JUDGMENT OF THE COURT
16 July 1992 *

In Case C-65/90,

European Parliament, represented by Jorge Campinos, Jurisconsult, assisted by Roland Bieber, Legal Adviser, and Johann Schoo, of its Legal Service, 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 Communities, represented by Jean-Claude Piris, Jurisconsult, and Jill Aussant, of the Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Xavier Herlin, Deputy Director of the Directorate for Legal Affairs of the European Investment Bank, 100 Boulevard Konard Adenauer,

defendant,

APPLICATION under Article 173 of the EEC Treaty for the annulment of Council Regulation (EEC) No 4059/89 of 21 December 1989 laying down the conditions under which non-resident carriers may operate national road haulage services within a Member State (OJ 1989 L 390, p. 3),

* Language of the case: French.

THE COURT,

composed of: O. Due, President, R. Joliet, F. A. Schockweiler, F. Grévisse and P. J. G. Kapteyn (Presidents of Chambers), G. F. Mancini, C. N. Kakouris, J. C. Moitinho de Almeida, G. C. Rodríguez Iglesias, M. Diez de Velasco and M. Zuleeg, Judges,

Advocate General: M. Darmon,
Registrar: J. A. Pompe, Deputy Registrar,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 8 January 1992,

after hearing the Opinion of the Advocate General at the sitting on 26 February 1992,

gives the following

Judgment

1 By application lodged at the Court Registry on 14 March 1990, the European Parliament brought an application under Article 173 of the EEC Treaty for the annulment of Council Regulation (EEC) No 4059/89 of 21 December 1989 laying down the conditions under which non-resident carriers may operate national road haulage services within a Member State (OJ 1989 L 390, p. 3).

2 That regulation, which is based on Article 75 of the EEC Treaty, introduced a Community cabotage quota consisting of 15 000 cabotage authorizations, each valid for two months (Article 2(1)). The quota is allocated amongst the various Member States according to a formula determined and increased annually from

1 July 1991 in line with the average trends in internal road haulage in the Member States (Article 2(3) and (4)). In the event of serious disturbance of the internal transport market in a given geographical area due to cabotage the Commission may decide on safeguard measures after consulting the Member States; such measures may involve the temporary exclusion of the area concerned from the scope of the regulation (Article 2(5)).

3 The contested regulation also provides that the performance of cabotage transport operations is to be subject, save as otherwise provided in Community regulations, to the provisions in force in the host Member State as regards rates and conditions governing the transport contracts, weight and dimensions of road vehicles, requirements relating to the carriage of certain categories of goods, driving and rest-time and value added tax on transport services (Article 5). The regulation entered into force on 1 July 1990 and is applicable until 31 December 1992 (first and second paragraphs of Article 9). However, the Council undertook to adopt before 1 July 1992 a regulation laying down the definitive cabotage system which is to enter into force on 1 January 1993 (third paragraph of Article 9).

4 It appears from the documents before the Court that the contested measure originated in a proposal for a regulation submitted by the Commission to the Council on 5 December 1985 (OJ 1985 C 349, p. 26), on which the European Parliament gave its opinion in a resolution of 12 September 1986 (OJ 1986 C 255, p. 236).

5 That proposal, which was based on Article 75 of the EEC Treaty, was to the effect that from 1 January 1987 any road haulier for hire or reward established in a Member State and authorized in that country to carry on business as an international road haulier should be allowed to carry out national road haulage operations for hire or reward in another Member State; in that connection he would temporarily be permitted to pursue therein his activities without having to set up a registered office, place of business or other establishment (Article 1).

6 It was proposed that any haulier, as defined in the proposal, might, with effect from 1 January 1987, carry out national transport operations in another Member State, without quantitative or qualitative restrictions, following on from a haulage operation between two Member States, provided that the number of such transport operations be limited to two and be carried out during the return journey either to the Member State in which the operator is based or to the Member State where the preceding international transport operation began (Article 5).

7 At the Council session which led to the adoption of the contested regulation on 21 December 1989, the Commission amended its original proposal in line with the text of the regulation adopted. The Council adopted the regulation in accordance with the amended proposal by a qualified majority without reconsulting the European Parliament on the amended proposal.

8 In support of its action, the Parliament alleges infringement of its right to participate in the Community legislative process as a result of the failure to consult it a second time before the adoption of the contested regulation. In the Parliament's view, a fresh consultation is necessary under the procedure provided for in Article 75 of the Treaty where the Council has departed significantly from the Commission's original proposal.

9 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the procedure and the pleas and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

Admissibility

10 The Council raised an objection of inadmissibility under the first paragraph of Article 91(1) of the Rules of Procedure, challenging the Parliament's right to bring an action for annulment.

11 In support of that objection, the Council relied first on the principles contained in the 'Comitology' judgment in Case 302/87 *Parliament* v *Council* [1988] ECR 5615. Subsequently, it took note of the interlocutory judgment in Case C-70/88 *Parliament* v *Council* [1990] ECR I-2041, the 'post-Chernobyl regulation' judgment and, in its supplementary observations lodged with the leave of the Court and in oral argument at the hearing, it put forward arguments based thereon.

12 According to the Council, the judgment in Case C-70/88 shows that the Parliament's right of action under Article 173 of the Treaty may be exercised only exceptionally in cases where the balance of the Treaty system risks being disturbed or there is a substantial infringement of the Parliament's basic prerogatives. Those criteria are not satisfied in the present case because the action does not challenge the legal basis of the contested measure; moreover, it concerns not the cooperation procedure but merely the procedure for consulting the Parliament.

13 It is sufficient in that respect to recall that, as the Court held in Case C-70/88, an action for annulment brought by the Parliament against an act of the Council or the Commission is admissible provided that the action seeks only to safeguard its prerogatives and that it is founded only on submissions alleging their infringement (paragraph 27), and that the Parliament's prerogatives include, in particular, participation in the drafting of legislative measures (paragraph 28).

14 On the basis of those criteria, the action must be declared admissible. The Parliament alleges infringement of its prerogatives, inasmuch as the failure to consult it a second time during the procedure leading to the adoption of the contested regulation meant that it was not duly associated with the drafting of a legislative measure whose adoption, pursuant to Article 75 of the Treaty, is subject to the requirement that there should be prior consultation of the Parliament. Due consultation of the Parliament in the cases provided for by the Treaty is one of the means enabling the Parliament to participate effectively in the Community's legislative procedure (see the so-called 'Isoglucose' judgments in Case 138/79 *Roquette Frères* v *Council* [1980] ECR 3333, paragraph 33, and Case 139/79 *Maizena* v *Council* [1980] ECR 3393, paragraph 34).

15 The objection of inadmissibility raised by the Council must therefore be rejected.

Substance

16 The case-law of the Court indicates that the duty to consult the European Parliament in the course of the legislative procedure, in the cases provided for by the Treaty, includes the requirement that the Parliament be reconsulted on each occasion when the text finally adopted, viewed as a whole, departs substantially from the text on which the Parliament has already been consulted, except in cases where the amendments essentially correspond to the wishes of the Parliament itself (see the judgments in Case 41/69 *Chemiefarma* v *Commission* [1970] ECR 661 and Case 817/79 *Buyl* v *Commission* [1982] ECR 245).

17 Article 1 of the regulation originally proposed by the Commission, on which the Parliament gave its opinion, provided that any road haulier for hire or reward established in a Member State and authorized to carry on business as an international road haulier should be allowed to carry out national road haulage operations for hire or reward in a Member State other than the one in which he is established. According to Article 3 of the original proposal, national transport operations were to be subject to the rules in force in the Member State where the transport operations were carried out, provided that such rules were applied by that State to non-resident and national carriers alike.

18 On the other hand, the regulation adopted by the Council provides only that carriers established in a Member State and authorized to carry on business as international road hauliers should be entitled to operate on a temporary basis national road haulage services in another Member State (Article 1). Cabotage may be carried out only within a Community quota of 15 000 cabotage authorizations valid for two months (Article 2). In addition, the regulation applies only until 31 December 1992 and the Council is to adopt before 1 July 1992 a regulation laying down the definitive cabotage system (Article 9).

19 A comparison between the Commission's original proposal and the contested regulation shows that temporary authorization within the framework of a Community quota has been substituted for the principle of freedom of cabotage in Member States for carriers established in another Member State. Those amendments affect the very essence of the instrument adopted and must therefore be regarded as substantive. They do not correspond to any wish of the Parliament. On the contrary, in its opinion of 12 September 1986 the Parliament favoured greater liberalization, proposing that a paragraph should be added to Article 1, ensuring that Member States in which authorization to carry out national transport operations is subject to quantitative restrictions should increase the number of authorizations appropriately in order to allow carriers from other Member States to participate in domestic transport operations when additional authorizations are issued.

20 Those amendments, which affect the scheme of the proposed regulation as a whole, suffice to require fresh consultation of the Parliament; it is therefore unnecessary to consider the applicant's other pleas in law.

21 In those circumstances, the fact that the Parliament was not consulted a second time in the legislative procedure provided for in Article 75 of the Treaty constitutes an infringement of essential procedural requirements entailing the annulment of the contested measure.

The temporal limitation of the effects of annulment

22 Article 9 of the regulation in question provides that the scheme is to apply until 31 December 1992.

23 In the interest of legal certainty and in order to maintain continuity in the Community system of cabotage it is appropriate to apply the second paragraph of Article 174 of the Treaty, according to which the Court may state which of the effects of an annulled regulation are to be considered definitive.

24 Accordingly, the provisions of the regulation to be annulled should continue to have effect until the Council, after due consultation of the Parliament, has adopted fresh rules on the subject.

Costs

25 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the Council has been unsuccessful, it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

1. **Annuls Council Regulation (EEC) No 4059/89 of 21 December 1989 laying down the conditions under which non-resident carriers may operate national road haulage services within a Member State.**

2. **Declares that the provisions of the annulled regulation shall continue to have effect until the Council, after due consultation of the Parliament, has adopted new rules on the subject.**

3. **Orders the Council to pay the costs.**

Due Joliet Schockweiler Grévisse

Kapteyn Mancini Kakouris

Moitinho de Almeida Rodríguez Iglesias Diez de Velasco Zuleeg

Delivered in open court in Luxembourg on 16 July 1992.

J.-G. Giraud — O. Due

Registrar — President