



Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

11 June 2014*

(Action for annulment — Council Decision 2012/272/EU on the signing, on behalf of the Union, of the Framework Agreement on Partnership and Cooperation between the European Union and the Republic of the Philippines — Choice of legal basis — Articles 79 TFEU, 91 TFEU, 100 TFEU, 191 TFEU and 209 TFEU — Readmission of third-country nationals — Transport — Environment — Development cooperation)

In Case C-377/12,

ACTION for annulment under Article 263 TFEU, brought on 6 August 2012,

European Commission, represented by S. Bartelt, G. Valero Jordana and F. Erlbacher, acting as Agents, with an address for service in Luxembourg,

applicant,

v

Council of the European Union, represented by A. Vitro and J.-P. Hix, acting as Agents,

defendant,

supported by:

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

Federal Republic of Germany, represented by T. Henze, J. Möller and N. Graf Vitzthum, acting as Agents,

Ireland, represented by E. Creedon and A. Joyce, acting as Agents, and A. Carroll, Barrister, with an address for service in Luxembourg,

Hellenic Republic, represented by S. Khala and G. Papagianni, acting as Agents, with an address for service in Luxembourg,

Republic of Austria, represented by C. Pesendorfer, acting as Agent, with an address for service in Luxembourg,

United Kingdom of Great Britain and Northern Ireland, represented initially by A. Robinson, and subsequently by E. Jenkinson and M. Holt, acting as Agents, and by J. Holmes, Barrister,

interveners,

* Language of the case: English.

THE COURT (Grand Chamber),

composed of V. Skouris, President, K. Lenaerts, Vice-President, A. Tizzano, R. Silva de Lapuerta, M. Ilešič and M. Safjan, Presidents of Chambers, A. Rosas, A. Ó Caoimh, A. Arabadjiev, C. Toader and E. Jarašiūnas (Rapporteur), Judges,

Advocate General: P. Mengozzi,

Registrar: K. Malacek, Administrator,

having regard to the written procedure and further to the hearing on 22 October 2013,

after hearing the Opinion of the Advocate General at the sitting on 23 January 2014,

gives the following

Judgment

- 1 By its application, the European Commission seeks the annulment of Council Decision 2012/272/EU of 14 May 2012 on the signing, on behalf of the Union, of the Framework Agreement on Partnership and Cooperation between the European Union and its Member States, of the one part, and the Republic of the Philippines, of the other part (OJ 2012 L 134, p. 3; ‘the contested decision’) in so far as the Council of the European Union added thereto the legal bases relating to readmission of third-country nationals (Article 79(3) TFEU), transport (Articles 91 TFEU and 100 TFEU) and the environment (Article 191(4) TFEU).

The contested decision and the Framework Agreement

- 2 On 25 November 2004 the Council authorised the Commission to negotiate a framework agreement with the Republic of the Philippines on partnership and cooperation.
- 3 On 6 September 2010 the Commission adopted a proposal for a Council decision on the signing of the Framework Agreement on Partnership and Cooperation between the European Union and its Member States, of the one part, and the Republic of the Philippines, of the other part (‘the Framework Agreement’), which had as its legal bases Articles 207 TFEU and 209 TFEU, relating, respectively, to the common commercial policy and to development cooperation, in conjunction with Article 218(5) TFEU.
- 4 On 14 May 2012 the Council adopted unanimously the contested decision authorising the signing of the Framework Agreement, subject to the conclusion of that agreement. In addition to Articles 207 TFEU and 209 TFEU, in conjunction with Article 218(5) TFEU, the Council selected Articles 79(3) TFEU, 91 TFEU, 100 TFEU and 191(4) TFEU as legal bases.
- 5 Recitals 2 and 3 in the preamble to the contested decision state as follows:
 - ‘(2) The provisions of the [Framework] Agreement that fall within the scope of Part Three, Title V of the [FEU Treaty] bind the United Kingdom and Ireland as separate Contracting Parties, and not as part of the European Union, unless the European Union together with the United Kingdom and/or Ireland have jointly notified the Republic of the Philippines that the United Kingdom or Ireland is bound as part of the European Union in accordance with the Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the area of Freedom, Security and Justice annexed to the [EU Treaty] and the [FEU Treaty]. If the United Kingdom and/or Ireland

cease(s) to be bound as part of the European Union in accordance with Article 4a of the Protocol (No 21), the European Union together with the United Kingdom and/or Ireland are to immediately inform the Republic of the Philippines of any change in their position in which case they are to remain bound by the provisions of the [Framework] Agreement in their own right. The same applies to Denmark in accordance with the Protocol (No 22) on the position of Denmark annexed to those Treaties.

- (3) Where the United Kingdom and/or Ireland has/have not provided the notification required under Article 3 of the Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the area of Freedom, Security and Justice, they do not take part in the adoption by the Council of this Decision to the extent that it covers provisions pursuant to Part Three, Title V of the [FEU Treaty]. The same applies to Denmark in accordance with the Protocol (No 22) on the position of Denmark, annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union.’
- 6 In the preamble to the Framework Agreement, as worded in Council document No 15616/10 of 21 January 2011, the contracting parties affirm inter alia the particular importance that they attach to the comprehensive nature of their mutual relationship, and their desire to promote sustainable social and economic development, the eradication of poverty and the achievement of the Millennium Development Goals. They recognise the importance of strengthening the existing relationship between them with a view to enhancing cooperation, and their common will to consolidate, deepen and diversify their relations in areas of mutual interest. They express their full commitment to promoting sustainable development, including environmental protection and effective cooperation to combat climate change. They recognise furthermore their commitment to a comprehensive dialogue and to cooperation in promoting migration and development, while noting that the provisions of the Framework Agreement that fall within the scope of Title V of Part Three of the FEU Treaty bind the Kingdom of Denmark, Ireland and the United Kingdom as separate parties, or alternatively, as part of the European Union.
- 7 Article 1 of the Framework Agreement, headed ‘General Principles’, provides in paragraph 3:
- ‘The Parties confirm their commitment to promoting sustainable development, cooperating to address the challenges of climate change and to contributing to the internationally agreed development goals, including those contained in the Millennium Development Goals.’
- 8 Article 2 of the Framework Agreement, which defines the aims of the cooperation, states:
- ‘With a view to strengthening their bilateral relationship, the Parties undertake to hold a comprehensive dialogue and promote further cooperation between them on all sectors of mutual interest as provided under this [Framework] Agreement. Their efforts will, in particular, be aimed at:
- ...
- (g) establishing cooperation in the areas of migration and maritime labour;
- (h) establishing cooperation in all other sectors of mutual interest, notably employment and social affairs; development cooperation; economic policy; financial services; good governance in the tax area; industrial policy and SMEs; information and communication technology (ICT); audiovisual, media and multimedia; science and technology; transport; tourism; education, culture, intercultural and interfaith dialogue; energy; environment and natural resources including climate change; agriculture, fisheries and rural development; regional development; health; statistics; disaster risk management (DRM); and public administration;
- ...’

- 9 Article 26 of the Framework Agreement, headed ‘Cooperation on Migration and Development’, provides:

‘1. The Parties reaffirm the importance of the joint management of migratory flows between their territories. With a view to strengthening cooperation, the Parties shall establish a mechanism for comprehensive dialogue and consultation on all migration-related issues. Migration concerns shall be included in the national strategies/national development framework for economic and social development of countries of origin, transit and destination of migrants.

2. Cooperation between the Parties shall be based on a specific needs-assessment conducted in mutual consultation and agreement between the Parties and be implemented in accordance with the relevant Union and national legislation in force. It will, in particular, focus on:

...

(e) the establishment of an effective and preventive policy to address the presence on their territory of a national of the other Party who does not fulfil, or no longer fulfils, the conditions of entry, stay or residence in the territory of the Party concerned; the smuggling of persons, and trafficking in human beings, including ways to combat networks of smugglers of persons and traffickers and to protect the victims of such activities;

(f) the return of persons as defined under paragraph 2, point (e) of this Article, under humane and dignified conditions, including the promotion of their voluntary and sustainable return to the countries of origin, and their admission/readmission in accordance with paragraph 3 of this Article. The return of such persons shall be with due regard to the Parties’ right to grant residence permits or authorisations to stay for compassionate and humanitarian reasons and the principle of non-refoulement;

...

(h) migration and development issues including human resources development, social protection, maximising benefits from migration, gender and development, ethical recruitment and circular migration, and the integration of migrants.

3. Within the framework of cooperation in this area and without prejudice to the need to protect victims of human trafficking, the Parties further agree that:

(a) The Philippines shall admit back any of its nationals as defined under paragraph 2, point (e) of this Article present in the territory of a Member State upon request by the latter, without undue delay once nationality has been established and due process in the Member State carried out.

(b) Each Member State shall readmit any of its nationals as defined under paragraph 2, point (e) of this Article present in the territory of the Philippines upon request by the latter, without undue delay once nationality has been established and due process in the Philippines carried out.

(c) The Member States and the Philippines will provide their nationals with required documents for such purposes. Any request for admission or readmission shall be transmitted by the requesting state to the competent authority of the requested state.

Where the person concerned does not possess any appropriate identity documents or other proof of his/her nationality, the competent diplomatic or consular representation concerned shall be immediately requested by the Philippines or Member State to ascertain his/her nationality, if needed by means of an interview; and once ascertained to be a national of the Philippines or Member State, appropriate documents shall be issued by the competent Philippine or Member State authorities.

4. The Parties agree to conclude as soon as possible an agreement for the admission/readmission of their nationals, including a provision on the readmission of nationals of other countries and stateless persons.'

10 Article 29 of the Framework Agreement, headed 'Development Cooperation', provides:

'1. The primary goal of development cooperation is to encourage sustainable development that will contribute to the reduction of poverty and to the attainment of internationally agreed development goals including the Millennium Development Goals. The Parties shall engage in regular dialogue on development cooperation in line with their respective priorities and areas of mutual interest.

2. The development cooperation dialogue shall aim at, inter alia:

- (a) promoting human and social development;
- (b) pursuing sustained inclusive economic growth;
- (c) promoting environmental sustainability and sound management of natural resources including promotion of best practices;
- (d) reducing the impact, and managing the consequences of, climate change;
- (e) enhancing capacity to implement deeper integration into the world economy and international trading system;
- (f) promoting public sector reform particularly in the area of public finance management to improve the delivery of social services;
- (g) establishing processes adhering to the principles of the Paris Declaration on Aid Effectiveness, the Accra Agenda for Action, and other international commitments aimed at improving the delivery and effectiveness of aid.'

11 As regards protection of the environment and of natural resources, Article 34 of the Framework Agreement is worded as follows:

'1. The Parties agree that cooperation in this area shall promote the conservation and improvement of the environment in pursuit of sustainable development. The implementation of the outcome of the [World Summit on Sustainable Development which took place in Johannesburg in 2002] and of relevant multilateral environmental agreements to which they are parties shall be taken into account in all activities undertaken by the Parties under this [Framework] Agreement.

2. The Parties agree on the need to conserve and manage in a sustainable manner natural resources and biological diversity for the benefit of all generations taking into account their developmental needs.

3. The Parties agree to cooperate with a view to enhancing the mutual support for trade and environment policies, and the integration of environmental considerations into all sectors of cooperation.

4. The Parties endeavour to continue and strengthen their cooperation in regional programmes on protection of the environment, as regards:

- (a) enhancing environmental awareness and local participation in environmental protection and sustainable development efforts, including participation of indigenous cultural communities/indigenous peoples and local communities;
- (b) capacity-building on climate change adaptation and mitigation and energy efficiency;
- (c) capacity-building for participating [in] and implementing multilateral environment agreements including but not limited to biodiversity and biosafety;
- (d) promoting environmentally friendly technologies, products and services, including through the use of regulatory and market-based instruments;
- (e) improving natural resources including forest governance and combating illegal logging and associated trade, and promoting sustainable natural resources including forest management;
- (f) effective management of national parks and protected areas and the designation and protection of areas of biodiversity and fragile ecosystems, with due regard for local and indigenous communities living in or near these areas;
- (g) prevention of illegal transboundary movement of solid and hazardous wastes and other forms of wastes;
- (h) protection of coastal and marine environment and effective water resources management;
- (i) protection and conservation of soils and sustainable land management, including rehabilitation of mined-out/abandoned mines;
- (j) promoting capacity building in disaster and risk management;
- (k) promoting Sustainable Consumption and Production patterns in their economies.

5. The Parties shall encourage mutual access to their programmes in this field, in accordance with the specific terms of such programmes.'

¹² Article 38 of the Framework Agreement, relating to transport, states:

'1. The Parties agree to cooperate in relevant areas of transport policy with a view to improving investment opportunities and the movement of goods and passengers, promoting maritime and aviation safety and security, addressing the environmental impact of transport and increasing the efficiency of their transport systems.

2. Cooperation between the Parties in this area shall aim to promote:

- (a) the exchange of information on their respective transport policies, regulations and practices, especially regarding urban and rural transport, maritime transport, air transport, transport logistics, and the interconnection and interoperability of multimodal transport networks as well as the management of roads, railways, ports, and airports;
- (b) the exchange of views on the European Satellite Navigation Systems (in particular Galileo) with a focus on regulatory, industrial, and market development issues of mutual benefit;

- (c) continuing the dialogue in the field of air transport services with a view to ensuring legal certainty without any undue delay to the existing bilateral air services agreements between individual Member States and the Philippines;
- (d) continuing the dialogue on enhancing air transport infrastructure networks and operations for the fast, efficient, sustainable, safe and secure movement of people and goods, and promoting the application of competition law and economic regulation of the air industry, with a view to supporting regulatory convergence and enhancing doing business, and to examine possibilities for the further development of relations in the field of air transport. Air transport cooperation projects of mutual interest should be further promoted;
- (e) dialogue in the field of maritime transport policy and services aiming in particular at promoting the development of the maritime transport industry including but not limited to:
 - (i) the exchange of information on legislation and regulations concerning maritime transport and ports;
 - (ii) the promotion of unrestricted access to the international maritime markets and trades on a commercial basis, the abstention from introducing cargo sharing clauses, the granting of national treatment and Most Favoured Nation (MFN) clauses for vessels operated by nationals or companies of the other Party and relevant issues related to door-to-door transport services involving the sea leg, taking into account the domestic laws of the Parties;
 - (iii) the effective administration of ports and the efficiency of maritime transport services; and
 - (iv) the promotion of maritime transport cooperation of mutual interest and of the area of maritime labour, education and training pursuant to Article 27;
- (f) a dialogue on the effective implementation of transport security, safety and pollution prevention standards, notably as regards maritime transport, particularly including combating piracy, and air transport, in line with the relevant international conventions to which they are parties, and standards, including cooperation in the appropriate international fora aiming to ensure better enforcement of international regulations. To this end, the Parties will promote technical cooperation and assistance on issues related to transport safety, security and environmental consideration including but not limited to maritime and aviation education and training, search and rescue, and accidents and incidents investigation. The Parties will also focus on the promotion of environmentally-friendly modes of transport.'

Forms of order sought and procedure before the Court

- 13 The Commission asks the Court to annul the contested decision in so far as the Council added thereto the legal bases relating to readmission of third-country nationals (Article 79(3) TFEU), transport (Articles 91 TFEU and 100 TFEU) and the environment (Article 191(4) TFEU), to maintain the effects of the contested decision and to order the Council to pay the costs.
- 14 The Council contends that the action should be dismissed and that the Commission should be ordered to pay the costs.
- 15 By orders of the President of the Court of 29 November 2012, 18 December 2012 and 25 January 2013, Ireland, the United Kingdom, the Czech Republic, the Federal Republic of Germany, the Hellenic Republic and the Republic of Austria were granted leave to intervene in support of the form of order sought by the Council.

The action

Arguments of the parties

- 16 In support of its action, the Commission puts forward a single plea in law, according to which the addition of Articles 79(3) TFEU, 91 TFEU, 100 TFEU and 191(4) TFEU as legal bases for the contested decision was unnecessary and unlawful.
- 17 It states that it is not disputed that the objective of the Framework Agreement is to establish a framework for cooperation and development, as follows in particular from Article 1(3) of the agreement, and that the contested decision had to be based on both Article 207 TFEU and Article 209 TFEU since the trade part of the Framework Agreement cannot be seen as being merely incidental to the part concerning development cooperation. On the other hand, unlike the Council, it considers that the provisions of the Framework Agreement which accounted for the addition of Articles 79(3) TFEU, 91 TFEU, 100 TFEU and 191(4) TFEU are entirely covered by Article 209 TFEU.
- 18 It indeed follows from Articles 21 TEU, 208 TFEU and 209 TFEU and from the case-law, in particular Case C-268/94 *Portugal v Council* EU:C:1996:461, paragraphs 37 and 38, that development cooperation policy is conducted in the framework of a wide range of policy objectives which pursue the development of the third country concerned, so that development cooperation agreements necessarily encompass a wide range of specific areas of cooperation without the character of such agreements as development cooperation agreements being affected.
- 19 This broad notion of development cooperation is also reflected in secondary legislation, as is demonstrated by the wide range of actions eligible for European Union financing under the development cooperation instrument created by Regulation (EC) No 1905/2006 of the European Parliament and of the Council of 18 December 2006 establishing a financing instrument for development cooperation (OJ 2006 L 378, p. 41). It is likewise apparent in the joint statement by the Council and the representatives of the governments of the Member States meeting within the Council, the European Parliament and the Commission on European Union Development Policy: ‘The European Consensus’ (OJ 2006 C 46, p. 1; ‘the European Consensus’).
- 20 In this instance, all the provisions of the Framework Agreement except for the part on trade and investment contribute to furthering pursuit of the development of the Philippines as a developing country and do not impose extensive obligations distinct from those of development cooperation. They therefore come under the objectives of the European Union’s development cooperation policy and are covered by Article 209 TFEU.
- 21 That is so in the case of Article 38 of the Framework Agreement, relating to transport, the provisions of which do not go beyond a general commitment to cooperate. The same is true of Article 26(3) and (4) of the Framework Agreement, relating to readmission of nationals of the contracting parties. Article 26(3) provides for mere cooperation in that field and only restates the basic principles already laid down by international law, whilst Article 26(4) provides for the conclusion of a readmission agreement at a later stage. The same is again true of Article 34 of the Framework Agreement, concerning protection of the environment and of natural resources, which merely sets out general principles and guidelines on the role that environmental protection should play in the development cooperation of the European Union in respect of the Philippines.
- 22 Furthermore, the Commission submits that the addition by the Council of Article 79(3) TFEU produces unwarranted legal effects, both internally and externally. Because of Protocol No 21 and Protocol No 22, its addition gives rise to the application of voting rules that differ and are incompatible, to the alteration of the territorial scope of the contested decision, to legal uncertainty as regards determining which provisions of the Framework Agreement are covered by Article 79(3)

TFEU, to the limitation of the institutional rights of the European Parliament and the Court of Justice, and to uncertainty as regards the degree of the exercise of the European Union's competence under Articles 3(2) TFEU and 4(2) TFEU.

- 23 With regard to its request that the effects of the annulment of the contested decision be limited, the Commission submits that maintaining the effects of the contested decision is justified in order to avoid any negative consequences on relations between the European Union and the Republic of the Philippines.
- 24 The Council, supported by all the intervening Member States, opposes the Commission's reasoning, observing that agreements establishing partnership and cooperation with third countries that have been concluded recently seek to establish a comprehensive relationship covering many different areas of cooperation. The nature and content of such agreements have evolved in conjunction with the extension of the competences of the European Union and a particular area cannot be identified as predominant compared to others.
- 25 That being so, the nature of the commitments being entered into needs to be examined when choosing the legal bases. A specific or substantial commitment requires the addition of a corresponding legal basis. As the most limited obligation could lead to a wide development of the external relations with the third country party to the framework agreement, the criterion proposed by the Commission that an obligation must be extensive in order to constitute an objective distinct from those of the development cooperation cannot be accepted.
- 26 It follows from *Portugal v Council* EU:C:1996:461 that, when a clause in an agreement prescribes in concrete terms the manner in which cooperation in a specific area is to be implemented, that agreement must be founded on the corresponding legal basis. Each specific area of an agreement of this kind must be considered separately, irrespective of any concurrent development aid programme in that area, while taking account of the legal, binding and self-standing nature of the obligations entered into.
- 27 The Council submits that the content of the Framework Agreement confirms its approach, as the recitals and Article 2 do not assign a predominant role to a particular area, such as development cooperation, and the Framework Agreement's structure confirms that it relates to the establishment of a comprehensive multi-dimensional relation.
- 28 As regards transport, in the light of Opinion 1/08 EU:C:2009:739 of the Court concerning transport policy and the common commercial policy, recourse should be had to the legal bases provided for by the FEU Treaty that expressly concern transport, here Articles 91 TFEU and 100 TFEU. The Commission's argument that the obligations laid down in the Framework Agreement are merely related to pursuit of the economic, social and environmental development of the Philippines is incorrect. The argument that the provisions on transport are in line with the objectives of the European Union's development cooperation policy is not sufficient to demonstrate that those provisions are part of that policy.
- 29 In the case of readmission of nationals of the contracting parties, Article 26(3) of the Framework Agreement sets out clear legal commitments, which must be founded on the legal basis provided for by the FEU Treaty, namely Article 79(3) TFEU. The inclusion in such an agreement of obligations enshrined in international law has direct legal consequences, notably in the event of infringement of those obligations. It is, moreover, undeniable that, in providing for the conclusion as soon as possible of an agreement governing admission and readmission, the Framework Agreement contains a best-efforts obligation which constitutes important leverage for obtaining from the Republic of the Philippines a result that is hard to obtain separately.

- 30 As to the environment, the programmes and activities provided for by the Framework Agreement must be based on Article 191(4) TFEU, which permits the European Union to cooperate with third countries and specifies that arrangements for such cooperation may be the subject of agreements. Article 34 of the Framework Agreement contains, in paragraph 2, a clear obligation, compliance with which could be enforced by legal means.
- 31 Furthermore, the Council does not share the concerns expressed by the Commission regarding the effects of the addition of Article 79(3) TFEU. It points out that it is not procedures that define the legal basis of a measure but the legal basis of a measure that determines the procedures to be followed in adopting that measure. It observes that the Member States to which Protocol No 21 applies can exercise their right to opt in with respect to the adoption of the Council decisions on the signing and on the conclusion of the Framework Agreement and that, so far as concerns relations with the Republic of the Philippines, if the Member States concerned do not enter into obligations under Title V of Part Three of the FEU Treaty as Member States of the European Union, they may enter into them bilaterally.
- 32 The Council adds, as regards the compatibility of the legal bases, that the common accord of the Member States was in any case necessary as the latter were also parties to the Framework Agreement, and that the case-law is flexible in this regard where a measure needs to be founded on several legal bases providing for different voting rules.
- 33 Finally, the Council shares the Commission's view as to the necessity to maintain the effects of the contested decision if it were to be annulled.

Findings of the Court

- 34 According to settled case-law, the choice of the legal basis for a European Union measure, including the measure adopted for the purpose of concluding an international agreement, must rest on objective factors amenable to judicial review, which include the aim and content of that measure. If examination of a European Union 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, the measure must be founded on a single legal basis, namely, that required by the main or predominant purpose or component. By way of exception, if it is established that the measure pursues several objectives which are inseparably linked without one being secondary and indirect in relation to the other, the measure must be founded on the various corresponding legal bases. However, no dual legal basis is possible where the procedures required by each legal basis are incompatible with each other (see, inter alia, Case C-130/10 *Parliament v Council* EU:C:2012:472, paragraphs 42 to 45 and the case-law cited).
- 35 In this instance, it must be determined whether, among the provisions of the Framework Agreement, those relating to readmission of nationals of the contracting parties, to transport and to the environment also fall within development cooperation policy or whether they go beyond the framework of that policy and therefore require the contested decision to be founded on additional legal bases.
- 36 According to Article 208(1) TFEU, European Union policy in the field of development cooperation is to be conducted within the framework of the principles and objectives — as resulting from Article 21 TEU — of the European Union's external action. The primary objective of that policy is the reduction and, in the long term, the eradication of poverty and the European Union must take account of the objectives of development cooperation in the policies that it implements which are likely to affect developing countries. For implementation of that policy, Article 209 TFEU, upon which, inter alia, the

contested decision is founded, provides in particular, in paragraph 2, that the European Union may conclude with third countries and competent international organisations any agreement helping to achieve the objectives referred to in Article 21 TEU and Article 208 TFEU.

- 37 It follows that European Union policy in the field of development cooperation is not limited to measures directly aimed at the eradication of poverty, but also pursues the objectives referred to in Article 21(2) TEU, such as the objective, set out in Article 21(2)(d), of fostering the sustainable economic, social and environmental development of developing countries, with the primary aim of eradicating poverty.
- 38 For the purpose of establishing whether certain provisions of a cooperation agreement concluded between the European Community and a third State did indeed fall within development cooperation policy, the Court found in paragraphs 37 and 38 of *Portugal v Council* EU:C:1996:461, a judgment relied upon by the Commission, that, in order to qualify as a development cooperation agreement, an agreement must pursue the objectives of that policy, that those are broad objectives in the sense that it must be possible for the measures required for their pursuit to concern a variety of specific matters, and that that is so in particular in the case of an agreement establishing the framework of such cooperation. It added that to require a development cooperation agreement to be based on another provision as well as on the provision relating to that policy whenever the agreement touches on a specific matter would in practice amount to rendering devoid of substance the competence and procedure prescribed in the latter provision.
- 39 The Court drew the conclusion, in paragraph 39 of that judgment, that it should be held that the fact that a development cooperation agreement contains clauses concerning various specific matters cannot alter the characterisation of the agreement, which must be determined having regard to its essential object and not in terms of individual clauses, provided that those clauses do not impose such extensive obligations concerning the specific matters referred to that those obligations in fact constitute objectives distinct from those of development cooperation.
- 40 When examining the provisions of the abovementioned agreement relating to the specific matters at issue, the Court found, in paragraph 45 of that judgment, that they were limited to determining the areas for cooperation and to specifying certain of its aspects and various actions, but contained nothing that prescribed in concrete terms the manner in which cooperation in each specific area envisaged was to be implemented.
- 41 As is apparent from the rejoinder and the submissions made at the hearing, the Council does not call into question the criteria thereby established by the Court in paragraphs 39 and 45 of that judgment for determining whether clauses of an agreement concluded with a third country fall within development cooperation. However, the Council, supported by the intervening Member States, contends that the Court's analysis in respect of the Cooperation Agreement between the European Community and the Republic of India on Partnership and Development (OJ 1994 L 223, p. 24), which entered into force on 1 August 1994, is not transposable to the Framework Agreement which — on account of the evolution of cooperation agreements concluded since then between the European Union and third countries, an evolution characterised in particular by an extension, linked to the extension of the competences of the European Union, of the fields covered by those agreements and a strengthening of the commitments entered into — is of a different nature.
- 42 In that regard, it must however be pointed out, in the first place, that, far from casting doubt on the findings made by the Court in *Portugal v Council* EU:C:1996:461 and recalled in paragraph 38 of the present judgment, that evolution corresponds on the contrary to an increase in the objectives of development cooperation and in the matters concerned by it, reflecting the European Union vision for development which is set out in the European Consensus. As the Advocate General notes in points 40 and 41 of his Opinion and as is apparent in particular from paragraphs 5 and 7 of the European Consensus, the main objective of development cooperation is the eradication of poverty in the context

of sustainable development, including pursuit of the Millennium Development Goals. The concept of sustainable development includes in particular environmental aspects. As the eradication of poverty has many aspects, achievement of those aims requires, according to paragraph 12 of the European Consensus, the implementation of many development activities as referred to in that paragraph.

- 43 This broad notion of development cooperation has in particular been given concrete expression by the adoption of Regulation No 1905/2006 which, in order to support pursuit of the same objectives, provides for implementation of European Union assistance by means of geographic and thematic programmes involving numerous aspects.
- 44 However, even if a measure contributes to the economic and social development of developing countries, it does not fall within development cooperation policy if it has as its main purpose the implementation of another policy (see, to this effect, Case C-91/05 *Commission v Council* EU:C:2008:288, paragraph 72).
- 45 In the second place, it must be stated that, in contrast to the Cooperation Agreement between the European Community and the Republic of India on Partnership and Development, the word ‘development’ does not appear in the title of the Framework Agreement. Development cooperation is mentioned in Article 2(h) of the Framework Agreement only in terms of ‘cooperation in all other sectors of mutual interest’, in the same way as transport and the environment, whereas establishing cooperation in the area of migration is included, in Article 2(g), as a distinct objective. Development cooperation in itself is the subject of a single article, namely Article 29, among the 58 articles of the Framework Agreement.
- 46 Nevertheless, the intention of the contracting parties to promote sustainable social and economic development, the eradication of poverty and the achievement of the Millennium Development Goals is affirmed in the preamble to the Framework Agreement. The commitment to promoting sustainable development, to cooperating to address the challenges of climate change and to contributing to the internationally agreed development goals, including those contained in the Millennium Development Goals, forms part of the general principles set out in Article 1 of the Framework Agreement. The objective of sustainable development and of reducing poverty is not only laid down in Article 29 of that agreement which specifies the aims of the development cooperation dialogue but is also affirmed in other provisions, in particular those devoted to employment and social affairs, to agriculture, fisheries and rural development, and to regional development.
- 47 Furthermore, it is apparent from the whole of the Framework Agreement that the cooperation and partnership provided for by it take account especially of the needs of a developing country and, therefore, contribute to furthering, in particular, pursuit of the objectives referred to in Articles 21(2)(d) TEU and 208(1) TFEU.
- 48 In the light of all those considerations, it is necessary, for the purposes of the determination specified in paragraph 35 of the present judgment, to examine whether the provisions of the Framework Agreement relating to readmission of nationals of the contracting parties, to transport and to the environment also contribute to the pursuit of the objectives of development cooperation and, if so, whether those provisions do not nevertheless contain obligations so extensive that they constitute distinct objectives that are neither secondary nor indirect in relation to the objectives of development cooperation.
- 49 Concerning, in the first place, the contribution of those provisions to the pursuit of the objectives of development cooperation, as the Advocate General observes in points 48, 55 and 63 of his Opinion, migration (including the fight against illegal migration), transport and the environment are integrated into the development policy defined in the European Consensus. In paragraph 12 of the European Consensus, both migration and the environment and sustainable management of natural resources are among the many development activities envisaged in order to achieve the Millennium Development

Goals agenda and to take account of the economic, social and environmental dimensions of poverty eradication in the context of sustainable development. Migration is viewed, in paragraph 38 thereof, as being a positive factor for development contributing to poverty reduction, and development is viewed, in paragraph 40, as being the most effective long-term response to forced and illegal migration. The environment and transport are included, in paragraphs 75 and 77, among the main areas of European Union action in order to respond to the needs of partner countries.

- 50 Also, migration, transport and the environment are included in Regulation No 1905/2006 as areas of development cooperation that may receive European Union assistance by means of geographic programmes, in particular for the countries of Asia, and, in the case of the environment and migration, by means of thematic programmes.
- 51 The Framework Agreement itself displays a link between, on the one hand, the cooperation that it aims to establish regarding migration, transport and the environment and, on the other, the objectives of development cooperation.
- 52 First, Article 26 of the Framework Agreement, which is indeed headed ‘Cooperation on Migration and Development’, states that migration concerns are to be included in the national strategies for economic and social development of countries of origin, transit and destination of migrants and that that cooperation will focus in particular on migration and development issues.
- 53 Second, in Article 34 of the Framework Agreement the parties agree that cooperation in the area of the environment and natural resources must promote the conservation and improvement of the environment in pursuit of sustainable development and enhance the integration of environmental considerations into all sectors of cooperation. Such considerations are thus contained in other provisions of the Framework Agreement, in particular in Article 29 on development cooperation which provides that the development cooperation dialogue is to aim at, inter alia, promoting environmental sustainability.
- 54 Third, Article 38 of the Framework Agreement states that the parties agree to cooperate in the area of transport with a view, inter alia, to addressing transport’s environmental impact and that they aim to promote in this area exchanges of information and dialogue on various subjects, some of which relate to development.
- 55 It is apparent from these findings that the provisions of the Framework Agreement relating to readmission of nationals of the contracting parties, to transport and to the environment, consistently with the European Consensus, contribute to the pursuit of the objectives of development cooperation.
- 56 As regards, in the second place, the extent of the obligations set out in those provisions, it is clear that Article 34 relating to the environment and natural resources and Article 38 relating to transport are limited to declarations of the contracting parties on the aims that their cooperation must pursue and the subjects to which that cooperation will have to relate, and do not determine in concrete terms the manner in which the cooperation will be implemented.
- 57 As regards readmission of nationals of the contracting parties, Article 26(3) of the Framework Agreement, unlike the provisions referred to in the preceding paragraph of the present judgment, contains specific obligations. The Republic of the Philippines and the Member States undertake therein to readmit their nationals who do not fulfil, or no longer fulfil, the conditions of entry or residence on the territory of the other party, upon request by the latter and without undue delay once the nationality of those nationals has been established and due process carried out, and to provide their nationals with documents required for such purposes. They also agree to conclude an agreement governing admission and readmission as soon as possible.

- 58 Whilst Article 26(3) of the Framework Agreement does admittedly contain wording stating how requests for readmission are to be dealt with, the fact remains that, as is apparent from Article 26(2)(f), the readmission of persons residing without authorisation is included in Article 26 as one of the matters upon which cooperation on migration and development will have to focus, without it being covered at this stage by detailed provisions enabling its implementation, such as those contained in a readmission agreement. It cannot therefore be considered that Article 26 of the Framework Agreement prescribes in concrete terms the manner in which cooperation concerning readmission of nationals of the contracting parties is to be implemented, a conclusion which is reinforced by the commitment, in Article 26(4), to conclude a readmission agreement very soon.
- 59 It is consequently apparent that the provisions of the Framework Agreement relating to readmission of nationals of the contracting parties, to transport and to the environment do not contain obligations so extensive that they may be considered to constitute objectives distinct from those of development cooperation that are neither secondary nor indirect in relation to the latter objectives.
- 60 It follows that the Council was wrong in selecting Articles 79(3) TFEU, 91 TFEU, 100 TFEU and 191(4) TFEU as legal bases for the contested decision.
- 61 In the light of the foregoing considerations, the contested decision should be annulled in so far as the Council added thereto the legal bases relating to readmission of third-country nationals, transport and the environment.
- 62 That being so, there is no need to rule on the request of the Commission and the Council that the effects of the contested decision should be maintained.

Costs

- 63 Under Article 138(1) of the Rules of Procedure of the Court of Justice, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for costs and the Council has been unsuccessful, the latter must be ordered to pay the costs.
- 64 In accordance with Article 140(1) of the Rules of Procedure, the Czech Republic, the Federal Republic of Germany, Ireland, the Hellenic Republic, the Republic of Austria and the United Kingdom will bear their own costs.

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

- 1. Annuls Council Decision 2012/272/EU of 14 May 2012 on the signing, on behalf of the Union, of the Framework Agreement on Partnership and Cooperation between the European Union and its Member States, of the one part, and the Republic of the Philippines, of the other part, in so far as the Council of the European Union added thereto the legal bases relating to readmission of third-country nationals, transport and the environment;**
- 2. Orders the Council of the European Union to pay the costs;**
- 3. Orders the Czech Republic, the Federal Republic of Germany, Ireland, the Hellenic Republic, the Republic of Austria and the United Kingdom of Great Britain and Northern Ireland to bear their own costs.**

[Signatures]