JUDGMENT OF THE COURT

21 January 2003 *

In Case C-378/00,

Commission of the European Communities, represented by D. Maidani, acting as Agent, with an address for service in Luxembourg,

applicant,

v

European Parliament, represented by C. Pennera and M. Moore, acting as Agents, with an address for service in Luxembourg,

and

Council of the European Union, represented by J.-P. Jacqué and G. Houttuin, acting as Agents,

defendants,

* Language of the case: French.

supported by

United Kingdom of Great Britain and Northern Ireland, represented by G. Amodeo, acting as Agent, assisted by M. Hoskins, Barrister, with an address for service in Luxembourg,

APPLICATION for the annulment of Regulation (EC) No 1655/2000 of the European Parliament and of the Council of 17 July 2000 concerning the Financial Instrument for the Environment (LIFE) (OJ 2000 L 192, p. 1), in so far as it makes the adoption of measures for the implementation of the LIFE programme subject to the regulatory procedure under Article 5 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (OJ 1999 L 184, p. 23),

THE COURT,

composed of: G.C. Rodríguez Iglesias, President, J.-P. Puissochet and M. Wathelet (Presidents of Chambers), C. Gulmann, A. La Pergola (Rapporteur), P. Jann, V. Skouris, F. Macken, N. Colneric, S. von Bahr and J.N. Cunha Rodrigues, Judges,

Advocate General: L.A. Geelhoed,
Registrar: M.-F. Contet, Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 4 June 2002,

after hearing the Opinion of the Advocate General at the sitting on 3 October 2002,

gives the following

Judgment

1 By application lodged at the Court Registry on 13 October 2000, the Commission of the European Communities brought an action under the first paragraph of Article 230 EC for annulment of Regulation (EC) No 1655/2000 of the European Parliament and of the Council of 17 July 2000 concerning the Financial Instrument for the Environment (LIFE) (OJ 2000 L 192, p. 1), in so far as it makes the adoption of measures for the implementation of the LIFE programme subject to the regulatory procedure under Article 5 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (OJ 1999 L 184, p. 23, hereinafter 'the second comitology decision').

2 By order of the President of the Court of 30 April 2001, the United Kingdom of Great Britain and Northern Ireland was granted leave to intervene in support of the form of order sought by the European Parliament and the Council of the European Union.

Legal framework

EC Treaty

3 The third indent of Article 202 EC states:

'To ensure that the objectives set out in this Treaty are attained the Council shall, in accordance with the provisions of this Treaty:

...

— confer on the Commission, in the acts which the Council adopts, powers for the implementation of the rules which the Council lays down. The Council may impose certain requirements in respect of the exercise of these powers. The Council may also reserve the right, in specific cases, to exercise directly implementing powers itself. The procedures referred to above must be consonant with principles and rules to be laid down in advance by the Council, acting unanimously on a proposal from the Commission and after obtaining the Opinion of the European Parliament.'

The second comitology decision

4 The second comitology decision was adopted on the basis of the third indent of Article 202 EC and replaces Council Decision 87/373/EEC of 13 July 1987 laying down the procedures for the exercise of implementing powers conferred on the Commission (OJ 1987 L 197, p. 33, hereinafter 'the first comitology decision').

5 The first comitology decision provided that the Council could impose certain requirements in respect of the exercise of the powers of implementation conferred on the Commission, which had to be in conformity with the 'comitology' procedures which that decision defined.

6 According to the 5th, 9th, 10th and 11th recitals in the preamble to the second comitology decision, its purpose is, first, with a view to achieving greater consistency and predictability in the choice of type of committee, to establish criteria relating to the choice of committee procedures, it being understood that such criteria are of a non-binding nature; secondly, to simplify the requirements for the exercise of implementing powers conferred on the Commission and to improve the involvement of the European Parliament in those cases where the basic instrument conferring implementing powers on the Commission was adopted in accordance with the procedure laid down in Article 251 EC; thirdly, to improve information to the European Parliament; and fourthly, to improve information to the public concerning committee procedures.

7 According to Article 2 of the second comitology decision:

'The choice of procedural methods for the adoption of implementing measures shall be guided by the following criteria:

(a) management measures, such as those relating to the application of the common agricultural and common fisheries policies, or to the implementation of programmes with substantial budgetary implications, should be adopted by use of the management procedure;

(b) measures of general scope designed to apply essential provisions of basic instruments, including measures concerning the protection of the health or

safety of humans, animals or plants, should be adopted by use of the regulatory procedure; where a basic instrument stipulates that certain non-essential provisions of the instrument may be adapted or updated by way of implementing procedures, such measures should be adopted by use of the regulatory procedure;

(c) without prejudice to points (a) and (b), the advisory procedure shall be used in any case in which it is considered to be the most appropriate.'

8 Articles 3 to 6 of the second comitology decision lay down, respectively, four procedures, entitled 'advisory procedure' (Article 3), 'management procedure' (Article 4), 'regulatory procedure' (Article 5) and 'safeguard procedure' (Article 6).

9 Upon the adoption of the second comitology decision, the Council and the Commission made the following joint declaration, which appeared in the *Official Journal of the European Communities* of 17 July 1999 (OJ 1999 C 203, p. 1):

'The Commission and the Council agree that provisions relating to committees assisting the Commission in the exercise of implementing powers provided for in application of Decision 87/373/EEC should be adjusted without delay in order to align them with Articles 3, 4, 5 and 6 of Decision 1999/468/EC in accordance with the appropriate legislative procedures.

...

A modification of the type of committee provided for in a basic instrument should be made, on a case by case basis, in the course of normal revision of legislation, guided *inter alia* by the criteria provided for in Article 2.

Such adjustment or modification should be made in compliance with the obligations incumbent on the Community institutions. It should not have the effect of jeopardising attainment of the objectives of the basic instrument or the effectiveness of Community action.'

Regulation No 1655/2000

10 Regulation No 1655/2000 was adopted on the basis of Article 175(1) EC and replaces Council Regulation (EEC) No 1973/92 of 21 May 1992 (OJ 1992 L 206, p. 1), which established the financial instrument for the environment (hereinafter 'LIFE').

11 According to Article 1 of Regulation No 1655/2000, '[t]he general objective of LIFE shall be to contribute to the implementation, updating and development of Community environment policy and of environmental legislation, in particular as regards the integration of the environment into other policies, and to sustainable development in the Community'.

12 Projects which meet the criteria set by Regulation No 1655/2000 may be granted financial assistance under the conditions and according to the procedures laid down by that regulation.

13 According to Article 2 of that regulation, LIFE is to consist of three thematic components: 'LIFE-nature', 'LIFE-environment' and 'LIFE-third countries'.

14 Article 8(1) of Regulation No 1655/2000 provides:

'LIFE shall be implemented in phases. The third phase shall start on 1 January 2000 and shall end on 31 December 2004. The financial framework for the implementation of the third phase for the period 2000 to 2004 is hereby set at EUR 640 million.'

15 The 20th recital in the preamble to Regulation No 1655/2000 states:

'The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission.'

16 It follows from Articles 3(7) and 11(1) of Regulation No 1655/2000 that, in the exercise of implementing powers under that regulation, the Commission is to be assisted by a committee which, in the case of measures relating to the component LIFE-nature, is the committee established by Article 20 of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7) and, in the other cases, is that established by Article 11(1) of Regulation No 1655/2000.

17 The comitology procedure used for the adoption of implementing measures under Regulation No 1655/2000 is, pursuant to Article 11(2) thereof, the

regulatory procedure laid down in Article 5 of the second comitology decision.

18 The measures which the Commission is empowered to adopt under the implementing powers conferred on it by Regulation No 1655/2000 are of two kinds.

19 The first are measures relating to the granting of financial assistance to nature conservation projects and accompanying measures (Article 3); to demonstration projects, projects for the development and/or updating of the Community's environmental policies and legislation, as well as accompanying measures (Article 4); to technical assistance projects in third countries and accompanying measures (Article 5); or to projects proposed by the accession candidate central and east European countries under LIFE-nature or LIFE-environment (Article 6). The projects and accompanying measures cited above to which financial support is granted are set out in an outline decision or a decision addressed to the Member States by the Commission.

20 The second concern the adoption of guidelines for the selection of demonstration projects proposed under the LIFE-environment component (Article 4(4)). Those guidelines, published in the *Official Journal of the European Communities*, are to promote synergy between demonstration actions and the guiding principles of Community environmental policy with a view to sustainable development.

21 At the time when Regulation No 1655/2000 was adopted, declarations were made by the Council and the Commission (OJ 2000 L 192, p. 1).

22 The Commission stated, *inter alia*:

'The Commission notes the agreement of the European Parliament and the Council to provide for a regulatory procedure when considering the choice of projects, as opposed to the management procedure proposed by the Commission in the modified proposal following Parliament's second reading.

The Commission insists, as it stated at the time of the adoption of the Common Position, on the importance of applying the criteria of Article 2 of Council Decision 1999/468/EC of 28 June 1999, laying down the procedures for the exercise of implementing powers conferred on the Commission.

The Commission believes that, the choice of projects being a measure with substantial budgetary implications, this should follow the management procedure.

The Commission considers that to ignore the terms of Article 2 of Decision 1999/468/EC in a case as clear as this is contrary to both the spirit and the letter of the Council Decision.

The Commission must therefore reserve its position in this matter, including its right to take appropriate future action before the Court.'

23 The Council made the following statement:

'The Council notes the statement by the Commission regarding the choice of the committee procedure for the adoption, by the Commission, of implementing measures under the LIFE Regulation.

In choosing the regulatory procedure contained in Article 5 of Council Decision 1999/468/EC of 28 June 1999, laying down the procedures for the exercise of implementing powers conferred on the Commission, the Council took into account the experience gained with the regulatory procedure under the LIFE instrument during the first (since 1992) and second phase (since 1996) and the nature of the LIFE instrument, which plays a vital role in the protection of the environment within the Community and contributes to the implementation and development of Community environmental policy.

The Council recalls that the criteria laid down in Article 2 of Decision 1999/468/EC are legally non-binding and of an illustrative nature. The Council considers that the scope of implementing powers in this Regulation fully justify having recourse to a regulatory procedure.'

Admissibility

24 First, during the written procedure, the Council expressed doubts as to whether it was open to the Commission to bring an action for annulment in order to ensure that its point of view prevails as regards the type of committee procedure which should be chosen for the adoption of measures for the implementation of Regulation No 1655/2000.

25 The Council contends in that regard that, during the procedure for the adoption of Regulation No 1655/2000, the Commission did not use all the possibilities available to it under the Treaty to defend its position. In particular, after having adopted, before the entry into force of the second comitology decision, a proposal for a regulation providing for the regulatory procedure as its comitology procedure, the Commission did not, after the entry into force of that decision, submit, prior to the Council's adoption of a common position, an amended proposal providing for the use of the management procedure, although Article 250 EC allows it that possibility.

26 According to the Council, the Commission's conduct in the present case is hardly in accordance with the spirit of the duty of sincere cooperation between the institutions.

27 In so far as, in making these observations, the Council intended to challenge the admissibility of the application, the following points should be made.

28 Article 230 EC draws a clear distinction between the right of action available to the Community institutions and the Member States on the one hand and that available to natural or legal persons on the other, *inter alia* by giving the Commission the right to bring an action for annulment in order to challenge the legality of any measure adopted jointly by the Parliament and the Council, without making the exercise of that right conditional on proof of an interest in bringing proceedings (see, to that effect, Case 45/86 *Commission* v *Council* [1987] ECR 1493, paragraph 3). Neither is exercise of that right conditional on the position taken by the Commission at the time when the measure in question was adopted (see, by analogy, as regards positions taken by representatives of the Member States sitting in Council when a regulation is adopted, Case 166/78 *Italy* v *Council* [1979] ECR 2575, paragraph 6).

29 Secondly, as the Advocate General observed at points 136 and 137 of his Opinion, the choice of committee procedure made in Article 11(2) of Regulation No 1655/2000 can be severed from the other provisions of that regulation, so that

an action for partial annulment of Regulation No 1655/2000, in so far as it prescribes recourse to a regulatory committee, is possible.

30 It follows from the foregoing that the application is admissible.

Substance

31 In support of its application, the Commission puts forward two pleas in law alleging, first, infringement of Article 2 of the second comitology decision and, second, conflict with the wording and objective of that decision.

32 Under the first part of its first plea, the Commission contends that the criteria defined in Article 2 of the second comitology decision were not observed.

33 Under the second part of that same plea, the Commission states that the legal effects of Article 2 of the second comitology decision and the obligations flowing from them have been disregarded. It maintains in that regard that, by disregarding the legal effects of Article 2 of the second comitology decision, the Community legislature infringed the obligation to state reasons attaching to that provision, since it failed to state in Regulation No 1655/2000 the reasons which led it to choose a committee procedure different from that which the criteria laid down in that decision should have led it to choose.

34 In that connection, it must be remembered that absence of reasons or inadequacy of the reasons stated goes to an issue of infringement of essential procedural requirements within the meaning of Article 230 EC, and constitutes a plea distinct from a plea relating to the substantive legality of the contested measure, which goes to infringement of a rule of law relating to the application of the Treaty within the meaning of that article (see, to that effect, Case C-367/95 P *Commission* v *Sytraval and Brink's France* [1998] ECR I-1719, paragraph 67, and Case C-265/97 P *VBA* v *Florimex and Others* [2000] ECR I-2061, paragraph 114).

35 It must therefore be held that the second part of the Commission's first plea raises a plea that is distinct from the plea concerned with infringement of Article 2 of the second comitology decision and alleges infringement of the obligation to state reasons laid down in Article 253 EC, in that Regulation No 1655/2000, in so far as it makes the adoption of measures for the implementation of the LIFE programme subject to the regulatory procedure under Article 5 of the second comitology decision, does not state the reasons for which the criteria defined in Article 2 of that decision for choosing between the various committee procedures were not followed in the present case.

The plea alleging infringement of Article 2 of the second comitology decision

36 As a preliminary point, it should be considered whether Article 2 of the second comitology decision constitutes a rule of law relating to application of the Treaty, within the meaning of Article 230 EC, with which the Community legislature must comply when it adopts an instrument of secondary legislation directly on the basis of the Treaty (hereinafter a 'basic instrument'), such as Regulation No 1655/2000.

37 In that regard, the Commission maintains that, by virtue of Article 202 EC, the requirements which the Council may impose in respect of the exercise of the implementing powers conferred on the Commission must be consonant with the principles and rules that the Council has laid down in advance, so that the

provisions of the second comitology decision which lay down those principles and those rules are organic in nature and are binding on the Community legislature when it adopts a basic instrument.

38 According to the Parliament, the Commission's interpretation of Article 202 EC is incorrect. The second comitology decision is not binding on the Community legislature when a basic instrument is adopted. Article 202 EC merely empowers the Council to impose on the Commission rules relating to its exercise of the powers conferred on it, such as those relating to the conduct of the various committee procedures. By contrast, Article 202 EC does not empower the Council to lay down rules which limit the ability of the Community legislature freely to choose among those various procedures on a case-by-case basis, by defining in advance the criteria applying to that choice.

39 In that regard, it should be noted that, as a measure of secondary legislation, the second comitology decision, like the first, cannot add to the rules of the Treaty (see Case C-240/90 *Germany* v *Commission* [1992] ECR I-5383, paragraph 42).

40 None the less, it follows from the third indent of Article 202 EC, on the basis of which the second comitology decision was adopted, that the Council is empowered to lay down principles and rules with which the manner of exercising the implementing powers conferred on the Commission must comply. Those principles and those rules must therefore be observed when measures conferring implementing powers on the Commission are adopted, and Article 202 EC must be held to refer both to measures adopted by the Council alone and to measures adopted by the Council together with the Parliament under the co-decision procedure (see, to that effect, Case C-259/95 *Parliament* v *Council* [1997] ECR I-5303, paragraph 26).

41 Since the scope of the principles and rules which the Council is empowered to lay down in that area is not limited by Article 202 EC to establishing the various

procedures to which the Commission's exercise of the implementing powers conferred on it may be subject, they may also apply to the methods for choosing between those various procedures.

42 As it has thus been held that the Council may lay down the principles and rules to be complied with when choosing between various committee procedures and that those principles and rules are binding on the Community legislature when adopting a basic instrument which confers implementing powers on the Commission, it is necessary next to consider what effect the second comitology decision intended to give in the present case to the criteria for choice set out in Article 2 of that decision. As the Advocate General observed at point 87 of his Opinion, even if Article 202 EC allows the Council to adopt binding criteria, it does not necessarily require it to do so, since the Council may limit itself to laying down criteria for guidance.

43 In that regard, it must be observed at once that the second comitology decision did not intend to make the criteria laid down in Article 2 binding in character.

44 That interpretation is dictated first of all by the wording of Article 2 of the second comitology decision.

45 As the Advocate General observed at point 85 of his Opinion, the use of the conditional tense in most of the language versions of the second comitology decision indicates that the criteria set out in Article 2 of that decision as the basis for choosing between the management procedure or the regulatory procedure are not binding. In addition, that article states that the choice of procedural methods for the adoption of implementing measures are to be 'guided' by the criteria laid down.

46 That interpretation is confirmed by the fifth recital in the preamble to the second comitology decision, which expressly states that the criteria relating to the choice of committee procedure are of a non-binding nature.

47 Moreover, it is clear from the joint declaration of the Council and the Commission upon the adoption of the second comitology decision that a modification of the type of committee provided for in a basic instrument should be made on a case-by-case basis, the criteria specified in Article 2 merely serving to guide that choice, which suggests that those criteria are not, according to the authors of that declaration, binding in nature.

48 It follows from the foregoing that the criteria laid down in Article 2 of the second comitology decision are not binding in nature and that, therefore, the plea alleging that Regulation No 1655/2000 does not comply with those criteria must be rejected as irrelevant.

Plea alleging breach of the obligation to state reasons

49 It is necessary to consider, first, whether the Community legislature was under an obligation in the present case to state reasons for the choice which it made in Article 11(2) of Regulation No 1655/2000 to use the regulatory procedure laid down in Article 5 of the second comitology decision and, second, if that is the case, whether it complied with that obligation to state reasons.

Existence of an obligation to state reasons

50 It must be observed to begin with that, contrary to the contentions of the Parliament and the Council, the fact that the criteria laid down in Article 2 of the

second comitology decision are not binding in nature does not prevent that provision from having certain legal effects, and in particular does not prevent the Community legislature from being subject, when it departs from those criteria, to the obligation to state reasons on that point in the basic instrument adopted by it.

51 In that regard, the Court has held that, even though an act adopted by a Community institution does not lay down a rule of law which that institution is bound to observe, but merely lays down a rule of conduct indicating the practice to be followed, that institution may not depart from it without giving the reasons which have led it to do so (see, to that effect, Case 148/73 *Louwage* v *Commission* [1974] ECR 81, paragraph 12; Case 190/82 *Blomefield* v *Commission* [1983] ECR 3981, paragraph 20; Case 343/82 *Michael* v *Commission* [1983] ECR 4023, paragraph 14; and Joined Cases 129/82 and 274/82 *Lux* v *Court of Auditors* [1984] ECR 4127, paragraph 20).

52 The same conclusion is called for in the present case given the objective of Article 2 of the second comitology decision.

53 According to the fifth recital in the preamble to the second comitology decision, that decision defines the criteria for choice of committee procedure with a view to achieving greater consistency and predictability in the choice of type of committee.

54 Such an objective would be jeopardised if the Community legislature could, when adopting a basic instrument conferring implementing powers on the Commission, depart from the criteria defined in the second comitology decision without having to state the reasons which led it to do so.

55 If follows from the foregoing that, when the Community legislature departs, in the choice of committee procedure, from the criteria which are laid down in Article 2 of the second comitology decision, it must state the reasons for that choice.

56 It is therefore necessary to consider whether, in the present case, the Community legislature, by choosing, in Regulation No 1655/2000, to use the regulatory procedure, made a choice which departs from the criteria laid down in the second comitology decision and whether, accordingly, that choice must be the subject of a statement of reasons in that regulation.

57 The Commission contends in that regard that application of the criteria defined in Article 2 of the second comitology decision should have led the Community legislature to choose, in the case of Regulation No 1655/2000, the management procedure rather than the regulatory procedure.

58 According to the Commission, the measures to be taken to implement Regulation No 1655/2000 are management measures. The Commission is, first, to draw up the list of projects which are capable of being the subject of Community financial support, after verifying that they meet all the conditions and criteria set out in Regulation No 1655/2000 and, second, to establish guidelines, in accordance with Article 4(4) of that regulation. Those guidelines are to be strictly linked to the management of the LIFE programme and are intended essentially to provide potential candidates with practical guidance in presenting demonstration projects eligible for LIFE-Environment.

59 The Parliament and the Council limit themselves to maintaining that the criteria in Article 2 of the second comitology decision do not produce any legal effect, without taking a position on the question whether the choice of the regulatory procedure in Article 11(2) of Regulation No 1655/2000 departs from those criteria.

60 In that regard, it must be observed, as did the Advocate General at points 121 to 123 of his Opinion, that the measures which the Commission is empowered to adopt under the implementing powers conferred on it by Regulation No 1655/2000 are management measures relating to the implementation of a programme with substantial budgetary implications within the meaning of Article 2(a) of the second comitology decision.

61 Those implementing measures therefore fall in principle under the management procedure defined in Article 4 of the second comitology decision or, in some circumstances, in accordance with Article 2(c) of that decision, under the advisory procedure defined in Article 3 thereof.

62 Accordingly, when it chose, as it was entitled to do, to depart from the criteria for guidance defined in Article 2 of the second comitology decision by deciding to use, when adopting the measures for the implementation of Regulation No 1655/2000, the regulatory procedure defined in Article 5 of that decision, the Community legislature was under an obligation to state the reasons for that choice.

Compliance with the obligation to state reasons

63 The Commission submits that Regulation No 1655/2000 does not contain an adequate statement of reasons as regards the choice of the committee procedure made in that regulation and that the Council's declaration at the time of its adoption does not satisfy the obligation to state reasons relating to that point.

64 The Council contends that, although it was not required to do so, the Community legislature gave an appropriate statement, in the 20th recital in the preamble to Regulation No 1655/2000, of the reasons for its decision to use a regulatory procedure and developed those reasons in the form of the declaration made by the Council when that regulation was adopted and published in the *Official Journal of the European Communities*.

65 In that regard, it must be observed at once that the declaration cannot be taken into account for the purpose of determining whether Regulation No 1655/2000 complies with the obligation to state reasons established by Article 253 EC.

66 First, the statement of reasons for a Community measure must appear in that measure (see, to that effect, Case C-291/98 P *Sarrió* v *Commission* [2000] ECR I-9991, paragraphs 73 and 75) and, second, it must be adopted by the author of the measure (see, to that effect, Case C-137/92 P *Commission* v *BASF and Others* [1994] ECR I-2555, paragraph 67), so that, in the present case, a declaration adopted by the Council alone cannot in any event serve as a statement of reasons for a regulation adopted jointly by the Parliament and the Council, such as Regulation No 1655/2000.

67 As regards the question whether Regulation No 1655/2000 itself contains an adequate statement of reasons concerning the choice of committee procedure applicable, the 20th recital in the preamble to that regulation, the only recital capable of supplying such a statement of reasons, merely states that the measures necessary for the implementation of that regulation should be adopted 'in accordance' with the second comitology decision.

68 However, such a statement, which amounts to no more than a reference to the applicable Community instrument, does not constitute a sufficient statement of reasons (see, to that effect, Case 185/85 *Usinor* v *Commission* [1986] ECR 2079, paragraph 21). It does not make clear the specific reasons for the choice of the regulatory procedure in the case of Regulation No 1655/2000, where that choice does not appear to comply with the criteria for guidance defined in Article 2 of the second comitology decision.

69 It follows that the Commission's plea alleging infringement of the obligation to state reasons laid down in Article 253 EC is well founded.

70 It is therefore not necessary to consider the Commission's final plea, alleging conflict with the wording and objective of the second comitology decision.

71 The Commission has applied for annulment of Regulation No 1655/2000 in so far as it makes adoption of measures for the implementation of the LIFE programme subject to the regulatory procedure laid down in Article 5 of the second comitology decision. The purpose of the Commission's action is therefore annulment of Article 11(2) of Regulation No 1655/2000, which dictates the choice of the regulatory procedure laid down in Article 5 of the second comitology decision for the adoption of implementing measures for the LIFE programme.

72 It follows from the foregoing considerations that Article 11(2) of Regulation No 1655/2000 must be annulled.

Limitation of the effects of the annulment

73 The Commission asks the Court to maintain in force the effects of Regulation No 1655/2000 until its amendment, which should take place very soon after the delivery of the present judgment.

74 In the interest of legal certainty, the Commission's application must be allowed.

75 It is therefore appropriate for the Court to use its power under the second paragraph of Article 231 EC to state which of the effects of a regulation which it has declared void are to be considered definitive.

76 In the circumstances of this case, that power will be properly exercised by declaring that the measures for the implementation of Regulation No 1655/2000 already adopted at the date of the present judgment are not to be affected by it and that the effects of Article 11(2) of Regulation No 1655/2000 are to be fully maintained until the Parliament and the Council adopt new provisions concerning the committee procedure to which the measures for the implementation of that regulation are subject.

Costs

-- Under Article 69(2) of the Rules of Procedure, 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 to be awarded against the Parliament and the Council and the latter have been unsuccessful, they must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

1. Annuls Article 11(2) of Regulation (EC) No 1655/2000 of the European Parliament and of the Council of 17 July 2000 concerning the Financial Instrument for the Environment (LIFE);

2. Declares that the measures for the implementation of Regulation No 1655/2000 already adopted at the time of the present judgment are not affected by it;

3. **Declares that the effects of Article 11(2) of Regulation No 1655/2000 are to be fully maintained until the Parliament and the Council adopt new provisions concerning the committee procedure to which the measures for the implementation of that regulation are subject;**

4. **Orders the European Parliament and the Council of the European Union to pay the costs.**

Rodríguez Iglesias Puissochet Wathelet

Gulmann La Pergola Jann

Skouris Macken Colneric

von Bahr Cunha Rodrigues

Delivered in open court in Luxembourg on 21 January 2003.

R. Grass G.C. Rodríguez Iglesias

Registrar President