# JUDGMENT OF THE COURT
30 March 1995 *

In Case C-65/93,

**European Parliament**, represented by Christian Pennera and Kieran Bradley, members of the Parliament's Legal Service, and Jorge Campinos, Jurisconsult, acting as Agents, with an address for service in Luxembourg at the General Secretariat of the European Parliament, Kirchberg,

applicant,

v

**Council of the European Union**, represented by Jean-Claude Piris, Director-General of the Council's Legal Service, and Yves Crétien, Legal Adviser, acting as Agents, with an address for service in Luxembourg at the office of Bruno Eynard, Manager of the Legal Directorate of the European Investment Bank, 100 Boulevard Konrad Adenauer,

defendant,

supported by

**United Kingdom of Great Britain and Northern Ireland**, represented by John E. Collins of the Treasury Solicitor's Department, acting as Agent, and by Peter Duffy, Barrister, with an address for service in Luxembourg at the British Embassy, 14 Boulevard Roosevelt,

* Language of the case: French.

intervener,

APPLICATION for the annulment of Council Regulation (EEC) No 3917/92 of 21 December 1992 extending into 1993 the application of Regulations (EEC) Nos 3831/90, 3832/90, 3833/90, 3834/90, 3835/90 and 3900/91 applying generalized tariff preferences for 1991 in respect of certain products originating in developing countries, and adding to the list of beneficiaries of such preferences (OJ 1992 L 396, p. 1),

THE COURT,

composed of: G. C. Rodríguez Iglesias, President, F. A. Schockweiler, P. J. G. Kapteyn (Rapporteur) and C. Gulmann (Presidents of Chambers), G. F. Mancini, C. N. Kakouris, J. C. Moitinho de Almeida, J. L. Murray, D. A. O. Edward, J.-P. Puissochet, and G. Hirsch, Judges,

Advocate General: G. Tesauro,
Registrar: D. Louterman-Hubeau, Principal Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 19 October 1994,

after hearing the Opinion of the Advocate General at the sitting on 13 December 1994,

gives the following

## Judgment

1 By application lodged at the Court Registry on 12 March 1993, the European Parliament brought an action under Article 173 of the EEC Treaty for the annulment of Council Regulation (EEC) No 3917/92 of 21 December 1992 extending into 1993 the application of Regulations (EEC) Nos 3831/90, 3832/90, 3833/90, 3834/90, 3835/90 and 3900/91 applying generalized tariff preferences for 1991 in respect of certain products originating in developing countries, and adding to the list of beneficiaries of such preferences (OJ 1992 L 396, p. 1), on the ground that the Council had disregarded the Parliament's prerogatives.

2 The regulation is based on a proposal submitted by the Commission to the Council on 15 October 1992. The main objective of that proposal, based on Articles 43 and 113 of the EEC Treaty, was to extend into 1993 the system of generalized preferences then in force. It went on to include new countries in the list of beneficiaries, partly to take account of the collapse of the former Soviet Union (by including Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Uzbekistan, Russia, Tajikistan, Turkmenistan and Ukraine), and partly in order to align the Community list of the least developed countries with that of the United Nations (by adding Cambodia, Liberia, Madagascar, the Solomon Islands, Vanuatu, Zaïre and Zambia). Finally, with a view to the introduction of the single market on 1 January 1993, the Commission suggested replacing the tariff quotas divided among the Member States by fixed duty-free amounts for the whole Community.

3 By letter of 22 October 1992, the General Secretariat of the Council informed the President of the Parliament that the Council had decided that day to consult the Parliament on the proposal in question. To enable it to make a decision before 1 January 1993, when the regulation was due to enter into force, the Council also

requested the Parliament to apply the procedure in cases of urgency under Article 75 of its Rules of Procedure, which provided as follows:

'1. A request that a debate on a proposal on which Parliament has been consulted (...) be treated as urgent may be made to Parliament (...) by the Commission or by the Council. This request shall be made in writing and supported by reasons.

2. As soon as the President has received a request for urgent debate, he shall inform Parliament thereof; the vote on that request shall be taken at the beginning of the sitting following that during which notification was given of the request (...)'

4 At the Parliament's sitting of 30 October 1992, the proposal was referred to the Committee on Development for detailed consideration and to four other committees for their opinion (OJ 1992 C 305, p. 565).

5 On 17 November 1992 the Parliament decided in plenary session to debate the proposal as a matter of urgency on 20 November 1992 (OJ 1992 C 337, pp. 25, 26).

6 At the plenary session on 20 November the Chairman of the Committee on Development requested referral back to committee pursuant to Rule 103(1) of the Rules of Procedure (OJ 1992 C 337, p. 261) for the following reasons:

'We consider that this is merely a renewal, but one with important consequences because it affects East European countries, which are not particularly underdevel-

oped, and other products. Consequently, we would like to have the matter referred back to committee and we could review the situation after the Committee on Development and Cooperation has examined it, during the December session'.

7 The report by the Committee on Development was placed on the agenda for the sitting on Friday 18 December, the last day of the last session of the European Parliament for 1992. On that day, when the matter was about to be debated in plenary session shortly before 1.00 p. m., the President of the session received a request by 14 Members for the sitting to be adjourned pursuant to Rule 106 of the Rules of Procedure, which provided as follows:

'The sitting may be suspended or closed during a debate or a vote if Parliament so decides (...) at the request of (...) at least 13 Members'.

8 Parliament agreed to the request and the sitting was adjourned, with the result that the remaining matters on the agenda, including the resolution proposed in the report by the Committee on Development and Cooperation, could not be debated, notwithstanding a proposal by the President of the session that the report be debated first. The debate was postponed to 18 January 1993.

9 There followed immediate telephone consultations between the offices of the General Secretary of the Council and the President of the Parliament, in the course of which it was agreed that it would no longer be possible for practical reasons to convene an extraordinary session of the Parliament before the end of 1992.

10 The Council adopted the contested regulation on 21 December 1992 without having obtained the Parliament's opinion, although the latter was notified by letter of

the same date. The failure to consult the Parliament is justified in the recitals in the preamble to the regulation as follows:

'Whereas it is imperative to avoid a legal vacuum that could seriously harm the Community's relations with the developing countries as well as the interests of economic operators; whereas, therefore, the regulation on the application in 1993 of the Community's regime of generalized tariff preferences must be adopted sufficiently early to enable it to enter into force on 1 January 1993;

Whereas it appears, after consultation of the President of the European Parliament, that it would be impossible to hold an extraordinary session at the European Parliament to enable it to adopt its opinion in good time to allow the adoption and publication of the regulation before the end of 1992;

Whereas, in these exceptional circumstances, the regulation should be adopted in the absence of an opinion of the European Parliament.'

11 The regulation was published in the *Official Journal of the European Communities* of 31 December 1992. The relevant copy of the journal was issued by the Publications Office of the European Communities on 28 January 1993.

12 In the meantime, on 18 January 1993, the Parliament examined the proposal which had been submitted to it (OJ 1993 C 42, p. 11). The following day, it adopted 17 amendments (OJ 1993 C 42, p. 25) and approved the remainder of the text as a whole. However, it requested the Council to notify it should it intend to depart from the text, and to consult the Parliament again in the event of substantial modifications (OJ 1993 C 42, p. 28).

13 In its application, the Parliament maintains that, since the Council adopted the contested regulation without complying with the consultation procedure provided for in Article 43 of the Treaty which, in conjunction with Article 113 of the Treaty, forms the legal basis of the regulation, the latter must be annulled for breach of an essential procedural requirement.

14 The Council begins by pointing out that the introduction of a Community system of generalized preferences is the result of an agreement reached within the United Nations Conference on Trade and Development. Even if, as a matter of law, the measures adopted may be withdrawn at any time, the Community cannot alter its practice unilaterally, for political reasons.

15 Secondly, the Council argues that an overriding public interest required the regulation to be adopted before the end of 1992. It had to enter into force on 1 January 1993 in order to protect the legitimate expectations both of the developing countries which were beneficiaries of the system and of economic operators.

16 Thirdly, the Council argues that it exhausted all the possibilities for obtaining the Parliament's opinion in time, by requesting that the procedure in cases of urgency be used and by proposing, unsuccessfully, to the President of the Parliament that an extraordinary session be held in accordance with Article 139 of the EEC Treaty. In view of those exceptional circumstances, the Council considers that it was entitled to adopt the contested act without the Parliament's opinion.

17 Finally, in its rejoinder, the Council points out that consultation of the Parliament on the proposal for the regulation became obligatory only because Article 43 of the Treaty was included in the legal basis for its adoption. However, as the Court held in Case 45/86 *Commission* v *Council* [1987] ECR 1493, generalized preferences fall in principle solely within the common commercial policy, and thus within Article 113. Accordingly, the reference to Article 43 could have been

avoided, and, since Article 113 was the only legal basis lawfully required, the Parliament might not have had to be consulted at all.

18 For its part, the Government of the United Kingdom also argues that, although consultation of the Parliament is an essential procedural requirement, the Council may, in exceptional circumstances, adopt a regulation without having received its opinion. It may do so where, as in the present case, a measure is urgent and, despite its best efforts, it has been unable to obtain the Parliament's opinion in time.

19 The United Kingdom goes on to argue that the Council is not required to demonstrate the existence of a legal vacuum in order to justify the need for the urgent adoption of a measure. Article 43 of the Treaty gives the Council discretion to decide whether a measure should be adopted, and thus by implication a discretion to assess whether it is urgent that a particular measure be adopted. If the Council were never authorized to take a decision in those circumstances, or were bound to have recourse to Article 175 of the EEC Treaty, the obligation to consult the Parliament would be tantamount to conferring on the latter a *de facto* power to veto urgent legislative proposals, compromising the institutional balance established by the Treaty.

20 The United Kingdom makes the final observation that, under the cooperation procedure established by Article 149(2) and (3) of the EEC Treaty (now Article 189c following amendments made by the Treaty on European Union), the Council may definitively adopt the act in question if the Parliament has not taken a decision within three months of the communication of the Council's common position. Since the purpose of the cooperation procedure is to increase the Parliament's involvement in the Community legislative process, it would be paradoxical if, under the mere consultation procedure, the Parliament were to have more power, enabling it to block a measure in certain cases because of the impossibility of imposing a time-limit upon it for taking a decision.

21 The first point to note is that due consultation of the Parliament in the cases provided for by the Treaty constitutes an essential procedural requirement, disregard of which renders the measure concerned void. The effective participation of the Parliament in the legislative process of the Community, in accordance with the procedures laid down by the Treaty, represents an essential factor in the institutional balance intended by the Treaty. Such power reflects the fundamental democratic principle that the people should take part in the exercise of power through the intermediary of a representative assembly (see the 'Isoglucose' judgments, Case 138/79 *Roquette Frères* v *Council* [1980] ECR 3333, paragraph 33, and Case 139/79 *Maizena* v *Council* [1980] ECR 3393, paragraph 34).

22 Furthermore, observance of the consultation requirement implies that the Parliament has expressed its opinion and the requirement cannot be satisfied by the Council's simply asking for the opinion ('Isoglucose' judgments, paragraphs 34 and 35 respectively). In an emergency, it is for the Council to use all the possibilities available under the Treaty and the Parliament's Rules of Procedure in order to obtain the preliminary opinion of the Parliament ('Isoglucose' judgments, paragraphs 36 and 37 respectively).

23 However, the Court has held that inter-institutional dialogue, on which the consultation procedure in particular is based, is subject to the same mutual duties of sincere cooperation as those which govern relations between Member States and the Community institutions (see Case 204/86 *Greece* v *Council* [1988] ECR 5323, paragraph 16).

24 In this case, it is undisputed that the Council informed the President of the Parliament in its letter of 22 October 1992 of the need to adopt the contested regulation before the end of 1992, so as to enable it to enter into force on 1 January 1993. It is also undisputed that, having regard to the special relations between the Community and the developing countries and to the difficulties, both political and technical, which would result from an abrupt interruption in the application of generalized tariff preferences, that request was justified.

25 The Parliament took those considerations fully into account, since, after referring the proposal for the regulation to the Committee on Development, it decided to deal with the matter under its procedure in cases of urgency. By placing the report of the Committee on Development on the agenda for the sitting on Friday 18 December, during its last session of 1992, the Parliament clearly intended to give its opinion in time to enable the Council to adopt the regulation before 1 January 1993.

26 However, the documents before the Court show that, notwithstanding the assurances thereby given to the Council, the Parliament decided, pursuant to Article 106 of its Rules of Procedure, to adjourn the plenary session of 18 December 1992 at the request of 14 Members, without having debated the proposal for the regulation. It appears, moreover, that that decision was based on reasons wholly unconnected with the contested regulation and did not take into account the urgency of the procedure and the need to adopt the regulation before 1 January 1993.

27 By adopting that course of action, the Parliament failed to discharge its obligation to cooperate sincerely with the Council. That is so especially since the Council was unable to avail itself of the possibility open to it under Article 139 of the Treaty, the information obtained by the Council from the President of the Parliament having made it clear that it was impossible for practical reasons to convene an extraordinary session of the Parliament before the end of 1992.

28 In those circumstances, the Parliament is not entitled to complain of the Council's failure to await its opinion before adopting the contested regulation of 21 December 1992. The essential procedural requirement of Parliamentary consultation was not complied with because of the Parliament's failure to discharge its obligation to cooperate sincerely with the Council.

29 The fact that the *Official Journal of the European Communities* of 31 December 1992, in which the regulation was published, was not issued until 28 January 1993 cannot affect the assessment of the legality of the regulation on the date of its adoption.

30 The application must therefore be dismissed.

## Costs

31 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the European Parliament has been unsuccessful, it must be ordered to pay the costs. Under Article 69(4) of the Rules of Procedure, the intervener, the United Kingdom of Great Britain and Northern Ireland, must be ordered to bear its own costs.

On those grounds,

THE COURT

hereby:

**1. Dismisses the application.**

2. **Orders the European Parliament to pay the costs, with the exception of those of the United Kingdom of Great Britain and Northern Ireland, which is ordered to bear its own costs.**

Rodríguez Iglesias Schockweiler Kapteyn

Gulmann Mancini Kakouris

Moitinho de Almeida Murray Edward

Puissochet Hirsch

Delivered in open court in Luxembourg on 30 March 1995.

R. Grass
Registrar

G. C. Rodríguez Iglesias
President