JUDGMENT OF THE COURT
1 June 1994 *

In Case C-388/92,

European Parliament, represented by Johann Schoo, Head of Division in its Legal Service, acting as Agent, 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 Antonio Sacchettini, Director in its Legal Service, and Philippe Woodland, legal adviser, acting as Agents, with an address for service in Luxembourg at the office of Bruno Eynard, Deputy Director of Legal Affairs of the European Investment Bank, 100 Boulevard Konrad Adenauer,

defendant,

supported by

Kingdom of Spain, represented by Alberto Navarro González, Director General of Community Legal and Institutional Coordination, and Gloria Calvo Diaz, State Attorney, of the State Legal Service for matters before the Court of Justice, acting as Agents, with an address for service in Luxembourg at the Spanish Embassy, 4-6 Boulevard Emmanuel Servais,

* Language of the case: French.

intervener,

APPLICATION for annulment of Council Regulation (EEC) No 2454/92 of 23 July 1992 laying down the conditions under which non-resident carriers may operate national road passenger transport services within a Member State (OJ 1992 L 251, p. 1),

THE COURT,

composed of: G. F. Mancini, President of Chambers, acting as President, J. C. Moitinho de Almeida and D. A. O. Edward (Presidents of Chambers), R. Joliet, F. A. Schockweiler, G. C. Rodríguez Iglesias, F. Grévisse, M. Zuleeg (Rapporteur) and J. L. Murray, Judges,

Advocate General: M. Darmon,
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 1 March 1994,

after hearing the Opinion of the Advocate General at the sitting on 16 March 1994,

gives the following

Judgment

1 By application lodged at the Court Registry on 29 October 1992, the European Parliament brought proceedings under Article 173 of the EEC Treaty for the annulment of Council Regulation (EEC) No 2454/92 of 23 July 1992 laying down the conditions under which non-resident carriers may operate national road passenger transport services within a Member State (OJ 1992 L 251, p. 1, hereinafter referred to as 'the regulation'), on the ground that the Council had disregarded the prerogatives of the Parliament.

2 That regulation, which is based on Article 75 of the Treaty, provides that any carrier who operates road passenger transport services for hire or reward who is established in a Member State in accordance with its legislation and is authorized, in that State, to pursue the occupation of road passenger transport operator in international transport operations is to be permitted, under the conditions laid down in the regulation, temporarily to operate national road passenger services for hire or reward in another Member State, without being required to have a registered office or other establishment in that State. Such national transport services are referred to as 'cabotage transport operations' (Article 1 of the regulation).

3 Until 31 December 1995, permission to operate cabotage transport operations in the form of non-regular services is restricted to 'closed-door tours'. After that date all cabotage transport operations are to be authorized for all non-regular services (Article 3(1) of the regulation).

4 Cabotage transport operations in the form of special regular services intended for the carriage of workers between home and work and for the carriage of school

pupils and students to and from their educational institution may be carried out in the frontier zone of a Member State only if, *inter alia*, the total distance involved does not exceed 50 km in each direction as the crow flies (Article 3(2) of the regulation). The Commission is to report to the Council before 31 December 1995 on whether consideration should be given to extending the scope of the regulation to other regular passenger transport services and, in an appropriate case, is to submit a proposal for a regulation (Article 12(1) of the regulation).

5 It appears from the file that the contested act originated in a proposal for a regulation submitted by the Commission to the Council on 4 March 1987 (OJ 1987 C 77, p. 13). Article 2 of that proposal, based on Article 75 of the Treaty, envisaged that with effect from 1 January 1989 any carrier who operates road passenger transport services for hire or reward, is established in a Member State in which he is authorized to undertake the international carriage of passengers, and satisfies the conditions laid down by Council Directive 74/562/EEC of 12 November 1974 on admission to the occupation of road passenger transport operator in national and international transport operations (OJ 1974 L 308, p. 23), 'shall be permitted to operate national road passenger transport services for hire or reward by means of regular services, occasional services or shuttle services, in a Member State other than that in which he is established; he may temporarily pursue his activities in the relevant Member State without having to set up a registered office, place of business or other establishment therein'.

6 Having been consulted by the Council, the Parliament gave its opinion in a resolution of 10 March 1988 (OJ 1988 C 94, p. 125), in which, subject to three amendments, it approved the Commission proposal.

7 The Commission found two of those amendments acceptable, and on 4 November 1988 submitted an amended proposal to the Council (OJ 1988 C 301, p. 8). That provided that the regulation should apply to coaches and buses suitable for

carrying more than nine persons, and added an obligation on Member States to communicate to the Commission the provisions adopted in implementation of the regulation. Those amendments were confirmed by the Council in Articles 2(d) and 13 of the regulation. However, the Commission did not take up the Parliament's third proposed amendment to postpone for one year the regulation's entry into force.

8 On 23 July 1992, the Council adopted the contested regulation.

9 In support of its application, the Parliament argues that the contested act infringed an essential procedural requirement by disregarding the Parliament's right to participate in the Community legislative process. In its view, the Council's obligation to consult the Parliament under Article 75 of the Treaty includes the duty to reconsult it if a substantial amendment to the proposal on which the Parliament has given its opinion is envisaged. In the Parliament's submission, that applies in the present case to the near-exclusion of regular services from the substantive scope of the regulation and to the postponement of full liberalization of cabotage concerning non-regular services until 1 January 1996.

10 The Court has consistently held that the duty to consult the European Parliament in the course of the legislative procedure, in the cases provided for by the Treaty, includes a 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 where the amendments essentially correspond to the wish of the Parliament itself (see the judgments in Case C-65/90 *Parliament* v *Council* [1992] ECR I-4593, and in Joined Cases C-13/92 to C-16/92 *Driessen en Zonen and Others* v *Minister van Verkeer en Waterstaat* [1993] ECR I-4751, at paragraph 23).

11 Article 2 of the Commission's initial proposal, on which the Parliament gave its opinion, envisaged that any carrier who operated road passenger transport services for hire or reward, was established in a Member State, was authorized therein to undertake the international carriage of passengers, and satisfied the conditions laid down by Directive 74/562 referred to above, was to be permitted to operate national road passenger transport services for hire or reward by means of regular services, occasional services or shuttle services, in a Member State other than that in which he was established.

12 By contrast, as far as regular services are concerned, the regulation adopted by the Council covers only the carriage, in frontier areas, of workers between home and work and school pupils and students to and from their educational institution. Cabotage can be extended to other regular passenger transport services only by a new Council regulation adopted on a proposal by the Commission, the latter being under a duty to report to the Council in that respect before 31 December 1995.

13 As the Parliament maintains, a comparison between the Commission's initial proposal and the contested regulation shows that, as far as regular services are concerned, the amendments made have restricted the scope of the regulation to certain types of road passenger transport and to certain restricted frontier zones in such a way as to affect the very essence of the enactment. Those amendments must therefore be regarded as substantial.

14 The Council, however, supported by the Kingdom of Spain, argues that those amendments correspond to the Parliament's wishes, and that, in adopting the contested regulation, the Council followed a policy which is now the same as that of the Parliament. In that respect, the Council refers to the opinions expressed by the Parliament concerning cabotage road haulage operations at the time of the procedure leading to the adoption of Council Regulation (EEC) No 3118/93 of 25 October 1993 laying down the conditions under which non-resident carriers may operate national road haulage services within a Member State (OJ 1993 L 279,

p. 1). Whilst the Parliament had originally approved the Commission's proposal for an immediate, and almost unconditional, liberalization of cabotage in goods, in fresh consultations on the same question, it unambiguously declared itself in favour of a progressive implementation of liberalization (OJ 1992 C 150, p. 336). In the present case, the Council has, it argues, reflected the current opinion of the Parliament.

15 The case-law of the Court shows that, when the regulation adopted broadly corresponds to the Parliament's wishes, the Council may dispense with further consultation (see the judgment in Case 817/79 *Buyl* v *Commission* [1982] ECR 245, at paragraph 23). In the present case, however, the Council has not produced any text enabling the conclusion to be drawn that the Parliament expressly declared itself in favour of a progressive liberalization of cabotage in passenger transport. Indeed, the resolution cited by the Council, which concerns the liberalization of cabotage in road haulage operations, namely a different sector from the one in question here, contains no indication to that effect. The Council's argument cannot, therefore, be upheld.

16 The Kingdom of Spain refers, however, to the opinions of various parliamentary committees which, according to the Kingdom of Spain, came out in favour of the progressive liberalization of cabotage in passenger transport operations before the resolution of 10 March 1988 was adopted.

17 On that point, in examining whether the Council's amendments correspond with the wishes of the Parliament, no reference may be made to opinions expressed by parliamentary committees before the adoption of a legislative resolution ending the consultation procedure.

18 Given that the amendments referred to above affected the scheme of the proposed regulation as a whole, and are therefore in themselves sufficient to require the Par-

liament to be reconsulted, it is not necessary to examine the Parliament's other pleas in law.

19 In those circumstances, the fact that the Parliament was not consulted a second time during the legislative procedure laid down in Article 75 of the Treaty constitutes an infringement of essential procedural requirements which must entail the annulment of the contested regulation.

20 In its defence, the Council asked the Court to limit the effects of any annulment of the regulation.

21 In that connection, the Court has held that the principles governing freedom to provide transport services, as established in particular by Articles 59 and 60 of the Treaty, must be applied by introducing a common transport policy (see the judgment in Case 13/83 *Parliament* v *Council* [1985] ECR 1513, at paragraph 62). Simply to annul the contested regulation would be likely to call in question the degree of liberalization which that regulation sought to achieve.

22 Accordingly, the second paragraph of Article 174 of the Treaty must be applied in order that the provisions of the annulled regulation may remain effective until the Council, after proper consultation of the Parliament, has adopted new legislation in the matter.

Costs

23 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. In accordance with Article 69(4) of the Rules of Procedure, the Kingdom of Spain is to bear its own costs.

On those grounds,

THE COURT

hereby:

1. **Annuls Council Regulation (EEC) No 2454/92 of 23 July 1992 laying down the conditions under which non-resident carriers may operate national road passenger transport services within a Member State;**

2. **Declares that the provisions of the annulled regulation shall remain effective until the Council, after consultation with the Parliament, has adopted new legislation in the matter;**

3. Orders the Council to pay the costs. The Kingdom of Spain shall bear its own costs.

Mancini	Moitinho de Almeida	Edward
Joliet	Schockweiler	Rodríguez Iglesias
Grévisse	Zuleeg	Murray

Delivered in open court in Luxembourg on 1 June 1994.

R. Grass

Registrar

G. F. Mancini

President of Chambers, acting as President