



## Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

12 February 2015\*

(Action for annulment — Directive 2013/51/Euratom — Choice of legal basis — EAEC Treaty — Articles 31 EA and 32 EA — FEU Treaty — Article 192(1) TFEU — Protecting human health — Radioactive substances in water intended for human consumption — Legal certainty — Sincere cooperation among the institutions)

In Case C-48/14,

ACTION for annulment under Articles 263 TFEU and 106a(1) EA brought on 30 January 2014,

**European Parliament**, represented by L. Visaggio and J. Rodrigues, acting as Agents, with an address for service in Luxembourg,

applicant,

v

**Council of the European Union**, represented by O. Segnana and R. Liudvinaviciute-Cordeiro, acting as Agents, with an address for service in Luxembourg,

defendant,

supported by:

**Czech Republic**, represented by M. Smolek and E. Ruffer, acting as Agents,

**French Republic**, represented by G. de Bergues and D. Colas and by N. Rouam, acting as Agents,

**European Commission**, represented by P. Van Nuffel and M. Patakia, acting as Agents,

interveners,

THE COURT (Second Chamber),

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

Advocate General: Y. Bot,

Registrar: A. Calot Escobar,

having regard to the written procedure,

\* Language of the case: French.

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,  
gives the following

### Judgment

- 1 By its application, the European Parliament seeks annulment of Council Directive 2013/51/Euratom of 22 October 2013 laying down requirements for the protection of the health of the general public with regard to radioactive substances in water intended for human consumption (OJ 2013 L 296, p. 12, ‘the contested Directive’).

#### Legal context

##### *EAEC Treaty*

- 2 Articles 30 EA to 32 EA, which are included in Chapter 3, entitled ‘Health and Safety’, of Title II of the EAEC Treaty, provide:

##### *‘Article 30*

Basic standards shall be laid down within the Community for the protection of the health of workers and the general public against the dangers arising from ionising radiations.

The expression ‘basic standards’ means:

- (a) maximum permissible doses compatible with adequate safety;
- (b) maximum permissible levels of exposure and contamination;
- (c) the fundamental principles governing the health surveillance of workers.

##### *Article 31*

The basic standards shall be worked out by the Commission after it has obtained the opinion of a group of persons appointed by the Scientific and Technical Committee from among scientific experts, and in particular public health experts, in the Member States. The Commission shall obtain the opinion of the Economic and Social Committee on these basic standards.

After consulting the European Parliament the Council shall, on a proposal from the Commission, which shall forward to it the opinions obtained from these Committees, establish the basic standards; the Council shall act by a qualified majority.

##### *Article 32*

At the request of the Commission or of a Member State, the basic standards may be revised or supplemented in accordance with the procedure laid down in Article 31.

The Commission shall examine any request made by a Member State.’

- 3 Under Article 106a(3) EA, ‘[t]he provisions of the [TEU] and of the [FEU] Treaty shall not derogate from the provisions of this Treaty.’

*Directive 98/83/EC*

4 Council Directive 98/83/EC of 3 November 1998 on the quality of water intended for human consumption (OJ 1998 L 330, p. 32), as amended by Regulation (EC) No 596/2009 of the European Parliament and of the Council of 18 June 2009 (OJ 2009 L 188, p. 14, 'Directive 98/83'), provides in Article 1:

'1. This Directive concerns the quality of water intended for human consumption.

2. The objective of this Directive shall be to protect human health from the adverse effects of any contamination of water intended for human consumption by ensuring that it is wholesome and clean.'

5 Article 5 of Directive 98/83, entitled 'Quality standards', provides in paragraphs 1 and 2:

'1. Member States shall set values applicable to water intended for human consumption for the parameters set out in Annex I.

2. The values set in accordance with paragraph 1 shall not be less stringent than those set out in Annex I. As regards the parameters set out in Annex I, Part C, the values need be fixed only for monitoring purposes and for the fulfilment of the obligations imposed in Article 8.'

6 Part C of Annex I to Directive 98/83, entitled 'Indicator parameters', provides:

'...

Radioactivity

Parameters	Parametric value	Unit	Notes
Tritium	100	Bq/l	Notes 8 and 10
Total indicative dose	0,10	mSv/year	Notes 9 and 10

...

*Note 8:* Monitoring frequencies to be set later in Annex II.

*Note 9:* Excluding tritium, potassium -40, radon and radon decay products; monitoring frequencies, monitoring methods and the most relevant locations for monitoring points to be set later in Annex II.

*Note 10:* 1. The Commission shall adopt the measures required under Note 8 on monitoring frequencies, and Note 9 on monitoring frequencies, monitoring methods and the most relevant locations for monitoring points in Annex II. Those measures, designed to amend non-essential elements of this Directive, by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 12(3).

When elaborating those measures the Commission shall take into account, inter alia, the relevant provisions under existing legislation or appropriate monitoring programmes including monitoring results as derived from them.

'...'

*The contested Directive*

- 7 Proposal COM(2012) 147 for a Commission Directive of 28 March 2012 laying down requirements for the protection of the health of the general public with regard to radioactive substances in water intended for human consumption was based on Article 31 EA and 32 EA. The Parliament, by legislative resolution of 12 March 2013, approved amendments concerning the replacement of that legal basis by that resulting from Article 192(1) TFEU.
- 8 However, the Council rejected the amendment of the legal basis contemplated by the Parliament and, on 22 October 2013, adopted the contested Directive on the basis of Articles 31 EA and 32 EA.
- 9 Recitals 1 to 5 in the preamble to the contested Directive provide:
- ‘(1) The ingestion of water is one of the pathways of incorporation of radioactive substances into the human body. In accordance with Council Directive 96/29/Euratom [of 13 May 1996 laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionising radiation], the contribution to the exposure of the general public as a whole from practices which involve a risk from ionising radiation must be kept as low as reasonably achievable.
- (2) In view of the importance for human health of the quality of water intended for human consumption, it is necessary to lay down, at Community level, quality standards which have an indicator function and to provide for the monitoring of compliance with those standards.
- (3) Council Directive 98/83/EC ... sets out indicator parameters relating to radioactive substances in Annex I, Part C and related monitoring provisions in Annex II thereto. However, those parameters fall within the scope of the basic standards defined in Article 30 of the [EA] Treaty.
- (4) The requirements for monitoring levels of radioactive substances in water intended for human consumption should therefore be adopted in specific legislation that ensures the uniformity, coherence and completeness of radiation protection legislation under the [EAEC] Treaty.
- (5) Since the Community is competent to adopt the basic safety standards for the protection of the health of workers and general public against the dangers arising from ionising radiations, the provisions of this Directive supersede those of Directive 98/83/EC as regards the requirements for the protection of the health of the general public with regard to radioactive substances in water intended for human consumption.’
- 10 Article 1 of the contested Directive provides:
- ‘This Directive lays down requirements for the protection of the health of the general public with regard to radioactive substances in water intended for human consumption. It lays down parametric values and frequencies and methods for monitoring radioactive substances.’
- 11 Article 2(3) of the contested Directive defines the ‘indicative dose’ (‘the ID’) as meaning ‘the committed effective dose for one year of ingestion resulting from all the radionuclides whose presence has been detected in a supply of water intended for human consumption, of natural and artificial origin, but excluding tritium, potassium-40, radon and short-lived radon decay products.’
- 12 In accordance with Article 5(1) of the contested Directive, ‘Member States shall set parametric values applicable for the monitoring of radioactive substances in water intended for human consumption in accordance with Annex I.’

- 13 Annex I to the contested Directive, entitled ‘Parametric values for radon, tritium, and ID of water intended for human consumption’, reads as follows:

	Parameter	Parametric value	Unit	Notes
	Radon	100	Bq/l	Note 1
	Tritium	100	Bq/l	Note 2
	ID	0,10	mSv	

Note 1:

- (a) Member States may set a level for radon which is judged inappropriate to be exceeded and below which optimisation of protection should be continued, without compromising water supply on a national or regional scale. The level set by a Member State may be higher than 100 Bq/l but lower than 1 000 Bq/l. In order to simplify national legislation, Member States may choose to adjust the parametric value to this level.
- (b) Remedial action is deemed to be justified on radiological protection grounds, without further consideration, where radon concentrations exceed 1 000 Bq/l.

Note 2: Elevated levels of tritium may indicate the presence of other artificial radionuclides. If the tritium concentration exceeds its parametric value, an analysis of the presence of other artificial radionuclides shall be required.’

- 14 Article 6(1) and (2) of the contested Directive provides:

‘1. Member States shall take all measures necessary to ensure that monitoring for radioactive substances in water intended for human consumption is undertaken in accordance with the monitoring strategies and frequencies set out in Annex II, in order to check whether the values of radioactive substances comply with the parametric values laid down pursuant to Article 5(1).

...

2. Monitoring for the ID shall be carried out, and analytical performance characteristics shall be in accordance with the requirements set out in Annex III.’

### **Procedure before the Court and the forms of order sought**

- 15 By decisions of the President of the Court of 14 May, 28 May and 26 June 2014, the French Republic, the Commission and the Czech, respectively, were granted leave to intervene in support of the form of order sought by the Council.

- 16 The Parliament claims that the Court should:

- annul the contested Directive; and
- order the Council to pay the costs.

- 17 The Council, supported by the Czech Republic, the French Republic and the Commission, contends that the Court should:

- dismiss the action; and

— order the Parliament to pay the costs.

- 18 The Council, supported by the French Republic and the Commission requests, in the alternative, should the Court uphold the appeal, that the effects of the contested Directive be maintained until the entry into force, within a reasonable period, of new legislation to replace it.

### **The action**

- 19 The Parliament puts forward three pleas in law in support of its action. The first plea alleges an incorrect choice of the legal basis for the contested Directive, the second, infringement of the principle of legal certainty, and the third, infringement of the principle of sincere cooperation among the institutions, set out in Article 13(2) TEU.

*The first plea in law, alleging an incorrect choice of the legal basis for the contested Directive*

### Arguments of the parties

- 20 The Parliament, referring to recitals 3 to 5 in the preamble to the contested Directive, claims that the main objective of the contested Directive corresponds to that of EU policy in the field of the environment, listed in Article 191(1) TFEU, particularly the objectives of the protection of human health and the prudent and rational use of natural resources. In its view, the contested Directive should have been based on Article 192(1) TFEU (see judgment in *Commission v Parliament and Council*, C-411/06, EU:C:2009:518, paragraphs 45 to 47).
- 21 The Parliament claims that it follows from Article 1 of Directive 98/83 that the scheme established by the latter was intended to apply to all forms of water contamination intended for human consumption, regardless of the source. The contested Directive accordingly disrupts the uniformity of the scheme established by Directive 98/83.
- 22 According to the Parliament, it is clear from the explanatory memorandum for Commission proposal COM(2012) 147 final that the Commission considers that certain provisions of Directive 98/83, namely those in Part C of Annex I and Annex II thereto, in fact fall within Articles 30 EA to 32 EA. However, Regulation No 596/2009 added in Part C of Annex I to Directive 98/83 Note 10 on radioactive substances. Regulation No 596/2009 was based on Article 175(1) EC, now Article 192(1) TFEU. Neither the EU legislature nor the Commission at that time considered it necessary to add the provisions of the EAEC Treaty as a legal basis for that regulation.
- 23 In the present case, instead of proceeding to an amendment of Directive 98/83 seeking to include provisions on the parametric values of radioactive substances as well as provisions on their monitoring, the Council endorsed a proposal which distorts the uniform system established by that directive.
- 24 The Parliament also claims, in its reply, that its argument does not question the principle set out in Article 106a(3) EA. According to the Parliament, the contested Directive should have had its legal basis in Article 192(1) TFEU since it fits into the regulatory framework established by Directive 98/83. By the contested Directive, the Council, acting on the basis of Articles 31 EA and 32 EA, enacted new rules regarding a particular aspect of the framework established by Directive 98/83, that is to say, protection requirements with regard to radioactive substances in water intended for human consumption, and accordingly acted contrary to the objective pursued by that directive. In determining the appropriate legal basis for the contested Directive, account ought to have been taken, first, of the fact that Directive 98/83 constitutes the cornerstone of the system of protecting human health against the harmful effects of contaminated water intended for human consumption and,

secondly, of the fact that the contested Directive takes effect specifically in relation to one aspect of the scheme established by Directive 98/83 (see the judgment in *UK v Council*, C-656/11, EU:C:2014:97, paragraphs 50, 51, 64 and 66).

- 25 The Council and the interveners, after recalling that the provisions of Chapter 3 of Title II of the EAEC Treaty, which include Articles 31 EA and 32 EA, are to be interpreted broadly in order to give them practical effect (judgments in *Parliament v Council*, C-70/88, EU:C:1991:373, paragraph 14; *Commission v Council*, C-29/99, EU:C:2002:734, paragraphs 78 to 80, and *ČEZ*, C-115/08, EU:C:2009:660, paragraphs 100 and 112), argue that, having regard to the purpose and content of the contested Directive, it was correctly based on Articles 31 EA and 32 EA.

#### Findings of the Court

- 26 It should be recalled that, according to Article 31 EA, the Council, acting by a qualified majority, after consulting the European Parliament on a proposal from the Commission, is to establish the basic standards referred to in Article 30 EA relating to the protection of the health of workers and the general public against the dangers arising from ionising radiations. Article 32 EA states that, at the request of the Commission or of a Member State, the basic standards accordingly adopted may be revised in accordance with that procedure.
- 27 Although the preamble to the contested Directive refers to Articles 31 EA and 32 EA, as it does not include revisions of the basic standards previously adopted on the basis of the EAEC Treaty, only Article 31 EA could constitute the legal basis.
- 28 Article 192(1) TFEU provides that the European Parliament and the Council are to act in accordance with the ordinary legislative procedure when deciding what action is to be taken by the Union in order to achieve its objectives on environmental policy, which include, inter alia, protecting human health.
- 29 As for the question whether the contested Directive could legitimately be adopted on the basis of Article 31 EA, it is clear from settled case-law that the choice of legal basis for a measure must rest on objective factors that are amenable to judicial review; these include the purpose and content of that measure (see, inter alia, judgments in *Parliament v Council*, EU:C:1991:373, paragraph 9; *Parliament v Council*, C-130/10, EU:C:2012:472, paragraph 42; *Commission v Council*, C-137/12, EU:C:2013:675, paragraph 52; and *Commission v Parliament and Council*, C-43/12, EU:C:2014:298, paragraph 29).
- 30 The legal basis which has been used for the adoption of other European Union measures which might, in certain cases, display similar characteristics is irrelevant in that regard, as the legal basis for a measure must be determined having regard to its purpose and content (see judgment in *United Kingdom v Council*, EU:C:2014:97, paragraph 48 and the case-law cited). The Parliament cannot therefore base any argument on the fact that the contested Directive contains certain aspects which are identical to those set out in Part C of Annex I to Directive 98/83, which itself was based on Article 130 S(1) of the EC Treaty, now Article 192(1) TFEU.
- 31 In the present case, it must be noted that the contested Directive aims, as is clear from Article 1, to protect the health of the general public by defining the requirements for radioactive substances in water intended for human consumption. Recitals 1 and 2 in the preamble to that directive explain for that purpose that the ingestion of water is one of the pathways of incorporation of radioactive substances in the human body and that it is therefore necessary to lay down, at Community level, quality standards which have an indicator function and to provide for the monitoring of compliance with those standards.

- 32 The purpose pursued by the contested Directive thus corresponds to the purpose of a basic standard within the meaning of Article 30 EA, which aims to protect the health of the general public against the dangers arising from ionising radiation.
- 33 As regards the content of the contested Directive, it lays down the parametric values and frequencies and methods for monitoring radioactive substances in water intended for human consumption. The content of the contested Directive also corresponds to the content of a basic standard within the meaning of Article 30 EA which, in accordance with points (a) and (b) of the second paragraph of that article, in respect of the ionising radiation, sets maximum permissible doses compatible with adequate safety and the maximum permissible levels of exposure and contamination. It should in addition be noted that the control of radioactivity of water is expressly covered by the provisions of Chapter 3 of Title II of the EAEC Treaty, which includes Articles 30 EA and 31 EA.
- 34 As for the Parliament's argument that the main objective of the contested Directive corresponds to that of EU policy in the field of the environment, listed in Article 191(1) TFEU, and that, accordingly, the contested Directive should have been based on Article 192(1) TFEU, it should admittedly be noted that under Article 191(1) TFEU, EU policy on the environment is to contribute to the pursuit, in particular, of the protection of human health.
- 35 However, the Court has repeatedly held that the provisions of Chapter 3 of Title II of the EAEC Treaty are to be interpreted broadly in order to give them practical effect (see, inter alia, judgments in *Commission v Council*, EU:C:2002:734, paragraph 78, and *ČEZ*, EU:C:2009:660, paragraph 100). Those provisions, which include Articles 30 EA and 31 EA, accordingly are intended to ensure the consistent and effective protection of the health of the general public against the dangers arising from ionising radiations, whatever their source and whatever the categories of persons exposed to such radiations (judgments in *Parliament v Council*, EU:C:1991:373, paragraph 14, and *ČEZ*, EU:C:2009:660, paragraph 112).
- 36 In addition, if the Treaties contain a more specific provision that is capable of constituting the legal basis for the measure in question, the measure must be founded on that provision (see judgments in *Commission v Council*, C-338/01, EU:C:2004:253, paragraph 60, and in *Commission v Council*, Case C-533/03, EU:C:2006:64, paragraph 45).
- 37 Article 31 EA constitutes a more specific legal basis for protecting the health of populations against radioactive substances in water intended for human consumption than the general legal basis resulting from Article 192(1) TFEU. The EAEC Treaty contains a set of rules relating precisely to the protection of populations and the environment against ionising radiations (judgment in *ČEZ*, EU:C:2009:660, paragraph 83).
- 38 In any event, if the mere finding that a measure relating to radioactive substances is to protect human health within the meaning of Article 191(1) TFEU were sufficient for Article 192(1) TFEU to be accepted as the appropriate legal basis for that measure, Article 31 EA could no longer serve as the legal basis for Community action since the basic standards within the meaning of Article 30 EA have, by their nature, the protection of human health as their objective. The Parliament's argument accordingly misconstrues not only the practical effect of Article 31 EA, which constitutes a more specific legal basis than Article 192(1) TFEU, but also the principle enshrined in Article 106a(3) EA, according to which the provisions of the TFEU are not to derogate from the provisions of the EAEC Treaty.
- 39 It follows from all the foregoing that the contested Directive was legitimately adopted on the basis of Article 31 EA.
- 40 The first plea in law alleging an incorrect choice of the legal basis for the contested Directive must therefore be rejected.



*The second plea in law, alleging infringement of the principle of legal certainty*

Arguments of the parties

- 41 The Parliament claims that the Council has created a situation of legal uncertainty since the adoption of the contested Directive was not accompanied by the repeal of Directive 98/83 as regards its part relating to radioactive substances. In the absence of an express repeal, the parametric values of Part C of Annex I to that directive remain in force, in the same way as those of the contested Directive. The same is true of the authorisation granted to the Commission to adopt measures in accordance with the regulatory procedure with scrutiny as provided in Note 10 of Part C of Annex I to Directive 98/83. The overlapping of the two schemes, that of the contested Directive and that of Directive 98/83, undermines legal certainty.
- 42 According to the Parliament, recital 5 in the preamble to the contested Directive, according to which the provisions of the contested Directive supersede those of Directive 98/83, is not sufficient in itself to overcome that legal uncertainty. Indeed, the coexistence of two pieces of legislation both seeking the same objective, namely the protection of human health against radioactive substances in water intended for human consumption, but having different content, generates uncertainty which cannot be eliminated by reference to the principle of *lex specialis derogat legi generali*. In any event, the Member States remain obliged, pursuant to Directive 98/83, to leave in force the provisions adopted to implement Part C of Annex I and Annex II to that directive and the infringement of that obligation may be relied on by any interested party before the competent national courts. That obligation cannot be removed except by express repeal of the provisions at issue which requires the use of the legal basis resulting from Article 192(1) TFEU. It is clear from the contested Directive that the failure to repeal those provisions is not a mere oversight. Moreover, according to the Parliament, the drafter of a measure is not permitted to use the principle of *lex specialis derogat legi generali* to explain a conflict between two measures which it created.
- 43 The Council and the interveners note that recital 5 in the preamble to the contested Directive clearly shows that the provisions of the contested Directive supersede those of Directive 98/83 as regards the requirements for the protection of the health of the general public with regard to radioactive substances in water intended for human consumption.
- 44 Therefore, in their view, there is no ambiguity regarding the relationship between the provisions of the contested Directive and those of Directive 98/83. In accordance with the principle of legal certainty, the Member States, addressees of the contested Directive, are in a position to determine what their obligations are.

Findings of the Court

- 45 According to settled case-law, the principle of legal certainty requires that rules of law be clear and precise and predictable in their effect, so that interested parties can ascertain their position in situations and legal relationships governed by EU law (see judgments in *France Télécom v Commission*, C-81/10 P, EU:C:2011:811, paragraph 100 and the case-law cited, and in *LVK — 56*, C-643/11, EU:C:2013:55, paragraph 51).
- 46 In the present case, it should be noted that there is no contradiction in the relationship between the contested Directive and Directive 98/83. In fact, the contested Directive fixes, in Annex I, exactly the same parametric values as those set out in Part C of Annex I to Directive 98/83, namely, for tritium, 100 Bq per litre, and, for the total indicative dose of radioactivity, 0.10 mSv per year.

- 47 It follows that, even if the contested Directive and Directive 98/83 lay down rules of law relating to radioactive substances in water intended for human consumption, the overlapping of the two schemes is not such as to affect the clear, precise and predictable nature of the applicable rules.
- 48 Furthermore, it should be noted that, although the contested Directive includes new rules, in particular those relating to radon, as those rules are contained only in the contested Directive, the clear, precise and predictable nature of those rules cannot in addition be affected by the overlapping of legal schemes resulting from the contested Directive and Directive 98/83.
- 49 Finally, it should be noted that, in relation to Directive 98/83 which concerns, in general, the quality of water intended for human consumption, the contested Directive is a *lex specialis* with regard to the protection of human health against the dangers of radioactive substances in such waters. Contrary to the Parliament's claims, the principle of *lex specialis derogat legi generali* is applicable even if the *lex generalis* and the *lex specialis* emanate from the same institution.
- 50 It follows that, although the allegation made by Parliament for the first time in its observations on the statements in intervention, according to which there are differences between the legal content of the measures concerned, is correct, the provisions of the contested Directive supersede those of Directive 98/83 in the event of any inconsistency between the schemes established by the two directives concerned, as expressly confirmed by recital 5 in the preamble to the contested Directive.
- 51 In those circumstances, no breach of the principle of legal certainty can be established.
- 52 Accordingly, the second plea in law cannot be upheld.

*The third plea in law, alleging infringement of the principle of sincere cooperation among the institutions, laid down in Article 13(2) TEU*

#### Arguments of the parties

- 53 The Parliament claims that no valid legal reason may be relied upon to create — for radioactive substances in water intended for human consumption — a separate scheme on the basis of the EAEC Treaty, with its purpose being the same protection and control measures as those specified in Part C of Annex I and Annex II to Directive 98/83. The provisions of Directive 98/83 concern, it is true, radiation protection, but they are only one of the aspects of the overall framework of safeguards established by Directive 98/83, for which they share the same ultimate objective, namely the protection of the environment and human health, provided for in Article 191(1) TFEU.
- 54 The Parliament notes that the choice of legal basis cannot in any case be based on considerations relating to the procedure to be followed for the adoption of the measure in question or relating to the scheme applicable to that measure once it is adopted (judgment in *Commission v Council*, EU:C:2013:675, paragraph 74). Action to artificially separate part of a legislative act in force, which is clearly of a secondary nature in the general scheme of that measure, in order to be the subject of a separate legal measure with a different legal basis and subject to a different legal scheme, constitutes an infringement of the duty of sincere cooperation among institutions, enshrined in Article 13(2) TEU.
- 55 In its observations on the statements in intervention, the Parliament also claims that, in order to observe the duty of sincere cooperation, it was necessary, first, to repeal part of Directive 98/83 on the basis of Article 192(1) TFEU and under the ordinary legislative procedure, which would have allowed all the institutions concerned to decide the question of whether it was legally correct and politically

expedient to extract the provisions relating to radioactive substances in water intended for human consumption from Directive 98/83, in order to make them the subject of an autonomous measure on the basis of the EAEC Treaty.

56 The Council and the interveners contend that the contested Directive does not infringe Article 13(2) TEU.

#### Findings of the Court

57 Under Article 13(2) TEU, the institutions are to practise mutual sincere cooperation.

58 That sincere cooperation, however, is exercised within the limits of the powers conferred by the Treaties on each institution. The obligation resulting from Article 13(2) TEU is therefore not such as to change those powers.

59 As to whether the Council infringed the principle of sincere cooperation by adopting the contested Directive, it must be recalled that, as was stated in paragraph 39 of the present judgment, the contested Directive was founded on an appropriate legal basis, namely Article 31 EA.

60 The fact that, for the purposes of adopting the contested Directive, the Parliament was consulted and did not intervene as co-legislator under the ordinary legislative procedure, is accordingly solely a result of the choice made by the framers of the treaties and not from an infringement of the principle of sincere cooperation (see, to that effect, judgment in *Parliament v Commission*, EU:C:2012:472, paragraph 82).

61 Finally, the Parliament's argument that, before the adoption of the contested Directive, Directive 98/83 should have been partially repealed on the basis of Article 192(1) TFEU and in compliance with the provisions of the TEU Treaty relating to the ordinary legislative procedure, cannot be upheld.

62 In fact, the Parliament's argument is tantamount to accepting that the exercise by the Council of the powers conferred on it by Articles 30 EA and 31 EA may be subject to the prior approval of Parliament, even though those provisions only grant it an advisory role. As is clear from paragraph 58 of the present judgment, the powers that Parliament and the Council derive from Articles 30 EA and 31 EA cannot be limited or extended, respectively, under the principle of sincere cooperation.

63 The third plea in law must therefore be rejected.

64 It follows from all the foregoing that the action must be dismissed in its entirety.

#### Costs

65 Under Article 138(1) of the Rules of Procedure of the Court of Justice, the unsuccessful party must be ordered to pay the costs if they have been applied for in the other party's pleadings. Since the Council has applied for costs and the Parliament has been unsuccessful, the latter must be ordered to pay the costs.

66 In accordance with Article 140(1) of the Rules of Procedure, the Czech Republic, the French Republic and the Commission must bear their own costs.

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

- 1. Dismisses the action;**
- 2. Orders the European Parliament to pay the costs;**
- 3. Orders the Czech Republic, the French Republic and the Commission to bear their own costs.**

[Signatures]