Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

17 September 2013*

(Action for annulment — Definitive adoption of the European Union's general budget for the financial year 2011 — Act of the President of the Parliament declaring that the budget has been definitively adopted — Article 314(9) TFEU — Establishment by the Parliament and the Council of the European Union's annual budget — Article 314, introductory paragraph, TFEU — Principle of institutional balance — Principle that the institutions must act within the limits of their powers — Duty to cooperate in good faith — Compliance with essential procedural requirements)

In Case C-77/11,

ACTION for annulment under Article 263 TFEU, brought on 14 February 2011,

**Council of the European Union**, represented by G. Maganza and M. Vitsentzatos, acting as Agents,

applicant,

supported by:

**Kingdom of Spain**, represented by N. Díaz Abad, acting as Agent,

intervener,

v

**European Parliament**, represented by C. Pennera, R. Passos, D. Gauci and R. Crowe, acting as Agents,

defendant,

THE COURT (Grand Chamber),

composed of V. Skouris, President, K. Lenaerts, Vice-President, M. Ilešič, L. Bay Larsen, T. von Danwitz, A. Rosas and M. Berger, Presidents of Chambers, E. Levits, A. Ó Caoimh, J.-C. Bonichot, A. Arabadjiev, C. Toader, J.-J. Kasel (Rapporteur), M. Safjan and D. Šváby, Judges,

Advocate General: Y. Bot,

Registrar: V. Tourrès, Administrator,

having regard to the written procedure and further to the hearing on 14 May 2013,

after hearing the Opinion of the Advocate General at the sitting on 28 May 2013,

* Language of the case: French.

gives the following

## Judgment

1 By its action, the Council of the European Union seeks the annulment of Act 2011/125/EU, Euratom of the President of the European Parliament of 15 December 2010, by which the latter declared that the budgetary procedure initiated under Article 314 TFEU had been completed and that, accordingly, the European Union's general budget for the financial year 2011 had been definitively adopted (OJ 2011 L 68, p. 1; 'the contested measure').

### Legal context

2 Article 14(1) TEU provides that '[t]he European Parliament shall, jointly with the Council, exercise legislative and budgetary functions …'. In parallel with this, Article 16(1) TEU states that '[t]he Council shall, jointly with the European Parliament, exercise legislative and budgetary functions …'.

3 Article 314 TFEU sets out the stages and timetable to be followed in the budgetary procedure. The Parliament now has the same powers as the Council with regard to all budgetary appropriations. Moreover, the Council may not impose a budget without the Parliament's agreement. On the other hand, as is apparent from Article 314(7) TFEU, the Parliament may, in certain circumstances, namely where it has the support of a significant majority of the votes cast, have the last word and conclude the budgetary procedure without the Council's agreement.

4 The provisions of Article 314 TFEU of greatest relevance for the purpose of the present action are the introductory paragraph and Article 314(9).

5 The introductory paragraph of Article 314 TFEU states that '[t]he … Parliament and the Council, acting in accordance with a special legislative procedure, shall establish the Union's annual budget …'.

6 Article 314(9) TFEU provides that '[w]hen the procedure provided for in this Article has been completed, the President of the European Parliament shall declare that the budget has been definitively adopted'.

### Background to the dispute and the contested measure

7 On 15 December 2009, the Council reminded the Parliament of the Council's powers under the FEU Treaty as co-author of the legislative act establishing the budget by proposing that the President of the Parliament and the President of the Council should both sign the act establishing the budget.

8 Notwithstanding the Council's request, on 17 December 2009 the President of the Parliament adopted and signed the Union's annual budget for the financial year 2010 alone.

9 On 12 November 2010, in the course of the budgetary procedure for the financial year 2011, the President of the Council sent to the President of the Parliament a letter in which he pointed out that, following the entry into force of the Treaty of Lisbon, the President of the Council and the President of the Parliament were both required to sign the act establishing the European Union's annual budget, since those two institutions are now co-authors of that act. That act is to be distinguished from the act of the President of the Parliament declaring, in accordance with Article 314(9) TFEU, that the budget has been definitively adopted.

10 On 10 December 2010, the Council adopted its position on the draft budget for the financial year 2011. It annexed to that position a draft decision of the Parliament and of the Council establishing the Union's general budget for the financial year 2011.

11 By letter of 14 December 2010, received by the Council on 17 December 2010, the President of the Parliament confirmed that he was unable to share the Council's view that the act establishing the Union's budget must be signed by the Presidents of both those institutions.

12 On 15 December 2010, following the vote on the budget for the financial year 2011 by the Parliament in plenary session, the President of the Council made the following statement: 'the Parliament has just … approved the Council's position on the draft budget for 2011, without amendments. I must say, on behalf of the Council, that I am pleased that we have reached a mutual agreement on the 2011 budget.'

13 On the same day, the President of the Council sent to the President of the Parliament a letter in which he said he was glad that the Parliament had voted in favour of the draft budget for the financial year 2011 and alluded to the fact that the FEU Treaty provides that the budget is to be established by the Parliament and the Council. He annexed to that letter a draft decision of the Parliament and of the Council establishing the European Union's general budget for the financial year 2011, signed by himself and intended also for signature by the President of the Parliament.

14 Also on 15 December 2010, the contested measure was adopted. The single article of that measure, signed only by the President of the Parliament, provides that '[t]he procedure initiated under Article 314 TFEU has been completed and the Union's general budget for the financial year 2011 has been definitively adopted'.

**Forms of order sought by the parties and the procedure before the Court**

15 The Council claims that the Court should:

— annul the contested measure;

— declare the effects of the Union's budget for the financial year 2011 definitive until that budget is established by a legislative act which complies with the Treaties, and

— order the Parliament to pay the costs.

16 The Parliament contends that the Court should:

— dismiss the Council's action, and

— order the Council to pay the costs.

17 By order of the President of the Court of 29 June 2011, the Kingdom of Spain was granted leave to appeal in support of the form of order sought by the Council.

## The action

*Arguments of the parties*

18 In support of its action, the Council submits that the Treaty of Lisbon altered the budgetary procedure significantly, making the Parliament and the Council equal partners, inter alia, by abolishing the distinction between compulsory and non-compulsory expenditure and by providing that there is to be a single reading of the draft budget by the two institutions concerned.

19 In the view of the Council, the principal change is to be found in the introductory paragraph of Article 314 TFEU. That provision, read in conjunction with other Treaty provisions, now requires the procedure to be concluded by the joint adoption of a legislative act bearing the signatures of the Presidents of both the institutions concerned.

20 Accordingly, the practice under the Treaty establishing the European Community, whereby the President of the Parliament simply declares that the budgetary procedure has been completed, is no longer applicable.

21 The Council's application is based on four pleas in law. The first plea alleges breach of Articles 288 TFEU, 289 TFEU, 296 TFEU and 314 TFEU, in light of the absence of any legislative act establishing the Union's budget signed by the Presidents of both the institutions concerned. The second plea alleges failure to adhere to the principle of institutional balance established by Article 314 TFEU. The third plea alleges breach of the principle that the institutions must act within the limits of their powers and of the duty to cooperate in good faith enshrined in Article 13(2) TEU. The fourth plea, put forward in the alternative, alleges breach of essential procedural requirements.

22 First of all, the Council is of the view that the Union's annual budget and amending budgets must now, as a result of the reform brought about by the Treaty of Lisbon, be established by a joint legislative act. The Council therefore considers the case-law established by the judgment in Case 34/86 *Council* v *Parliament* [1986] ECR 2155 obsolete, in particular paragraph 8 of that judgment, in which the Court held that it is the President of the Parliament who formally declares that the budgetary procedure has been brought to a close by the final adoption of the budget and thus endows the budget with binding force vis-à-vis both the institutions and the Member States.

23 For the Council, it is apparent from Article 314 TFEU that, in establishing the budget, the Parliament and the Council now act 'in accordance with a special legislative procedure'. That procedure should, according to Article 289(3) TFEU, culminate in the adoption of a legislative act. That act should take the form of a regulation, directive or decision, in accordance with Articles 288 TFEU and 289(2) TFEU.

24 Moreover, the Council infers from the fact that the powers conferred on the two institutions are equal that the present case entails a specific special legislative procedure, since two principal actors are involved.

25 The Council points out that, as with the ordinary legislative procedure under Article 294 TFEU, Article 314 TFEU expressly provides that the Union's annual budget requires the agreement of both institutions on a joint text established in the Conciliation Committee.

26 The second subparagraph of Article 297(1) TFEU provides that acts adopted under a special legislative procedure are, in principle, to be signed by the President of the institution which adopted them. Since the European Union's annual budget is a joint undertaking, the concluding act must necessarily bear the signature of the Presidents of both the institutions concerned.

27 It follows, according to the Council, that the act of the President of the Parliament declaring that the Union's annual budget has been definitively adopted cannot constitute a legislative act for the purposes of the FEU Treaty.

28 Second, the Council is of the view that, by signing the budget for the financial year 2011 alone, the President of the Parliament acted in a manner inconsistent with the new institutional balance established by Article 314 TFEU. In other words, the President of the Parliament acted *ultra vires*.

29 Third, the Council refers to its efforts to find a mutually acceptable solution. By ignoring those efforts, the President of the Parliament failed in his duty to cooperate in good faith, which should govern relations between the institutions, in accordance with Article 13(2) TEU.

30 Fourth, the Council considers that the contested measure should be annulled on the ground of infringement of essential procedural requirements. The Council submits that that measure came into being in the absence of any agreement as to the type of measure required for a declaration that the Union's annual budget had been definitively adopted.

31 In any event, pending the bringing to an end of the illegality established, the Council requests the Court to maintain the effects of the Union's annual budget relating to the financial year 2011 for the current year, in accordance with the second paragraph of Article 264 TFEU.

32 The Kingdom of Spain supports the Council's arguments without reservation.

33 The Parliament acknowledges that the budgetary procedure envisages the Parliament and the Council working together with a view to reaching an agreement. That was the case with the Union's annual budget for the financial year 2011. However, unlike the situation under the ordinary legislative procedure, that cooperation does not ultimately result in an independent act in the form of a regulation, directive or decision.

34 The Parliament points out that the Council itself accepts that the agreement between the two institutions concerned on the draft budget cannot of itself produce legal effects.

35 Accordingly, in order for it to be possible for the budget to produce legal effects binding on both the institutions and the Member States, action is required on the part of the President of the Parliament, as is apparent from Article 314(9) TFEU. That action constitutes an additional act, as observed by Advocate General Mancini in his Opinion in the case which gave rise to the judgment in *Council* v *Parliament*, referred to above.

36 According to the Parliament, the act of its President is founded on a power which is particular to the President of that institution. It is based on an assessment as to whether the budgetary procedure which has been completed is lawful. It is an independent act which does not reflect a parliamentary majority and may be regarded as verification on the part of the President of the Parliament that the budgetary procedure complies with the FEU Treaty.

37 In the light of the foregoing, the Parliament disputes the Council's argument that Article 314 TFEU requires a joint legislative act at the conclusion of the procedure in order to give the Union's annual budget its binding force.

38 If the intention of the authors of the Treaty of Lisbon had been to alter the powers of the President of the Parliament at the conclusion of the procedure, they would not have retained in Article 314(9) TFEU a provision which is the same as that in Article 272(7) EC.

39 According to the Parliament, the specific nature of the budget derives from the fact that it is purely an accounting matter, since it contains only estimates of revenue and appropriations, which, in order to become authorised expenditure, require, at the appropriate time, the adoption of a basic act. Given the specific nature of the budget, the Parliament is of the view that the Union's annual budget is adopted in accordance with a *sui generis* procedure, which takes account of the need to formalise the adoption of the budget before the end of the year in order to avoid the 'provisional twelfths system'.

40 Accordingly, the FEU Treaty does not provide that the act adopting the budget is to bear the signature of the Presidents of both the institutions concerned.

41 Referring to the specific nature of the budgetary procedure, as opposed to the ordinary legislative procedure, the Parliament disputes the argument that neither institution has the last word vis-à-vis the other, since the draft budget in question must be adopted by co-decision.

42 The Parliament refers in that regard to the wording of Article 314(7) TFEU, which provides for the situation in which the President of the Parliament declares that the Union's annual budget has been adopted, even though the Council rejected the joint text agreed at the end of negotiations in the Conciliation Committee.

43 Confident that it acted in accordance with the letter and spirit of the FEU Treaty, the Parliament considers that it did not in any way infringe the principle that the institutions must act within the limits of their powers. That would have been the case, however, had it lent its support to the Council's intention to conclude the budgetary procedure by adopting an independent legislative act which is specific to the ordinary legislative procedure.

44 Lastly, the Parliament rejects the assertion that it failed in its duty to cooperate in good faith enshrined in Article 13(2) TEU, since, on 14 December 2010, the eve of the vote in Parliament on the budget for the financial year 2011, the President of that institution informed the Council of his position.

45 Similarly, the Parliament, confident that, from the point at which the joint text was established, it complied with the terms of Article 314(9) TFEU, disputes the Council's claim that it infringed essential procedural requirements.

*Findings of the Court*

46 It should be noted, first of all, that the procedure for the establishment of the Union's budget is governed by the provisions of Article 314 TFEU. The introductory paragraph of Article 314 TFEU states that the budget is to be adopted in accordance with a special legislative procedure.

47 The Council's reasoning underlying its first three pleas, which equates the budgetary procedure with an ordinary legislative procedure, as laid down in Article 294 TFEU, must be rejected at the outset. The various provisions of Article 314 TFEU establish a special legislative procedure for the adoption of the Union's budget, which is appropriate to the specific nature of the budget and is concluded by the act referred to in Article 314(9) TFEU. The latter provision states that '[w]hen the procedure [for the establishment of the Union's budget] has been completed, the President of the European Parliament shall declare that the budget has been definitively adopted'.

48 Next, it should be noted that the contested measure is based on Article 314 TFEU, in particular Article 314(9) TFEU.

49 It is apparent from the very wording of Article 314(9) TFEU that the act based on that provision concludes the procedure for the establishment of the Union's budget and is signed only by the President of the Parliament.

50 It follows that, contrary to contentions of the Council and the Kingdom of Spain, the budgetary procedure laid down in Article 314 TFEU is not concluded by an act jointly signed by the Presidents of the Parliament and the Council. It is the act based on Article 314(9) TFEU – by which the President of the Parliament declares, after verifying that the procedure has been conducted lawfully, that the budget has been definitively adopted – which constitutes the final stage of the procedure for the adoption of the Union's budget and endows the budget with binding force.

51 Accordingly, the Court has held that the act based on Article 203(7) of the EEC Treaty, the terms of which correspond to those of Article 314(9) TFEU, first, is adopted by the President of the Parliament in his capacity as an organ of that institution and must therefore be attributed to that institution and, second, endows the budget with binding force vis-à-vis both the institutions and the Member States (see *Council* v *Parliament*, paragraph 8).

52 However, the Council and the Kingdom of Spain maintain that the insertion by the Treaty of Lisbon of the provision in the introductory paragraph of Article 314 TFEU to the effect that '[t]he European Parliament and the Council, acting in accordance with a special legislative procedure, shall establish the Union's annual budget' has an impact on the legal effects which the judgment in *Council* v *Parliament* attributed to the act of the President of the Parliament declaring that the Union's budget had been definitively adopted. Under that provision, the budget should be adopted definitively by an act of the Parliament and of the Council signed by the Presidents of both those institutions. The act adopted on the basis of Article 314(9) TFEU is merely a declaratory act, adopted by the President of the Parliament.

53 Those arguments cannot be accepted.

54 By stating that the Parliament and the Council are to establish the Union's budget, the introductory paragraph of Article 314 TFEU serves as a reminder that, in accordance with Articles 14(1) TEU and 16(1) TEU, budgetary functions are to be exercised jointly by those two institutions.

55 However, the introductory paragraph of Article 314 TFEU states that the budget is to be established 'in accordance with the following provisions'. No provision in Article 314 TFEU provides for the adoption, at the end of the budgetary procedure, of an act which is to be signed by the Presidents of both the Parliament and the Council.

56 Accordingly, it is the President of the Parliament, in his capacity as organ of that institution, who, by adopting the act based on Article 314(9) TFEU, endows the Union's budget with binding force at the conclusion of a procedure characterised by the joint action of the Parliament and the Council (see *Council* v *Parliament*, paragraph 8).

57 The Council and the Kingdom of Spain also argue that the contested measure, which was adopted in accordance with a special legislative procedure, is unlawful because, contrary to the requirements of Articles 288 TFEU and 289(2) TFEU, it does not take the form of a regulation, directive or decision.

58 The argument should also be rejected.

59 It should be recalled that Article 314 TFEU lays down a special legislative procedure appropriate to the nature of the budget, which is essentially an accounting document setting out estimates for the European Union of all income and expenditure over a certain period. After the President of the Parliament has verified that the procedure complies with the provisions of the FEU Treaty, that document is annexed to the act by which the President declares, on the basis of Article 314(9) TFEU, that the budget has been definitively adopted.

60 Even though the act based on Article 314(9) TFEU is the outcome of a special legislative procedure, it does not, due to the nature of the budget, take the form of a legislative act in the strict sense of the term for the purpose of Articles 288 TFEU and 289(2) TFEU, and is, in any event, a measure open to challenge for the purpose of Article 263 TFEU, since it endows the Union's budget with binding force.

61 The Council also contends that the contested measure infringes the powers conferred on the Council by the first paragraph of Article 296 TFEU. That provision states that '[w]here the Treaties do not specify the type of act to be adopted, the institutions shall select it on a case-by-case basis, in compliance with the applicable procedures and with the principle of proportionality'. It maintains that, in the absence of further clarification in Article 314 TFEU concerning the type of act by which the Union's budget is to be adopted, the Parliament should have consulted with the Council on that question. The parameters established by the first paragraph of Article 296 TFEU lead to the conclusion that the act establishing the budget should be an act signed by the Presidents of both the institutions concerned.

62 That argument cannot be accepted either.

63 Indeed, the first paragraph of Article 296 TFEU is not applicable in the budgetary procedure established by Article 314 TFEU, since the latter provision, in particular Article 314(9) TFEU, expressly provides that that procedure is concluded by the adoption of an act of Parliament, signed by the President of that institution.

64 Moreover, the Council submits that, in adopting the contested measure, the President of the Parliament acted in breach of the duty to cooperate in good faith, which should govern relations between the institutions. It criticises the President of the Parliament in particular on the ground that he did not participate in the steps taken by the Council to seek a solution that complied with the Treaties, was mutually acceptable and had due regard to both the institutions' powers and the powers of the President of the Parliament. It also criticises the President of the Parliament for failing to inform the President of the Council on the day of the vote on the budget in plenary session, namely 15 December 2010 – even though he was present at that vote – of the content of his letter of 14 December 2010.

65 That argument cannot be accepted either.

66 It is apparent from the documents submitted to the Court, in particular the statement set out at paragraph 12 above, that an agreement was reached on 15 December 2010 between the Parliament and the Council on the content of the budget for the financial year 2011. The fact that those two institutions disagreed as to how that agreement was to be formalised did not preclude the President of the Parliament from declaring, on 15 December 2010, that the procedure initiated under Article 314 TFEU had been completed and the Union's general budget for the financial year 2011 definitively adopted.

67 Since, in accordance with Article 314(9) TFEU, only the President of the Parliament had the authority to sign the contested measure, no question of breach of the duty to cooperate in good faith on the part of the President of the Parliament arises.

68 It is clear from all the above that the first three pleas must be rejected.

69 Lastly, the Council and the Kingdom of Spain submit, as an alternative argument, that the contested measure must be annulled on account of breach of essential procedural requirements, on the ground that, from the point at which the President of the Parliament became aware of the disagreement between the Parliament and the Council as to which type of act governs the adoption of the budget, the President of the Parliament was not entitled to declare that the budgetary procedure for the financial year 2011 had been completed.

70 However, since an agreement was reached between the Parliament and the Council on 15 December 2010 on the content of the budget for the financial year 2011, the President of the Parliament was entitled, in full accordance with the provisions of Article 314 TFEU, to adopt the contested measure the same day.

71 The final plea in law cannot therefore be upheld either.

72 It follows from all the foregoing that the action must be dismissed.

**Costs**

73 Under Article 138(1) of the Rules of Procedure of the Court of Justice, the unsuccessful party must be ordered to pay the costs if they have been applied for in the other party's pleadings. Since the Parliament has applied for an order that the Council pay the costs and the Council has been unsuccessful, the Council must be ordered to pay the costs. Under Article 140(1) of those rules, the Kingdom of Spain, which has intervened in the proceedings, is to bear its own costs.

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

**1. Dismisses the action.**

**2. Orders the Council of the European Union to pay the costs.**

**3. Orders the Kingdom of Spain to bear its own costs.**

[Signatures]