of the Union. Such links make it necessary that the problems arising in this connection should no longer be studied in isolation but viewed as interdependent, account also being taken of the problems of employment at the regional level. It is therefore necessary to direct the efforts of Member States toward coordinating their employment policies.'

3 Under Article 11 of the regulation:

'1. …

The central employment services of the Member States shall cooperate closely with each other and with the Commission with a view to acting jointly as regards the clearing of vacancies and applications for employment within the Union and the resultant placing of workers in employment.

2. To this end the Member States shall designate specialist services which shall be entrusted with organising work in the fields referred to in the second subparagraph of paragraph 1 and cooperating with each other and with the departments of the Commission.

…'

4 Article 12 of Regulation No 492/2011 provides:

'1. The Member States shall send to the Commission information on problems arising in connection with the freedom of movement and employment of workers and particulars of the state and development of employment.

2. The Commission, taking the utmost account of the opinion of the Technical Committee referred to in Article 29 ("the Technical Committee"), shall determine the manner in which the information referred to in paragraph 1 of this Article is to be drawn up.

3. In accordance with the procedure laid down by the Commission taking the utmost account of the opinion of the Technical Committee, the specialist service of each Member State shall send to the specialist services of the other Member States and to the European Coordination Office [the European

Office for Coordinating the Clearance of Vacancies and Applications for Employment ("the European Coordination Office")] referred to in Article 18 such information concerning living and working conditions and the state of the labour market as is likely to be of guidance to workers from the other Member States. Such information shall be brought up to date regularly.

…'

5 Article 13 of Regulation No 492/2011 provides:

'1. The specialist service of each Member State shall regularly send to the specialist services of the other Member States and to the European Coordination Office referred to in Article 18:

(a) details of vacancies which could be filled by nationals of other Member States;

(b) details of vacancies addressed to third countries;

(c) details of applications for employment by those who have formally expressed a wish to work in another Member State;

(d) information, by region and by branch of activity, on applicants who have declared themselves actually willing to accept employment in another country.

The specialist service of each Member State shall forward this information to the appropriate employment services and agencies as soon as possible.

2. The details of vacancies and applications referred to in paragraph 1 shall be circulated according to a uniform system to be established by the European Coordination Office referred to in Article 18 in collaboration with the Technical Committee.

This system may be adapted if necessary.'

6 Section 3 of Regulation No 492/2011, headed 'Measures for controlling the balance of the labour market', contains only one article, Article 17, which provides:

'1. On the basis of a report from the Commission drawn up from information supplied by the Member States, the latter and the Commission shall at least once a year analyse jointly the results of Union arrangements regarding vacancies and applications.

2. The Member States shall examine with the Commission all the possibilities of giving priority to nationals of Member States when filling employment vacancies in order to achieve a balance between vacancies and applications for employment within the Union. They shall adopt all measures necessary for this purpose.

…'

7 Article 18 of Regulation No 492/2011 provides:

'The European [Coordination] Office …, established within the Commission, shall have the general task of promoting vacancy clearance at Union level. It shall be responsible in particular for all the technical duties in this field which, under the provisions of this Regulation, are assigned to the Commission, and especially for assisting the national employment services.

It shall summarise the information referred to in Articles 12 and 13 and the data arising out of the studies and research carried out pursuant to Article 11, so as to bring to light any useful facts about foreseeable developments on the Union labour market …'

8 Under Article 19(1) of the regulation:

'The European Coordination Office shall be responsible, in particular, for:

(a) coordinating the practical measures necessary for vacancy clearance at Union level and for analysing the resulting movements of workers;

…'

9 Article 20 of Regulation No 492/2011 states:

'The Commission may, in agreement with the competent authority of each Member State, and in accordance with the conditions and procedures which it shall determine on the basis of the opinion of the Technical Committee, organise visits and assignments for officials of other Member States, and also advanced programmes for specialist personnel.'

10 Article 21 of Regulation No 492/2011 establishes an Advisory Committee that is responsible for assisting the Commission in the examination of any questions arising from the application of the FEU Treaty and measures taken in pursuance thereof, in matters concerning the freedom of movement of workers and their employment.

11 Article 29 of the regulation establishes a Technical Committee that is responsible for assisting the Commission in the preparation, promotion and follow-up of all technical work and measures for giving effect to the regulation and any supplementary measures.

12 Article 38 of Regulation No 492/2011 provides:

'The Commission shall adopt measures pursuant to this Regulation for its implementation. To this end it shall act in close cooperation with the central public authorities of the Member States.'

The contested decision

13 Recitals 4 and 7 in the preamble to the contested decision state:

'(4) EURES should promote better functioning of the labour markets and satisfaction of economic needs by facilitating transnational and cross-border geographical mobility of workers, while ensuring mobility under fair conditions and respect of applicable labour standards. It should provide greater transparency on the labour markets, ensuring the exchange and processing of vacancies and applications for employment (i.e. the "clearance" or "matching" within the meaning of the Regulation) and supporting activities in the areas of recruitment, advice and guidance at national and cross-border level, thereby contributing to the objectives of the Europe 2020 strategy.

(7) The abolishment of monopolies together with other developments has led to the emergence of a wide variety of employment service providers on the labour market. To reach its full potential, EURES needs to be opened to the participation of these operators, committed to fully respect applicable labour standards and legal requirements, and other EURES quality standards.'

14 Article 1 of the contested decision provides:

'In order to fulfil the obligations laid down in Chapter II of Regulation (EU) No 492/2011 the Commission shall together with the Member States establish and operate a European network of employment services, designated EURES.'

15 Article 2 of the contested decision provides:

'For the benefit of jobseekers, workers and employers, EURES shall promote, in cooperation as appropriate with other European services or networks:

…

(b) the clearance and placement at the transnational, interregional and cross-border level through the exchange of vacancies and applications for employment, and participation in targeted mobility activities at EU level;

…

(d) the development of measures to encourage and facilitate mobility of young workers;

…'

16 Under Article 3 of the contested decision, EURES is to comprise, in addition to the European Coordination Office and the EURES Members (the designated specialist services appointed by the Member States, namely, the National Coordination Offices), also:

'…

(c) the EURES Partners, in accordance with Article 15(1) of Regulation (EU) No 492/2011. EURES Partners are designated by the respective EURES Member and may include public or private service providers active in the relevant field of placement and employment, and trades union and employer organisations. In order to qualify, a EURES Partner must undertake to fulfil the roles and responsibilities laid down in Article 7;

(d) the Associated EURES Partners, which in accordance with Article 6 provide limited services under the supervision and responsibility of a EURES Partner or the European Coordination Office.'

17 Under Article 4(3) of the contested decision, the European Coordination Office:

'… shall, in particular, undertake: …

(b) the analysis of geographic and occupational mobility, in the light of the achievement of a balance between supply and demand, and the development of a general approach to mobility in accordance with the European Employment Strategy; …'

18 Article 7 of the contested decision provides:

'1. The full range of EURES Services shall comprise recruitment, job matching and placement, covering all phases of placement from pre-recruitment preparation to post-placement assistance, and related information and advice.

2. They shall be further detailed in the EURES Service Catalogue that shall be part of the EURES Charter as provided for in Article 10 and shall consist of the universal services provided by all EURES Partners and complementary services.

3. Universal services are those provided for in Chapter II of Regulation (EU) No 492/2011, in particular Article 12(3) and Article 13. Complementary services are not obligatory in the sense of Chapter II of Regulation (EU) No 492/2011, but fulfil important labour market needs.

…'

19 Article 8 of the contested decision provides:

'1. The EURES Management Board shall assist the Commission, its European Coordination Office and the National Coordination Offices in promoting and overseeing the development of EURES.

…

7. The Commission shall consult the EURES Management Board on questions concerning the strategic planning, development, implementation, monitoring and evaluation of the services and activities referred to in this Decision, including:

(a) the EURES Charter, in accordance with Article 10;

(b) strategies, operational objectives and work programmes for the EURES network;

(c) the Commission's reports required by Article 17 of Regulation (EU) No 492/2011.'

20 Article 10 of the contested decision provides:

'1. The Commission shall adopt the EURES Charter in accordance with the procedures set out in Articles 12(2), 13(2) and 19(1) and Article 20 of Regulation (EU) No 492/2011, after consultation of the EURES Management Board established by Article 8 of this Decision.

2. On the basis of the principle that all vacancies and applications for employment that are made public by any of the EURES Members must be accessible throughout the Union, the EURES Charter shall, in particular, establish:

(a) the EURES Service Catalogue, describing the universal and complementary services to be rendered by the EURES Members and Partners, including job-matching services, such as personalised counselling and advice to customers, whether they be jobseekers, workers or employers;

…

(d) the operational objectives of the EURES network, the quality standards to be applied as well as the obligations of the EURES Members and Partners, which include:

…

(ii) the kind of information, such as labour market information, information on living and working conditions, information on job offers and requests, information on traineeships and apprenticeships, measures to encourage youth mobility, acquisition of skills, and obstacles to mobility, which they have to supply to their customers and to the rest of the network, in cooperation with other relevant European services or networks;

(iii) task descriptions and criteria for appointment of national coordinators, EURES advisers and other key personnel at national level;

(iv) the training and qualifications required for EURES personnel and conditions and procedures for the organisation of visits and assignments for officials and specialised personnel;

…'

Forms of order sought

21 The Parliament claims that the Court should:

— annul the contested decision; and

— order the Commission to pay the costs.

22 The Commission contends that the Court should:

— dismiss the action; and

— order the Parliament to pay the costs.

23 The Commission requests, in the alternative, should the Court uphold the action in whole or in part, that the effects of the contested decision or the provisions annulled thereof be maintained until the entry into force, within a reasonable time, of a new decision designed to replace the contested decision.

The action

Arguments of the parties

24 The Parliament raises, in support of its action, a single plea in law alleging infringement of Article 38 of Regulation No 492/2011 and misuse of the implementing power that the legislature conferred on the Commission under that article.

25 The Parliament states, first of all, that Article 38 of Regulation No 492/2011 confers on the Commission the power to adopt measures 'pursuant to this Regulation for its implementation'. The EU legislature thus sought to limit the implementing power to the strict minimum. It was not, therefore, for the Commission to seek, by means of implementing measures, to perfect the framework established by that regulation. Indeed, under the normative architecture of the treaty, an implementing measure under Article 291 TFEU is only supposed to give effect to the existing rules in the act on which it is based, without, however, supplementing it.

26 The Parliament then refers to six articles in the contested decision, which, it claims, supplement certain elements of Regulation No 492/2011 and therefore go beyond the implementing power conferred on the Commission by Article 38 of Regulation No 492/2011.

27 First, the Parliament claims that the objectives set out in Article 2(b) and (d) of the contested decision reflect policy choices in that they serve to focus the activity of EURES by prioritising certain categories of workers in the framework of the operation of the system for vacancy clearance put in place by

Regulation No 492/2011. The promotion of targeted mobility activities and the development of measures to encourage and facilitate mobility of young workers do not originate in the regulation, which does not grant priority to any particular group.

28 Second, the Parliament disputes the Commission's authority to open the EURES network to private entities, as envisaged in Article 3(c) of the contested decision. Such an opening changes the framework pre-established by Regulation No 492/2011. According to the Parliament, that regulation refers only to public-sector operators in the context of the system for vacancy clearance put in place by the regulation.

29 Third, the Parliament argues that the task that Article 4(3)(b) of the contested decision imposes on the European Coordination Office of developing 'a general approach to mobility' goes far beyond the implementing power conferred on the Commission by Regulation No 492/2011. Under Articles 18 and 19 of Regulation No 492/2011, which provisions draw a distinction between the Commission and the European Coordination Office established within the Commission, the tasks for which the European Coordination Office is responsible are circumscribed and purely technical or administrative in nature. Regulation No 492/2011 does not, it is claimed, envisage any specific planning activity on the part of the European Coordination Office.

30 Fourth, the Parliament claims that the Commission took the place of the EU legislature by introducing, in Article 7(2) and (3) of the contested decision, the concept of 'complementary services'. First, it follows, *a contrario*, from the definition of 'universal service' in the first sentence of Article 7(3) of the contested decision that complementary services are not provided for in Regulation No 492/2011. Secondly, even if they were covered by that regulation, it should be noted that the regulation does not draw a distinction between different services according to whether they are obligatory or not obligatory. The Parliament also observes that complementary services, although not obligatory, are not without legal effect. It refers, in this connection, to Article 6(5) of the contested decision.

31 Fifth, the Parliament argues that, by Article 8(7) of the contested decision, which requires the Commission to consult the EURES Management Board on numerous questions, the Commission has created a quasi-comitological structure for the implementation of Regulation No 492/2011, whereas Article 38 of that regulation requires the Commission to act in close cooperation with the central public authorities of the Member States.

32 The Parliament questions whether, in general, it is appropriate for an implementing measure itself to create such an institutional framework, which affects the procedure leading to the adoption of subsequent measures, even if those measures are 'implementing measures' in the strictest possible sense, that is to say, specific and purely technical.

33 The Parliament submits that, in any event, some of the questions on which the EURES Management Board is to be consulted, such as strategic planning or the adoption of the EURES Charter, concern matters which are neither specific nor purely technical, but which supplement Regulation No 492/2011.

34 The Parliament argues that even supposing that the EURES Charter were to contain measures that fall within the scope of the implementing measures that the Commission could adopt under Article 38 of Regulation No 492/2011 — *quod non* — Article 10(1) of the contested decision, by requiring consultation of the EURES Management Board, adds a new procedural condition for the adoption of such measures that does not originate in Article 38 of the regulation.

35 Moreover, according to the Parliament, the necessary bodies, which are supposed to assist the Commission in the implementation of the policies covered by Regulation No 492/2011, have already been created by the EU legislature. Thus, the Advisory Committee and the Technical Committee, referred to in Articles 21 and 29 of that regulation, respectively, have that very task. It follows that

there is a potential overlap between the powers of the Advisory Committee and the Technical Committee, on the one hand, and those of the EURES Management Board, derived from the contested decision, on the other. The Parliament submits that the Commission does not have the authority to supplement the institutional framework, as it arises from Regulation No 492/2011, without the intervention of the EU legislature.

36 Sixth, as regards the EURES Charter, the adoption of which is provided for in Article 10 of the contested decision, the Parliament argues, in the first place, that Article 10(1) specifies that it is to be adopted by the Commission in accordance with the procedures set out in Articles 12, 13, 19 and 20 of Regulation No 492/2011. The Commission thus arrogated implementing powers to itself and decided upon the procedure to be applied for the adoption of the charter, whereas the conferment of such implementing powers and the decision as to such a procedure falls within the competence of the EU legislature. By being interposed between Regulation No 492/2011 and the future EURES Charter, Article 10 of the contested decision has lost any implementing character within the meaning of Article 291 TFEU. According to the Parliament, the EURES Charter is to form the subject-matter of a separate measure also based on Article 38 of the regulation.

37 In the second place, as regards the content of Article 10 of the contested decision, the Parliament submits that the content of that article further defines the scope of Articles 12, 13, 19 and 20 of Regulation No 492/2011. It is apparent from Article 10(2)(d) that the EURES Charter is to contain legal obligations for EURES Members and Partners. Although under Article 12(3) of Regulation No 492/2011 'such information concerning living and working conditions and the state of the labour market as is likely to be of guidance to workers' is to be provided 'in accordance with the procedure laid down by the Commission', Article 10(2)(d)(ii) of the contested decision specifies the content of that type of information beyond the general formulation of Regulation No 492/2011. Furthermore, the regulation is supplemented, in a similar way, by Article 10(2)(d)(iii) and (iv) of the contested decision concerning the criteria for appointment of, and the training and qualifications required for, EURES personnel.

38 The Commission contends that the contested decision is entirely compatible with Article 291 TFEU and does not go beyond the implementing power as established and delimited by Regulation No 492/2011.

Findings of the Court

Preliminary observations

39 Under Article 291(2) TFEU, where uniform conditions for implementing legally binding Union acts are needed, those acts are to confer implementing powers on the Commission, or, in duly justified specific cases and in the cases provided for in Article 24 TEU and Article 26 TEU, on the Council of the European Union.

40 Article 38 of Regulation No 492/2011 confers on the Commission an implementing power within the meaning of Article 291(2) TFEU. Article 38 provides that the Commission is to adopt measures pursuant to the regulation for its implementation.

41 The contested decision is based on Article 38 of Regulation No 492/2011 and, in accordance with Article 291(4) TFEU, its title contains the word 'implementing'.

42 In contrast to the action that gave rise to the judgment in *Commission* v *Parliament and Council* (C-427/12, EU:C:2014:170), the present action does not concern the lawfulness of the choice made by the EU legislature when it confers an implementing power on the Commission within the meaning of Article 291(2) TFEU, instead of conferring a delegated power within the meaning of Article 290(1)

TFEU. The present action concerns the lawfulness of the implementing measure, namely, the contested decision, based on Article 38 of Regulation No 492/2011, in that it is claimed that the Commission exceeded the implementing power conferred on it by Article 38 of the regulation and Article 291 TFEU.

43 In this connection, it is important to note, first, that the implementing power conferred on the Commission is delimited by both Article 291(2) TFEU and the provisions of Regulation No 492/2001. The Court has held that when an implementing power is conferred on the Commission on the basis of Article 291(2) TFEU, the Commission is called on to provide further detail in relation to the content of the legislative act, in order to ensure that it is implemented under uniform conditions in all Member States (judgment in *Commission* v *Parliament and Council*, EU:C:2014:170, paragraph 39).

44 Next, it is settled case-law that, within the framework of the Commission's implementing power, the limits of which must be determined by reference amongst other things to the essential general aims of the legislative act in question, the Commission is authorised to adopt all the measures which are necessary or appropriate for the implementation of that act, provided that they are not contrary to it (judgments in *Netherlands* v *Commission*, C-478/93, EU:C:1995:324, paragraphs 30 and 31; *Portugal* v *Commission*, C-159/96, EU:C:1998:550, paragraphs 40 and 41; *Parliament* v *Commission*, C-403/05, EU:C:2007:624, paragraph 51; and *Parliament and Denmark* v *Commission*, C-14/06 and C-295/06, EU:C:2008:176, paragraph 52).

45 Furthermore, it follows from Article 290(1) TFEU in conjunction with Article 291(2) TFEU that in exercising an implementing power, the Commission may neither amend nor supplement the legislative act, even as to its non-essential elements.

46 Having regard to the foregoing, the Commission must be deemed to provide further detail in relation to the legislative act within the meaning of the case-law cited in paragraph 43 above, if the provisions of the implementing measure adopted by it (i) comply with the essential general aims pursued by the legislative act and (ii) are necessary or appropriate for the implementation of that act without supplementing or amending it.

47 It is in the light of those principles that the single plea in law raised by the Parliament in support of its action should be examined.

Whether the contested provisions comply with the essential general aims pursued by Regulation No 492/2011

48 Under Article 1 of the contested decision, the Commission together with the Member States is to establish and operate a European network of employment services, designated 'EURES', in order to fulfil the obligations laid down in Chapter II of Regulation No 492/2011.

49 It should therefore be examined whether the contested decision complies with the essential general aims pursued by Chapter II of the regulation, entitled 'Clearance of vacancies and applications for employment'.

50 As is apparent from recitals 8 and 9 in the preamble to Regulation No 492/2011, the essential general aim pursued by Chapter II of that regulation is to 'pu[t] workers in a position to take up concrete offers of employment from other regions of the Union' by 'ensur[ing] in a general way a clearer picture of the labour market'. Such a clearer picture is to be achieved, as set out in recital 8, through 'the machinery for vacancy clearance, in particular by means of direct cooperation between the central employment services and also between the regional services, as well as by coordination of the exchange of information'.

51 The second subparagraph of Article 11(1) of Regulation No 492/2011 defines that cooperation by providing that '[t]he central employment services of the Member States shall cooperate closely with each other and with the Commission with a view to acting jointly as regards the clearing of vacancies and applications for employment within the Union and the resultant placing of workers in employment'.

52 It is apparent from recital 4 in the preamble to, and Article 2 of, the contested decision, that the decision, like Regulation No 492/2011, is intended to facilitate the cross-border geographical mobility of workers, by promoting, under a joint action framework, namely, EURES, transparency and exchange of information on the European labour markets. The objective pursued by the contested decision is accordingly consistent with the essential general aim of Regulation No 492/2011 set out in paragraph 50 of the present judgment.

53 It is true that paragraphs (b) and (d) of Article 2 of the contested decision mention, respectively, 'participation in targeted mobility activities' and 'the development of measures to encourage and facilitate mobility of young workers' among the actions to be promoted by EURES, although such actions are not expressly provided for in Regulation No 492/2011. However, such actions clearly fall within the scope of the essential general aim pursued by that regulation, which is to promote the cross-border geographical mobility of workers.

54 Furthermore, none of the other provisions of the contested decision that were identified by the Parliament in its application and that concern the composition and operation of EURES permit the inference that, having regard to the essential general aims pursued by Regulation No 492/2011, the decision is contrary to that regulation.

55 The possibility of private entities being designated as EURES Partners, envisaged in Article 3(c) of the contested decision, is linked, as is apparent from recital 7 in the preamble to that decision, to 'the emergence of a wide variety of employment service providers on the labour market' following the elimination of the monopoly of public employment services, and is intended to ensure that EURES reaches 'its full potential'. That provision falls within the scope of the objective pursued by the contested decision, as set out in paragraph 52 of the present judgment, which is consistent with the essential general aim pursued by Regulation No 492/2011.

56 The same is true, first, of the task assigned by Article 4(3)(b) of the contested decision to the European Coordination Office of '[developing] a general approach to mobility' and, secondly, of the 'complementary services', provided by EURES pursuant to Article 7(2) and (3) of that decision, which, as Article 7(3) states, fulfil 'important labour market needs'.

57 Lastly, the creation of the EURES Management Board, envisaged in Article 8 of the contested decision, and the conferment on it of a consultative role under Article 8(7), and the adoption by the Commission of the EURES Charter envisaged in Article 10 of that decision, are intended to improve the operation of EURES and thereby support the clearance of vacancies and applications for employment in the European Union.

58 Having regard to the foregoing considerations, it must therefore be concluded that the contested decision complies with the essential general aims of Chapter II of Regulation No 492/2011.

Whether the contested provisions are necessary or appropriate for the implementation of Regulation No 492/2011 and do not supplement or amend it

59 The Parliament claims, generally, that the EU legislature intended to limit the Commission's implementing power to the strict minimum by referring, in Article 38 of Regulation No 492/2011, to [the adoption of] implementing measures 'pursuant to this Regulation for its implementation'.

60 That line of argument cannot be upheld. Article 38 of Regulation No 492/2011 must be construed in the light of Article 291 TFEU. In those circumstances, the reference to measures [for the implementation of Regulation No 492/2011] in Article 38 of that regulation, concerns the need to ensure that that regulation is implemented under uniform conditions in all Member States (see judgment in *Commission* v *Parliament and Council*, EU:C:2014:170, paragraph 39) but it does not affect the scope of the implementing power which the Commission has under the framework established by Chapter II of Regulation No 492/2011.

61 If the appropriateness of the contested provisions for the implementation of Chapter II of Regulation No 492/2011 is not called in question, it suffices for the purposes of assessing whether those provisions comply with the limits of the implementing power afforded to the Commission, to examine whether they supplement or amend the legislative act.

62 In this connection, it must be recalled that the second subparagraph of Article 11(1) of Regulation No 492/2011, which appears in Chapter II of that regulation, envisages close cooperation between the employment services of the Member States and the Commission 'with a view to acting jointly as regards the clearing of vacancies and applications for employment within the Union and the resultant placing of workers in employment'. Such joint action, which involves, as can be seen from recital 9 in the preamble to Regulation No 429/2011, a certain coordination of the employment policies of the Member States, is characterised by the exchange of information on problems arising in connection with the freedom of movement and employment of workers, as provided for in Article 12 of that regulation, and by the putting in place of a system for the clearing of vacancies and applications for employment, as provided for in Articles 13 to 16 of the regulation, which system also involves the exchange of information between the specialist services of the Member States and between the latter and the Commission.

63 It must be stated that since EURES was not established by Regulation No 492/2011, the Commission was made responsible not only for setting up such 'joint action', but also for developing the operating rules for that action in accordance with the indications contained for that purpose in Regulation No 492/2011.

64 It should therefore be examined, taking into account the general framework established by Regulation No 492/2011 as to the joint action envisaged therein, whether the Commission, in adopting the contested decision, and, in particular, the provisions identified in the application, exceeded its implementing power when implementing that regulation.

65 The Parliament claims, first, that the Commission exceeded its implementing power by requiring, in Article 2(b) and (d) of the contested decision, respectively, that EURES promote participation in targeted mobility activities and the development of measures to encourage and facilitate mobility of young workers.

66 That argument must be rejected.

67 The provisions invoked by the Parliament fall within the scope of the cooperation between the Commission and the Member States required by the second subparagraph of Article 11(1) of Regulation No 492/2011 and do not supplement or amend the framework established by the legislative act in that regard. As the Advocate General stated in points 51 and 53 of his Opinion, Article 2(b) and 2(d) of the contested decision provide further detail in relation to the joint action envisaged in the second subparagraph of Article 11(1) of the regulation by emphasising specific measures, which are already pursued by the Member States at national level, and in respect of which Article 2(b) and (d) of the contested decision is merely intended to ensure the coordination.

68 Second, the Parliament claims that the opening of EURES to private entities, envisaged in Article 3(c) of the contested decision, involves an amendment to Regulation No 492/2011 and therefore goes beyond the implementing power conferred by the regulation on the Commission.

69 It is true, as stated in paragraph 45 above, that the Commission would exceed the limits of the implementing power conferred on it by Regulation No 492/2011 if it amended elements of that regulation.

70 However, Article 3(c) of the contested decision does not involve any amendment to the framework established by that regulation.

71 It must be recalled in that regard that, in accordance with Article 11(2) of Regulation No 492/2011, the Member States are to designate the specialist services which are entrusted with cooperation with each other and with the departments of the Commission as regards the clearing of vacancies and applications for employment within the European Union and the resultant placement of workers. No provision of the regulation reserves that cooperation to entities of a public nature. The reference to private service providers in the contested decision accordingly constitutes the provision of further detail in relation to the framework established by Regulation No 492/2011 that takes account, as can be seen from recital 7 to the contested decision, of the elimination of the monopoly of public employment services in the Member States.

72 The Parliament's argument regarding Article 3(c) of the contested decision must therefore also be rejected.

73 Third, the Parliament argues that the Commission exceeded the implementing power conferred on it by Regulation No 492/2011 by requiring, in Article 4(3)(b) of the contested decision, that the European Coordination Office '[develop] … a general approach to mobility'.

74 That argument cannot be upheld either.

75 It must be recalled that Regulation No 492/2011 confers on the European Coordination Office a key role in the system for the clearing of vacancies and applications for employment envisaged therein.

76 Thus, under the first subparagraph of Article 18 of Regulation No 492/2011, the European Coordination Office is to have 'the general task of promoting vacancy clearance at Union level'. Even though that provision makes the office responsible 'in particular' for technical duties, it is clear that Regulation No 492/2011 also entrusts the European Coordination Office with important tasks to support the action of the Commission and the Member States.

77 It must be observed in that regard that, under the second subparagraph of Article 18 of Regulation No 492/2011, the European Coordination Office is to summarise the information referred to in Articles 12 and 13 of that regulation and the data arising out of the studies and research carried out pursuant to Article 11 of the regulation, so as to bring to light any useful facts about foreseeable developments on the European Union labour market. In addition, under Article 19(1)(a) of Regulation No 492/2011, the office is responsible for 'analysing the … movements of workers'. The support tasks of the European Coordination Office should therefore enable the Member States and the Commission to adopt, taking into account all relevant information, the measures necessary for controlling the balance of the labour market envisaged in Article 17 of Regulation No 492/2011 and fall within the scope of the objective set out in recital 9 to that regulation, which is to 'direct the efforts of Member States toward coordinating their employment policies'.

78 In that context, the Commission cannot be deemed to have exceeded the limits of its implementing power by conferring on the European Coordination Office, in Article 4(3)(b) of the contested decision, the task of developing 'a general approach to mobility in accordance with the European Employment

Strategy', since such a general approach may be directed merely at preparing for the adoption of the controlling measures envisaged in Article 17 of Regulation No 492/2011 and at supporting the efforts of Member States toward coordinating their employment policies, in accordance with recital 9 to that regulation, without supplementing or amending thereby the nature of the support action of the European Coordination Office as provided for in that regulation.

79 Fourth, according to the Parliament, the Commission took the place of the EU legislature by introducing, in Article 7(2) and (3) of the contested decision, the concept of 'complementary services'.

80 That argument must also be rejected.

81 It should be recalled that Article 7 of the contested decision sets out the range of EURES Services. Article 7(3) of that decision envisages the possibility of EURES offering complementary services. It states that those services are not obligatory in the sense of Chapter II of Regulation No 492/2011, but nevertheless fulfil important labour market needs.

82 Since the employment services of the Member States do not generally confine themselves to offering only the services which are mandatory under Regulation No 492/2011, the Commission was entitled, without supplementing or amending the framework established by that regulation, to consider that any 'complementary services' offered by them ought to be included in the framework for the implementation of the cooperation between the Commission and the employment services of the Member States required by the second subparagraph of Article 11(1) of Regulation No 492/2011.

83 As the Advocate General stated in point 89 of his Opinion, it is essential, in order better to achieve the objective of clearing vacancies and applications for employment pursued by the provisions of Chapter II of Regulation No 492/2011, that EURES be provided with all the information available to the various national services, including that deriving from complementary services.

84 Fifth, the Parliament argues that Article 8(7) of the contested decision also shows that the Commission went beyond its task of implementing Regulation No 492/2011.

85 Article 8(1) of the contested decision states that the EURES Management Board is to assist the Commission, its European Coordination Office and the National Coordination Offices in promoting and overseeing the development of EURES. Under Article 8(7) of that decision, the Commission is to consult the EURES Management Board on questions concerning the strategic planning, development, implementation, monitoring and evaluation of the services and activities referred to in the contested decision.

86 The Commission has not exceeded its implementing power by establishing the EURES Management Board and conferring a consultative role on it.

87 It should be recalled in this connection that, having regard to the fact that EURES was not established by Regulation No 492/2011, that regulation, and, in particular, the second subparagraph of Article 11(1) of the regulation, confer on the Commission the authority to develop the operating rules for joint action by the Commission and the Member States as regards the clearing of vacancies and applications for employment within the Union and the resultant placing of workers in employment. The establishment of the EURES Management Board and the conferment of a consultative role on it by the provision contested by the Parliament neither supplement nor amend the framework established by Regulation No 492/2011 since they are intended merely to ensure that the joint action required by that regulation operates effectively without encroaching, as the Advocate General stated in point 108 of his Opinion, on the powers of the Advisory Committee and the Technical Committee established by Articles 21 and 29 of that regulation, respectively.

88 Consequently, the argument regarding Article 8(7) of the contested decision cannot be upheld either.

89 Last, the Parliament claims that the Commission exceeded its implementing power by adopting Article 10 of the contested decision.

90 That last argument must also be rejected.

91 Article 10 of the contested decision merely states that the Commission is to adopt a EURES Charter. The adoption of the Charter by the Commission will constitute an implementing act within the meaning of Article 291(2) TFEU, the legality of which will fall to be assessed, should the case arise, in a subsequent action for annulment, taking into account the limits on the implementing power afforded to the Commission.

92 None the less, it cannot be accepted that the Commission exceeded its implementing power by the mere fact of having provided for the future adoption of the EURES Charter. Article 10 of the contested decision neither supplements nor amends the framework established by Regulation No 492/2011 since Article 10 and the action stated therein are intended merely to facilitate the exchange of information within EURES, as required by Articles 12 and 13 of that regulation, and to promote its effective operation.

93 It follows from all the foregoing that the single plea in law raised by the Parliament in support of its action cannot be upheld.

94 Therefore, the action must be dismissed.

Costs

95 Under Article 138(1) of the Rules of Procedure, 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 Parliament has been unsuccessful, the latter must be ordered to pay the costs.

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

1. **Dismisses the action;**

2. **Orders the European Parliament to pay the costs.**

[Signatures]