# JUDGMENT OF THE COURT

30 January 2001 *

In Case C-36/98,

**Kingdom of Spain,** represented by S. Ortiz Vaamonde, acting as Agent, with an address for service in Luxembourg,

applicant,

v

**Council of the European Union,** represented by G. Houttuin and D. Canga Fano, acting as Agents, with an address for service in Luxembourg,

defendant,

supported by

**French Republic,** represented by K. Rispal-Bellanger and R. Nadal, acting as Agents, with an address for service in Luxembourg,

by

* Language of the case: Spanish.

**Portuguese Republic**, represented by L. Fernandes, M. Telles Romão and P. Canelas de Castro, acting as Agents, with an address for service in Luxembourg,

by

**Republic of Finland**, represented by H. Rotkirch and T. Pynnä, acting as Agents, with an address for service in Luxembourg,

and by

**Commission of the European Communities**, represented by R. Gosalbo Bono and F. de Sousa Fialho, acting as Agents, with an address for service in Luxembourg,

interveners,

APPLICATION for annulment of Council Decision 97/825/EC of 24 November 1997 concerning the conclusion of the Convention on cooperation for the protection and sustainable use of the river Danube (OJ 1997 L 342, p. 18),

THE COURT,

composed of: G.C. Rodríguez Iglesias, President, C. Gulmann, A. La Pergola, M. Wathelet, V. Skouris (Presidents of Chambers), D.A.O. Edward, J.-P. Puissochet, P. Jann, L. Sevón (Rapporteur), R. Schintgen and F. Macken, Judges,

Advocate General: P. Léger,

Registrar: D. Louterman-Hubeau, Head of Division,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 18 January 2000 at which the Kingdom of Spain was represented by S. Ortiz Vaamonde, the Council by I. Díez Parra, acting as Agent, the Portuguese Republic by L. Fernandes and P. Canelas de Castro, the Republic of Finland by H. Rotkirch and T. Pynnä and the Commission by G. Valero Jordana, acting as Agent,

after hearing the Opinion of the Advocate General at the sitting on 16 May 2000,

gives the following

## Judgment

1 By application lodged at the Court Registry on 16 February 1998, the Kingdom of Spain brought an action pursuant to the first paragraph of Article 173 of the EC Treaty (now, after amendment, the first paragraph of Article 230 EC) for annulment of Council Decision 97/825/EC of 24 November 1997 concerning the conclusion of the Convention on cooperation for the protection and sustainable use of the river Danube (OJ 1997 L 342, p. 18, hereinafter 'the contested decision').

2 By orders of the President of the Court of 9 June, 15 July and 24 August 1998, the French Republic, the Commission of the European Communities, the Portuguese Republic and the Republic of Finland were granted leave to intervene in support of the forms of order sought by the Council of the European Union.

## Legal framework

3 Article 130r(1) and the first subparagraph of Article 130r(2) of the EC Treaty (now, after amendment, Article 174(1) EC and the first subparagraph of Article 174(2) EC) provide:

'1. Community policy on the environment shall contribute to pursuit of the following objectives:

— preserving, protecting and improving the quality of the environment;

— protecting human health;

— prudent and rational utilisation of natural resources;

— promoting measures at international level to deal with regional or worldwide environmental problems.

2. Community policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Community. It shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay. Environmental

protection requirements must be integrated into the definition and implementation of other Community policies.

...'

4 The first subparagraph of Article 130r(4) of the Treaty provides: 'Within their respective spheres of competence, the Community and the Member States shall cooperate with third countries and with the competent international organisations. The arrangements for Community cooperation may be the subject of agreements between the Community and the third parties concerned, which shall be negotiated and concluded in accordance with Article 228.'

5 Article 130s(1) and (2) of the EC Treaty (now, after amendment, Article 175(1) and (2) EC) provides:

'1. The Council, acting in accordance with the procedure referred to in Article 189c and after consulting the Economic and Social Committee, shall decide what action is to be taken by the Community in order to achieve the objectives referred to in Article 130r.

2. By way of derogation from the decision-making procedure provided for in paragraph 1 and without prejudice to Article 100a, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament and the Economic and Social Committee, shall adopt:

— provisions primarily of a fiscal nature;

— measures concerning town and country planning, land use with the exception of waste management and measures of a general nature, and management of water resources;

— measures significantly affecting a Member State's choice between different energy sources and the general structure of its energy supply.

The Council may, under the conditions laid down in the preceding subparagraph, define those matters referred to in this paragraph on which decisions are to be taken by a qualified majority.'

6 The conclusion of agreements between the Community and one or more States or international organisations is governed by Article 228 of the EC Treaty (now, after amendment, Article 300 EC), which provides in paragraph 2 and the first subparagraph of paragraph 3:

'2. Subject to the powers vested in the Commission in this field, the agreements shall be concluded by the Council, acting by a qualified majority on a proposal from the Commission. The Council shall act unanimously when the agreement covers a field for which unanimity is required for the adoption of internal rules, and for the agreements referred to in Article 238.

3. The Council shall conclude agreements after consulting the European Parliament, except for the agreements referred to in Article 113(3), including cases where the agreement covers a field for which the procedure referred to in Article 189b or that referred to in Article 189c is required for the adoption of internal rules. The European Parliament shall deliver its opinion within a time-limit which the Council may lay down according to the urgency of the matter. In the absence of an opinion within that time-limit, the Council may act.'

7 By the contested decision, the Council approved on behalf of the Community the Convention on cooperation for the protection and sustainable use of the river Danube, signed in Sofia (Bulgaria) on 29 June 1994 (OJ 1997 L 342, p. 19, hereinafter 'the Convention'). The contested decision states that it is based on the EC Treaty, and in particular Article 130s(1), in conjunction with the first sentence of Article 228(2) and the first subparagraph of Article 228(3), thereof.

## Substance

*Arguments of the parties*

8 In support of its action, the Kingdom of Spain relies on a single plea, to the effect that the legal basis adopted was inappropriate. In its submission, the decision should have been based exclusively on Article 130s(2) of the Treaty in conjunction with the second sentence of Article 228(2) and the first subparagraph of Article 228(3) of the Treaty.

9 In that regard, it observes that Article 130s(2) of the Treaty lists a series of actions relating to the environment, including 'management of water resources', in respect of which any decision must be taken in accordance with a specific procedure. That provision is a specific legal rule and not one that derogates from the general rule laid down in Article 130s(1) of the Treaty. It is therefore of preferential application and to be given a broad interpretation where the spirit of the provision renders such an interpretation desirable.

10 Measures concerning the management of water resources are measures designed to administer and rationalise the use of water by man for specific purposes by subjecting it to the requirements of the Community policy on the environment. The use of water covers both the transport of goods by river and the discharge of

residual substances into a river in order to dispose of them. As regards measures such as the sharing of water or the carrying out of works relating to water, the Community is competent only where those measures are dictated by an environmental policy requirement.

11 Owing to its nature as a natural resource absolutely essential to human life, water merits special attention. For that reason, when a Community action is designed to regulate, whether directly or indirectly, aspects of the use of water by man, the procedure laid down in Article 130s(2) of the Treaty applies, even where the general objectives of the Community policy on the environment are among its objectives. Indeed, it is scarcely possible to imagine measures concerned with the management of water that do not take account of the aspects relating to the protection and quality of water resources. Furthermore, in the Treaty, actions concerned with the management of water are included under the title on the environment.

12 Article 130s(1) and (2) of the Treaty distinguish between Community action not according to whether their object is the 'quality' or the 'quantity' of natural resources but according to the matter affected by the action. If the action concerns matters specifically referred to in Article 130s(2) of the Treaty, it must comply with that provision.

13 The Spanish Government analyses the Convention and points out that the preamble thereto, in setting out the objectives of the Contracting Parties, refers, in the first paragraph, to 'water management cooperation in the field of water protection and water use' and, in the sixth paragraph, to a 'lasting... protection of the river Danube and of the waters within its catchment area', 'sustainable water management' and 'water use'. Furthermore, Article 2 of the Convention, which sets out the objectives and principles of cooperation, refers in paragraph (1) to the rational use of water, in paragraph (2) to cooperation on fundamental water management issues and in paragraph (3) to rational and sustainable water use and to the sustainable use of water resources for municipal, industrial and agricultural purposes.

14 The content of the Convention, too, is entirely consistent within the concept of water resource management. In that regard, the Spanish Government refers to Article 3, which deals with the regulation of water courses, the effect on the hydraulic regime, the use of water and hydrotechnical installations, Article 5(1) and (2)(a) on cooperation with a view to ensuring sustainable water use and on uniform methods of recording conditions of water resources, Article 6, which concerns appropriate measures to ensure a sustainable use of water and the conservation of those resources, Article 7(1) and (5)(b), which deals with restrictions on the industrial use of water and waste water discharges, Article 9(1) and (3), on the monitoring of the riverine conditions in the Danube catchment area and the compilation of water balances, Article 10(b) and (c), which concerns the mutual duty to provide information on international agreements or internal regulations on water protection and management, and Article 18(5) of the Convention, which deals with cooperation in elaborating further regulations on the protection and water management of the river Danube.

15 The Spanish Government concludes that the Convention approved by the contested decision relates exclusively to the management of the water resources of the catchment area of the river Danube and establishes measures aimed at its rational and non-polluting use. If one of its provisions fell within the sphere of water management, it would be incidental to the principal objective.

16 Furthermore, the contested decision was adopted pursuant to the Community policy on the environment, to which both paragraphs 1 and 2 of Article 130s of the Treaty are devoted, and not within the framework of two or more different Community policies. Consequently, the problem of concurrent legal bases does not arise. The only difficulty to be resolved is that of the choice between general rules and specific rules within the same Treaty title.

17 The Council contends that a clear distinction must be drawn between, on the one hand, what is commonly called 'water management' and, on the other, the 'management of water resources' referred to in Article 130s(2) of the Treaty. The

former covers the adoption of measures designed to improve the quality of water, while the latter covers the adoption of measures relating to the quantitative management of water resources. While it accepts that the various language versions of the Treaty do not assist the interpretation of 'management of water resources', the Council contends that the reference to 'resources' is a factor which favours the interpretation it advocates.

18 Furthermore, the management of water resources would appear to have something in common with town and country planning and land use, the other two matters referred to in the second indent of the first subparagraph of Article 130s(2) of the Treaty, namely the concept of 'works' to improve the environment.

19 The Council contends that the Convention aims to promote at international level measures designed to deal with a very specific regional environmental problem, namely the pollution of one of the longest rivers in Europe, which flows through two Member States and a number of non-member countries. The Convention also claims to preserve, protect and improve the quality of the environment and to encourage the prudent and rational use of the resources of the river Danube, since the Contracting Parties were aware that, particularly in its lower reaches, the river Danube is heavily polluted and that it makes a significant contribution to pollution in the Black Sea. The Convention also seeks to protect human health.

20 It is clear upon reading the Convention in its entirety that its aim and content go far beyond the mere management of the available water resources of the river. The Council acknowledges that where such an instrument pursues broad objectives it inevitably includes a part devoted to the management of resources. However, the effect on the management of the water resources of the river Danube is incidental to the aim and content of the Convention.

21 With reference to Part I of the Convention, entitled 'General provisions', the Council observes, in particular, that in Article 2 a sustainable and equitable water management is cited several times among the objectives and principles of cooperation, but alongside other objectives and principles.

22 Analysing Part II of the Convention, entitled 'Multilateral cooperation', the Council contends that it is designed to ensure efficient water quality protection and sustainable water use, the Contracting Parties thus contributing to the prevention, control and reduction of transboundary impact. In that regard, it refers to Article 5(2), which provides that the parties are to take measures concerning, in particular, waste water discharges, the handling of substances hazardous to water and the reduction of inputs of nutrients and pesticides or intended to avoid the transboundary impacts of wastes, and to Article 6 of the Convention, on specific water resources protection measures. It also refers to Article 7, which sets out water quality objectives and criteria for emission limitation, to Annex II, which contains a list of industrial sectors and industries and also a list of hazardous substances and groups of substances, and to Annex III to the Convention, which sets out a general guidance on water quality objectives and criteria.

23 As regards Part III of the Convention, entitled 'International Commission', the Council maintains that it is clear from its provisions that the International Commission for the Protection of the river Danube (hereinafter 'the International Commission') set up by Article 18(1) of the Convention is not competent to manage the water resources of the river Danube. Its powers are those of a body set up under a convention designed to improve the quality of the water of a river catchment area.

24 The Council concludes that the aim of the Convention, as set out in the third recital in the preamble to the contested decision, is wider than the mere management of the water resources of the river Danube and that its content pursues that aim. The measures provided for in the Convention are essentially intended to improve the quality of the water of the river Danube and the powers of the International Commission set up under that convention only allow it to

contribute to that improvement. Accordingly, the impact of the Convention on the quantitative management of water resources is entirely incidental.

25 The French Government, considering the meaning of the French expression 'gestion des ressources hydrauliques' in Community law and international law, argues that the expression refers to the control of the movement, the energy or the flow of the water and therefore covers the management of large and small rivers, the control and regulation of flows, the use of the quantities of water and the exploitation of the water resource for irrigation or energy. Regulation at Community level directly affecting the powers of decision of the Member States on the management and exploitation of water resources therefore comes under Article 130s(2) of the Treaty, whereas all measures concerning, on the one hand, marine waters and, on the other, the quality of fresh water, the fight against pollution and the protection of aquatic ecosystems are directly connected with the protection of natural resources and the environment, which is governed by the procedure provided for in Article 130s(1) of the Treaty.

26 As regards the Convention, its aim is to establish intergovernmental cooperation principally for the protection of the waters of the river Danube and its aquatic ecosystem against pollution. In that regard, it is clear from its very title that the Convention is aimed at preventing and controlling pollution in the river Danube from the point of view of ensuring sustainable use of its water, which is confirmed by the third recital in the preamble to the contested decision.

27 Admittedly, the ecological management of the water of a river makes it necessary to combine measures on quality and on quantities, which inevitably influence one another. However, the various provisions of the Convention on water resources and the flow of the water are of an incidental nature and do not constitute its principal objective.

28 The Portuguese Government observes, first of all, that there is no perfect correspondence between the various language versions of Article 130s(2) of the Treaty as regards the expression 'management of water resources'.

29 Next, it claims that in international law the tendency is to ascribe an increasingly restrictive meaning to that expression, especially against a background of increasing openness to environmental concerns. That tendency is reinforced by legal writers, who prefer to reserve the word 'water' for situations involving activities concerned or principally concerned with protection, and to refer to 'water resources' only in relation to the use of water or to activities concerned with the economic exploitation of water.

30 As regards Community law, the Portuguese Government states that the Treaty on European Union has provided that actions and measures taken to implement Community policy in the field of the environment are in future, in most cases, to be adopted in accordance with the simplified procedure laid down in Article 130s(1) of the Treaty. Article 130s(2) of the Treaty expresses at most a desire to establish a normative balance in the potentially dynamic relationship between the legislative powers of the Community and those which in principle belong to the Member States. 'Water management', in all its aspects, actions or measures designed to protect, or to curb the deterioration of, the environment, or to protect and improve the quality of water, has long been a Community power, whereas the 'management of water resources' does not form part of that category and is not a Community matter but has been left to the Member States. However, there is no wish to remove any action in the field of water from the Community plans for the protection and promotion of the environment set out in Article 130s(1) of the Treaty, but one to make provision for a sharing of powers. That solution in respect of the management of water resources, as in respect of town and country planning or land use, which are also referred to in the second indent of the first subparagraph of Article 130s(2) of the Treaty, expresses and implies a sovereignty encompassing those powers which derive their basis and authority from their connection with a territory.

31 The Portuguese Government contends that if a Community act is primarily concerned with the environment and deals with problems of quality, even though it has certain effects or contains provisions of a quantitative nature, that act must be based on Article 130s(1) of the Treaty and not Article 130s(2) of the Treaty, the latter provision being applicable where the issues dealt with are primarily of a quantitative nature.

32 As regards the purpose and content of the Convention, the Portuguese Government stresses that the Contracting Parties speak of protection and that, even where they deal with the problem of the use of water, of which the activity of management of water resources might form part, they do so from a very different perspective from the physical perspective, based on the idea of unlimited manipulation of water resources, corresponding to Article 130s(2) of the Treaty. In the Convention, the rules on the use of water are envisaged in accordance with a global environmental perspective, under which the use of water is made subject to the principle of sustainability, which, moreover, is expressed in the title of the Convention.

33 The Finnish Government contends that Article 130s(1) of the Treaty is to be taken as the legal basis of a Community act where the content and objectives of that act relate to the protection of surface or underground waters in the Community and that the regulation of the quantity and use of the water is designed to promote objectives relating to the quality of water.

34 Conventions relating to international waters are traditionally divided strictly between conventions on the management of water resources and those on the protection of water. Recently, the legislature has moved to the stage of sustainable development, which is characterised by an attempt to reconcile the interests of protecting water and the interests of users, so that water is used in the interest of sustainable development.

35 In the present case, the Convention is aimed at sustainable use, as its very title indicates. By virtue of the preamble to and Article 2 of the Convention, it has as its objective the global management of water in accordance with the principle of sustainable development. However, the rules relating to the management of water resources play a secondary role in the Convention, which is essentially concerned with the protection of water.

36 The Finnish Government contends that the Convention therefore has the objective both of protecting water and its sustainable use, but, examined in the light of Article 130s(1) and (2) of the Treaty, its essential concern and aim are the protection of the waters of the river Danube and not the management of its water resources.

37 The Commission maintains that the expression 'management of water resources' refers exclusively to the quantitative aspects of the management of water, by analogy with the other expressions in the second indent of the first subparagraph of Article 130s(2) of the Treaty, namely 'town and country planning' and 'land use', which, according to the Commission, directly concern the way in which States use their land for infrastructure projects. The expression 'management of water resources' should therefore be taken to cover the distribution and use of water from a quantitative aspect.

38 As regards the object and content of the contested decision, the Commission contends that the provisions of the Convention clearly reflect the priorities of those who negotiated it, namely to prevent pollution of the water of the river Danube caused by industrial development in the States through which it flows and to eliminate such pollution by encouraging cooperation, the exchange of information and mutual assistance between those States.

39 In the Commission's view, it is clear upon examining the Convention that the protection of the quality of the water of the river Danube is a constant factor in the preamble and in most of its provisions. Although the Convention also contains certain references to quantitative criteria relating to the catchment area

of the river Danube, in most cases those criteria cannot be dissociated from the criteria and measures relating to quality.

40 The Commission concludes that the centre of gravity of the Convention is the protection of the environment of the river Danube, and in particular the quality of its water, and that it is only incidentally that the Convention contains quantitative criteria on the management of the water, which, in most cases, may be explained by the fact that those criteria cannot be dissociated from the protection of the environment and the quality of the river.

*Findings of the Court*

41 It is appropriate to recall at the outset that, as provided for in Article 130r(4) of the Treaty, the Council, by the contested decision, approved in accordance with Article 228 of the Treaty an agreement concluded between the Community and non-member countries.

42 As regards the procedure applicable to the conclusion of such an agreement, it follows from Article 228(2) of the Treaty that if the agreement relates to a matter for which unanimity is required for the adoption of internal rules, or in the case of an agreement referred to in Article 238 of the EC Treaty (now Article 310 EC), the Council is to act unanimously. In other cases, it acts by a qualified majority.

43 It is therefore necessary to consider whether internal Community rules corresponding to the provisions of the Convention would be adopted on the basis of Article 130s(1) of the Treaty, which provides that the Council is to act on the basis of the procedure referred to in Article 189c of the EC Treaty (now Article 252 EC), that is by a qualified majority, or on the basis of Article 130s(2) of the Treaty, which provides that the Council is to act unanimously.

44 In that regard, it is appropriate, first, to determine the scope of Article 130s(1) of the Treaty, on the one hand, and Article 130s(2) of the Treaty, on the other, and, second, to examine the legal basis on which the Convention was approved.

The scope of Article 130s(1) and of Article 130s(2) of the Treaty

45 Pursuant to Article 130s(1) of the Treaty, the Council is to act in accordance with the procedure referred to therein when it decides what action is to be taken by the Community in order to achieve the objectives of Community policy on the environment as specified in Article 130r of the Treaty. According to Article 130s(2) of the Treaty, the decision-making procedure provided for therein is to apply, by way of derogation from that provided for in paragraph 1, where the Council adopts the decisions and measures set out in paragraph 2.

46 It therefore follows from the very wording of those two provisions that Article 130s(1) of the Treaty in principle constitutes the legal basis of acts adopted by the Council in order to attain the objectives referred to in Article 130r of the Treaty. On the other hand, Article 130s(2) of the Treaty was drafted in such a way that it is to apply where the measures to be adopted concern matters indicated therein, such as the management of water resources.

47 As regards the concept of 'management of water resources', it follows from the consistent case-law of the Court that an interpretation of a provision of Community law involves a comparison of the language versions (see Case C-72/95 *Kraaijeveld and Others* v *Gedeputeerde Staten van Zuid-Holland* [1996] ECR I-5403, paragraph 28).

48 In the present case, it should be observed that the use in the French version of the word 'hydrauliques', which means 'relating to the flow and distribution of water', implies that what is referred to in the second indent of the first subparagraph of Article 130s(2) of the Treaty is the management of water resources in their physical dimension and tends to support the interpretation advocated by the Council and the interveners. The Dutch version ('kwantitatief waterbeheer') is comparable, in that it uses terms which imply the management of water in its quantitative, as opposed to its qualitative, aspects. The German ('der Bewirtschaftung der Wasserressourcen'), Spanish ('la gestión de los recursos hídricos'), Italian ('la gestione delle risorse idriche'), Portuguese ('gestão dos recursos hídricos'), Finnish ('vesivarojen hoitoa'), Swedish ('förvaltning av vattenresurser'), Danish ('forvaltning af vandressourcerne'), English ('management of water resources'), Irish ('bainisteoireacht acmhainní uísce') and Greek ('τη διαχείριση των υδάτινων πόρων') versions may cover not only the quantitative aspects of the management of water but also qualitative aspects.

49 In the case of divergence between the language versions of a Community measure, the provision in question must be interpreted by reference to the purpose and general scheme of the rules of which it forms part (see in particular, in that regard, Case C-420/98 *W.N.* [2000] ECR I-2847, paragraph 21).

50 In that regard, it should be pointed out first of all that it is clear from the objectives of Community policy on the environment and from a reading of Article 130r in conjunction with Article 130s(1) and (2) of the Treaty that the inclusion of the 'management of water resources' in the first subparagraph of Article 130s(2) of the Treaty is not intended to exclude any measure dealing with the use of water by man from the application of Article 130s(1) of the Treaty.

51 Next, apart from the measures concerning the management of water resources, the second indent of the first subparagraph of Article 130s(2) of the Treaty refers to measures relating to town and country planning and to land use with the exception of waste management and measures of a general nature. These are measures which, just like those based on Article 130s(1) of the Treaty, are

intended to attain the objectives referred to in Article 130r of the Treaty, but which regulate the use of the territory of the Member States, such as measures relating to regional, urban or rural management plans or the planning of various projects concerning the infrastructure of a Member State.

52 The territory and land of the Member States and their water resources are limited resources and the second indent of the first subparagraph of Article 130s(2) of the Treaty therefore refers to the measures which affect them as such, that is measures which regulate the quantitative aspects of the use of those resources or, in other words, measures relating to the management of limited resources in its quantitative aspects and not those concerning the improvement and the protection of the quality of those resources.

53 That interpretation is borne out by the fact that waste management and measures of a general nature are excluded from the application of the second indent of the first subparagraph of Article 130s(2) of the Treaty. Measures of a general nature are, for example, measures which, whilst relating generally to town and country planning and land use in the Member States, do not regulate the performance of specific infrastructure projects or, although imposing certain limits on the way in which land may be used in the Member States, do not regulate the use to which the Member States plan to put their land.

54 Furthermore, the measures referred to in the three indents of the first subparagraph of Article 130s(2) of the Treaty all imply the involvement of the Community institutions in areas such as fiscal policy, energy policy or town and country planning policy, in which, apart from Community policy on the environment, either the Community has no legislative powers or unanimity within the Council is required.

55 It follows from a consideration of those various factors, taken together, that the concept of 'management of water resources' does not cover every measure concerned with water, but covers only measures concerning the regulation of the use of water and the management of water in its quantitative aspects.

56 As regards the argument that water is a natural resource so essential to life that it warrants special attention, it is sufficient to state that that reason alone cannot justify excluding water from the scope of Article 130s(1) of the Treaty. In any event, Article 130r(2) and (3) of the Treaty provides that the Community policy on the environment is to aim at a high level of protection taking into account the diversity of situations in the various regions of the Community, the economic and social development of the Community as a whole and the balanced development of its regions. Furthermore, pursuant to Article 130s(5) of the Treaty, if a measure based on Article 130s(1) of the Treaty involves costs judged disproportionate for the public authorities of a Member State, the Council is to lay down appropriate provisions in the act adopting that measure in the form of temporary derogations and/or financial support from the Cohesion Fund.

57 It follows that, among the measures concerning water whose purpose is to attain the objectives referred to in Article 130r of the Treaty, only those which concern the regulation of the use of water and its management in its quantitative aspects are to be adopted on the basis of Article 130s(2) of the Treaty.

The legal basis on which the Convention was approved

58 It follows from a consistent line of decisions that in the context of the organisation of the powers of the Community the choice of a legal basis for a measure must rest on objective factors which are amenable to judicial review.

Those factors include in particular the aim and the content of the measure (see, in particular, Case C-269/97 *Commission* v *Council* [2000] ECR I-2257, paragraph 43).

59 If examination of a Community measure reveals that it pursues a twofold purpose or that it has a twofold component and if one of these is identifiable as the main or predominant purpose or component, whereas the other is merely incidental, the act must be based on a single legal basis, namely that required by the main or predominant purpose or component (see, to that effect, the judgment in Case C-42/97 *Parliament* v *Council* [1999] ECR I-869, paragraphs 39 and 40).

60 As regards the purpose of the contested decision, although the Convention which it approves also refers to the regulation of the use of the waters of the catchment area of the river Danube and the management of those waters from a quantitative aspect, it is clear from the recitals to the contested decision and from the preamble to the Convention that the principal purpose of the Convention is the protection and improvement of the quality of those waters.

61 It follows from the third recital in the preamble to the contested decision that the Convention is intended to 'protect the marine environment', to 'prevent and control pollution in the river Danube' and to 'ensure sustainable use of the water resources of countries through which the river Danube flows'. Although, according to the first paragraph of the preamble to the Convention, the Contracting Parties are 'determined by the strong intention to intensify their water management cooperation in the field of water protection and water use', according to the second and third paragraphs they are concerned over the 'changes in conditions of watercourses within the river Danube basin' and emphasise the need to 'prevent, control and reduce significant adverse transboundary impact from the release of hazardous substances and of nutrients into the aquatic environment within the Danube basin with due attention also given to the Black Sea'. The fourth paragraph refers to the measures already taken to promote 'the prevention and control of transboundary pollution, sustainable water management, rational use and conservation of water resources'. According to the sixth paragraph, the Contracting Parties are concerned to bring about 'a lasting improvement and protection of the river Danube and of the waters within its catchment area... and... sustainable water management taking duly into

account the interests of the Danubian States in the field of water use and at the same time contributing to the protection of the marine environment of the Black Sea'.

62 The finding that the Convention is primarily concerned with the protection and improvement of the quality of the water in the catchment area of the river Danube is borne out by Article 2(1) to (3), which defines the objectives of the Contracting Parties.

63 As regards the content of the Convention, it is only incidentally that its provisions regulate the use of the waters of the catchment area of the river Danube and their management in its quantitative aspects.

64 In that regard, Article 3 of the Convention, which defines its scope, states the planned activities and ongoing measures to which the Convention is to apply in particular, namely 'the discharge of waste waters, the input of nutrients and hazardous substances... as well as heat discharge', 'planned activities and measures in the field of water construction works', 'other planned activities and measures for the purposes of water use, such as water power utilisation, water transfer and withdrawal', 'the operation of the existing hydrotechnical constructions e.g. reservoirs and water power plants; measures to prevent environmental impact, including deterioration in the hydrological conditions, erosion, abrasion, inundation and sediment flow; measures to protect the ecosystems' and 'the handling of substances hazardous to water and the precautionary prevention of accidents'.

65 However, those activities and measures are to be subject to the provisions of the Convention only 'as far as they cause or are likely to cause transboundary impacts'. According to Article 1(c) of the Convention, '"transboundary impact" means any significant adverse effect on the riverine environment resulting from a change in the conditions of waters caused by human activity and stretching out beyond an area under the jurisdiction of a Contracting Party'. Article 3(3) of the Convention likewise states that the Convention is to apply to fishing and inland

navigation 'as far as problems of water protection against pollution caused by these activities are concerned'.

66 Admittedly, the measures provided for in Article 5(2) of the Convention, for the purpose of preventing, controlling and reducing transboundary impact, consist in 'record[ing] conditions of natural water resources within the river Danube catchment area applying agreed quantity and quality parameters', but the other measures provided for in that paragraph concern only the protection and improvement of the quality of the waters of the river Danube, such as the adopting of legal provisions 'providing for requirements... to be met by waste water discharges', 'for the handling of substances hazardous to water' and also 'for reducing inputs of nutrients or hazardous substances from non-point sources' and taking 'appropriate measures to avoid the transboundary impacts of wastes and hazardous substances'.

67 Articles 6, 7 and 8 of the Convention are likewise primarily concerned with protecting and improving the quality of the waters of the river Danube.

68 Article 6, which sets out specific water resources protection measures, states that '[t]he Contracting Parties shall take appropriate measures aiming at the prevention or reduction of transboundary impacts and at a sustainable and equitable use of water resources as well as at the conservation of ecological resources'. That provision states that the Contracting Parties are to 'enumerate groundwater resources subject to long-term protection as well as protection zones valuable for existing or future drinking water supply purposes', 'prevent the pollution of groundwater resources', 'minimise... the risks of accidental pollution', 'take into account possible influences on the water quality resulting from planned activities and ongoing measures referred to in Article 3(2)' and 'evaluate the importance of different biotope elements for the riverine ecology

and propose measures for improving the aquatic and littoral ecological conditions'.

69 According to Article 7 of the Convention, '[t]he Contracting Parties... shall set emission limits applicable to individual industrial sectors or industries in terms of pollution loads and concentrations' and are to draw up '[s]upplementary provisions for preventing or reducing the release of hazardous substances and nutrients... for non-point sources'. They are to 'define water quality objectives and apply water quality criteria for the purpose of preventing, controlling and reducing transboundary impact'.

70 Pursuant to Article 8 of the Convention, the Contracting Parties are to 'undertake periodically inventories of the relevant point and non-point sources of pollution' and 'in stages [to] establish a list of further prevention and abatement measures'; together those inventories and that list are to form the basis for developing joint action programmes. Those programmes are in particular to be aimed at 'the reduction of pollution loads and concentrations'.

71 Although it is true that the methods and monitoring programmes described in Article 9(1) of the Convention concern flood forecast, water balance and water quantity, they none the less also concern river quality, emission control, sediments and riverine ecosystems. There is also a reference to the development of methods for the 'monitoring and assessment of waste water discharges', the drawing up of 'inventories on relevant point sources including the pollutants discharged (emission inventories)' and the estimation of 'water pollution from non-point sources'.

72 It is also true that Article 9(3) requires that the Contracting Parties establish domestic water balances and the general water balance of the river Danube basin

and that it follows from Article 1(g) of the Convention that 'water balance' means 'the relationship characterising the natural water environment of an entire river basin as to its components (precipitation, evaporation, surface and underground run-off)'. None the less, Article 9(2) of the Convention makes clear that the Contracting Parties are under an obligation to agree on 'monitoring points, river quality characteristics and pollution parameters regularly to be evaluated for the river Danube with a sufficient frequency taking into account the ecological and hydrological character of the watercourse concerned as well as typical emissions of pollutants discarded within the respective catchment area'.

73 As regards the Contracting Parties' obligation under Article 10(b) and (c) to inform the International Commission of international agreements and national regulations concerning the protection and management of the water of the river Danube and the waters within its catchment area, and also the preparation by the International Commission of the basis for elaborating further regulations, pursuant to Article 18(5) of the Convention, on which the Spanish Government relies, it is clear that, as that government itself points out, the agreements and regulations to which those provisions refer concern the protection as well as the management of the waters of the river Danube.

74 It follows from that examination that, according to its aim and its content, the primary purpose of the Convention is the protection and improvement of the quality of the waters of the catchment area of the river Danube, although it also refers, albeit incidentally, to the use of those waters and their management in its quantitative aspects.

75 It follows from the foregoing that internal Community rules corresponding to the provisions of the Convention are adopted on the basis of Article 130s(1) of the Treaty. The Council was therefore correct to take the first sentence of Article 228(2) and the first subparagraph of Article 228(3) of the Treaty as the basis for approving the Convention.

76 The present action must therefore be dismissed.

## Costs

77 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 Council applied for the Kingdom of Spain to be ordered to pay the costs and the Kingdom of Spain has been unsuccessful, it must be ordered to pay the costs. Under the first subparagraph of Article 69(4) of the Rules of Procedure, the French Republic, the Portuguese Republic, the Republic of Finland and the Commission, which have intervened in the proceedings, are to bear their own costs.

On those grounds,

THE COURT

hereby:

1. **Dismisses the action;**

2. **Orders the Kingdom of Spain to pay the costs;**

3. **Orders the French Republic, the Portuguese Republic, the Republic of Finland and the Commission of the European Communities to bear their own costs.**

Rodríguez Iglesias Gulmann La Pergola

Wathelet Skouris

Edward Puissochet Jann Sevón

Schintgen Macken

Delivered in open court in Luxembourg on 30 January 2001.

R. Grass G.C. Rodríguez Iglesias

Registrar President