JUDGMENT OF THE COURT
12 July 1988 *

In Case 377/87

European Parliament, represented by its jurisconsult, Francesco Pasetti Bombardella, and by Christian Pennera, a member of its Legal Department, acting as Agents, with an address for service in Luxembourg at the General Secretariat of the Parliament, Plateau de Kirchberg,

applicant,

v

Council of the European Communities, represented by Arthur Alan Dashwood, Director of its Legal Department, and Félix van Craeyenest, Principal Administrator in its Legal Department, acting as Agents with an address for service in Luxembourg at the office of Jorn Käser, Manager of the Legal Directorate of the European Investment Bank, 100 boulevard Konrad-Adenauer,

defendant,

APPLICATION for a declaration that the Council has failed to place before the Parliament, pursuant to Article 203 (4) of the EEC Treaty, not later than 5 October 1987 a draft budget of the Communities for the financial year 1988 which it should have established in compliance with the provisions of the EEC Treaty, and in particular with Article 199 thereof,

THE COURT

composed of: Lord Mackenzie Stuart, President, G. Bosco, O. Due, J. C. Moitinho de Almeida and G. C. Rodríguez Iglesias (Presidents of Chambers), T. Koopmans, U. Everling, K. Bahlmann, Y. Galmot, C. Kakouris, R. Joliet, T. F. O'Higgins and F. Schockweiler, Judges,

Advocate General: J. Mischo
Registrar: H. A. Rühl, Principal Administrator

* Language of the Case: French.

having regard to the Report for the Hearing and further to the hearing on 28 April 1988,

after hearing the Opinion of the Advocate General delivered at the sitting on 26 May 1988,

gives the following

Judgment

1 By an application lodged at the Court Registry on 18 December 1987, the European Parliament brought an action under the first paragraph of Article 175 of the EEC Treaty for a declaration that, by failing to place before the Parliament no later than 5 October 1987 a draft general budget of the Community for the 1988 financial year which it should have established in compliance with the provisions of the EEC Treaty and in particular with Article 199 thereof, the Council has infringed Article 203 (4) of the Treaty.

2 In the course of the proceedings before the Court, the Parliament stated that the failure to act which it imputes to the Council consists in the failure to place the draft budget for 1988 before the European Parliament no later than 5 October 1987.

3 Reference is made to the Report for the Hearing for an account of the legal and factual background to the dispute and of the submissions and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

4 The Council contends that the action is inadmissible on the ground that the draft budget is not a definitive measure upon the absence of which an action for failure to act can be founded. All the measures forming part of the budgetary procedure prior to final adoption of the budget are preparatory measures.

5 It is appropriate for the Court, before considering that objection, to determine of its own motion whether, in the particular circumstances of the case, it is still necessary for it to give a decision.

6 In that connection, it should be noted that the following facts are undisputed:

The draft budget for 1988 had not been placed before the European Parliament by 6 October 1987;

On that date, the President of the Council informed the President of the European Parliament that the Council had not been able to comply with the time-limit of 5 October 1987 for placing the draft budget for 1988 before the Parliament;

By a letter dated 7 October 1987, the President of the European Parliament called upon the Council, pursuant to Article 175 of the EEC Treaty 'to establish a draft budget for the 1988 financial year without delay';

By a letter of the same date, the President of the Commission called upon the Council, pursuant to Article 175 of the EEC Treaty, 'to establish, without further delay, a draft (budget) which meets the financial requirements of the Community in 1988';

The Council did not define its position, within the meaning of Article 175, regarding those two requests that it should act;

The draft budget for 1988 established by the Council was not placed before the European Parliament until 7 March 1988.

7 When the President of the European Parliament and the President of the Commission called upon the Council to act, the Council was no longer in a position to do so by the date laid down in Article 203 (4) of the Treaty, since that date had passed in the mean time. Both Presidents were aware of that fact since they called upon the Council, not to comply with the time-limit, which was no longer possible, but to establish the draft budget 'without delay' or 'without further delay'. The draft was indeed established and submitted to the Parliament, but on a date which fell after the expiry of the two-month period provided for in

the second paragraph of Article 175 of the Treaty, computed from the time at which the Council was called upon to act. In fact, that date fell after the two actions were brought.

8 It must be observed in the first place that, under Article 175 of the Treaty, an action for failure to act is admissible only if the institution in question has first been called upon to act and has not defined its position within the abovementioned period of two months. It follows that an action for failure to act cannot be brought where the act which the institution concerned has been called upon to adopt was in fact adopted within the period of two months, with the result that the failure to act with which it is charged has been repaired.

9 The remedy provided for in Article 175 is thus founded on the premiss that the unlawful inaction on the part of the Council or of the Commission enables the other institutions and the Member States and, in certain circumstances, private persons to bring the matter before the Court in order to obtain a declaration that the failure to act is contrary to the Treaty, in so far as it has not been repaired by the institution concerned. The effect of that declaration, under Article 176, is that the defendant institution is required to take the necessary measures to comply with the judgment of the Court, without prejudice to any actions to establish non-contractual liability to which the aforesaid declaration may give rise.

10 In circumstances such as those in this case, where the act whose absence constitutes the subject-matter of the proceedings was adopted after the action was brought but before judgment, a declaration by the Court to the effect that the initial failure to act is unlawful can no longer bring about the consequences prescribed by Article 176. It follows that in such a case, as in cases where the defendant institution has responded within a period of two months after being called upon to act, the subject-matter of the action has ceased to exist.

11 It must therefore be held that there is no longer any need for the Court to give a decision.

Costs

12 By virtue of Article 69 (5) of the Rules of Procedure, where it is unnecessary for the Court to give a decision the costs are to be in the discretion of the Court. In

this case, the Council should be ordered to pay the costs since it failed to submit the draft budget for 1988 to the European Parliament before the final date laid down in the Treaty and did not communicate with the Parliament as that date approached in order to give assurances regarding the timetable which it envisaged or to discuss the procedure to be followed in such circumstances.

On those grounds,

THE COURT

hereby:

(1) Declares that there is no need for it to give a decision;

(2) Orders the Council to bear the costs.

Mackenzie Stuart Bosco Due Moitinho de Almeida

Rodríguez Iglesias Koopmans Everling Bahlmann

Galmot Kakouris Joliet O'Higgins Schockweiler

Delivered in open court in Luxembourg on 12 July 1988.

J.-G. Giraud
Registrar

A. J. Mackenzie Stuart
President