Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

25 June 2020*

(Action for annulment — Law of the institutions — Protocol on the location of the seats of the institutions and of certain bodies, offices, agencies and departments of the European Union — European Parliament — Concept of 'budgetary session' held in Strasbourg (France) — Article 314 TFEU — Exercise of budgetary powers during an additional plenary part-session held in Brussels (Belgium))

In Case C-92/18,

ACTION for annulment under Article 263 TFEU, brought on 7 February 2018,

French Republic, represented initially by E. de Moustier, A.-L. Desjonquères, J.-L. Carré, F. Alabrune, D. Colas and B. Fodda, and subsequently by E. de Moustier, A.-L. Desjonquères, A. Daly and J.-L. Carré, acting as Agents,

applicant,

supported by:

Grand Duchy of Luxembourg, represented initially by D. Holderer, C. Schiltz and T. Uri, and subsequently by C. Schiltz and T. Uri, acting as Agents,

intervener,

v

European Parliament, represented by R. Crowe, U. Rösslein and S. Lucente, acting as Agents,

defendant,

THE COURT (Second Chamber),

composed of A. Arabadjiev, President of the Chamber, K. Lenaerts, President of the Court, acting as a Judge of the Second Chamber, P.G. Xuereb, T. von Danwitz (Rapporteur) and A. Kumin, Judges,

Advocate General: G. Hogan,

Registrar: V. Giacobbo-Peyronnel, Administrator,

having regard to the written procedure and further to the hearing on 16 January 2020,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

* Language of the case: French.

gives the following

Judgment

1 By its application, the French Republic seeks the annulment of four acts of the European Parliament relating to the adoption of the annual budget of the European Union for the financial year 2018 (together 'the contested acts'), namely:

– the agenda for the plenary sitting of the Parliament of 29 November 2017 (Document P8_0J (2017)11-29), in so far as it includes debates on the joint text on the draft annual budget of the European Union for the financial year 2018;

– the agenda for the plenary sitting of the Parliament of 30 November 2017 (document P8_0J (2017)11-30), in so far as it includes a vote followed by explanations of votes on that joint draft text;

– the legislative resolution of the Parliament of 30 November 2017 on that joint draft text (document P8_TA(2017)0458, P8_TA-PROV(2017)0458); and

– the act of 30 November 2017 by which the President of the Parliament declared that the annual budget of the European Union for the financial year 2018 had been definitively adopted.

Legal context

2 Point (a) of the sole article of Protocol No 6 on the location of the seats of the institutions and of certain bodies, offices, agencies and departments of the European Union, annexed to the EU, FEU and EAEC Treaties ('the Protocol concerning the seats of the institutions'), provides:

'The European Parliament shall have its seat in Strasbourg where the 12 periods of monthly plenary sessions, including the budget session, shall be held. The periods of additional plenary sessions shall be held in Brussels. The committees of the European Parliament shall meet in Brussels. The General Secretariat of the European Parliament and its departments shall remain in Luxembourg.'

3 Article 314 TFEU provides:

'The European Parliament and the Council, acting in accordance with a special legislative procedure, shall establish the Union's annual budget in accordance with the following provisions.

…

3. The Council shall adopt its position on the draft budget and forward it to the European Parliament not later than 1 October of the year preceding that in which the budget is to be implemented. …

4. If, within forty-two days of such communication, the European Parliament:

…

(c) adopts amendments by a majority of its component members, the amended draft shall be forwarded to the Council and to the Commission. The President of the European Parliament, in agreement with the President of the Council, shall immediately convene a meeting of the Conciliation Committee. …

5. The Conciliation Committee, which shall be composed of the members of the Council or their representatives and an equal number of members representing the European Parliament, shall have the task of reaching agreement on a joint text, by a qualified majority of the members of the Council or their representatives and by a majority of the representatives of the European Parliament within twenty-one days of its being convened, on the basis of the positions of the European Parliament and the Council.

…

6. If, within the twenty-one days referred to in paragraph 5, the Conciliation Committee agrees on a joint text, the European Parliament and the Council shall each have a period of fourteen days from the date of that agreement in which to approve the joint text.

7. If, within the period of fourteen days referred to in paragraph 6:

(a) the European Parliament and the Council both approve the joint text or fail to take a decision, or if one of these institutions approves the joint text while the other one fails to take a decision, the budget shall be deemed to be definitively adopted in accordance with the joint text; or

(b) the European Parliament, acting by a majority of its component members, and the Council both reject the joint text, or if one of these institutions rejects the joint text while the other one fails to take a decision, a new draft budget shall be submitted by the Commission; or

…

(d) the European Parliament approves the joint text whilst the Council rejects it, the European Parliament may, within fourteen days from the date of the rejection by the Council and acting by a majority of its component members and three-fifths of the votes cast, decide to confirm all or some of the amendments referred to in paragraph 4(c). Where a European Parliament amendment is not confirmed, the position agreed in the Conciliation Committee on the budget heading which is the subject of the amendment shall be retained. The budget shall be deemed to be definitively adopted on this basis.

…

9. When 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.

10. Each institution shall exercise the powers conferred upon it under this Article in compliance with the Treaties and the acts adopted thereunder, with particular regard to the Union's own resources and the balance between revenue and expenditure.'

Background to the dispute

4 On 7 October 2015, the Parliament adopted the calendar of plenary part-sessions for the year 2017, which provided, inter alia, for ordinary plenary part-sessions to be held in Strasbourg (France) from 23 to 26 October 2017, from 13 to 16 November 2017 and from 11 to 14 December 2017 and for an additional plenary part-session to be held on 29 and 30 November 2017 in Brussels (Belgium).

5 In April 2017, the Council, the Parliament and the Commission adopted the 'pragmatic' calendar specifying the core dates envisaged by those institutions for the various stages of the budgetary procedure for the financial year 2018 and, in particular, for a possible conciliation procedure.

6 On 29 June 2017, the Commission published a draft annual budget of the European Union for the financial year 2018. On 13 September 2017, the Council forwarded to the Parliament its position on that draft. Following a vote by the Committee on Budgets and debates during the ordinary plenary part-session held in Strasbourg from 23 to 26 October 2017, the Parliament adopted, on 25 October 2017, a legislative resolution containing amendments to that draft. On 31 October 2017, the budget conciliation procedure between the Parliament and the Council began. On 18 November 2017, that procedure led to an agreement on a joint text on the draft annual budget of the European Union for the financial year 2018.

7 On 30 November 2017, the Council approved the joint text on the draft annual budget of the European Union for the financial year 2018. The Parliament included the debate and the vote on that joint text in the agenda for the additional plenary part-session on 29 and 30 November 2017, held in Brussels. By the legislative resolution of 30 November 2017, the Parliament approved that joint text. On the same day, the President of the Parliament declared, in plenary sitting, that the annual budget of the European Union for the financial year 2018 had been definitively adopted.

8 After the present action had been brought, the Court dismissed, by judgment of 2 October 2018, *France* v *Parliament (Exercise of budgetary powers)* (C-73/17, EU:C:2018:787), the action brought by the French Republic seeking the annulment of acts adopted by the Parliament in the context of the procedure leading to the adoption of the EU budget for the financial year 2017. Following the delivery of that judgment, the French Republic confirmed, at the Court's request, its intention to pursue its action concerning the EU budget for the financial year 2018.

Procedure before the Court and forms of order sought

9 The French Republic claims that the Court should:

– annul the contested acts;

– maintain the effects of the act by which the President of the Parliament declared that the annual budget of the European Union for the financial year 2018 had been definitively adopted until that budget is definitively adopted by an act in conformity with the Treaties within a reasonable period of time after the date on which the Court delivers its judgment in the present case; and

– order the Parliament to pay the costs.

10 The Parliament contends that the Court should:

– dismiss the action;

– order the French Republic to pay the costs; and

– in the alternative, maintain the effects of the act by which the President of the Parliament declared that the annual budget of the European Union for the financial year 2018 had been definitively adopted until the entry into force, within a reasonable period of time, of a new act intended to replace it.

11 By decision of the President of the Court of 26 April 2019, the Grand Duchy of Luxembourg was granted leave to intervene in support of the form of order sought by the French Republic.

The action

Arguments of the parties

12 The French Republic, supported by the Grand Duchy of Luxembourg, raises a single plea in law alleging that the contested acts infringe the Protocol concerning the seats of the institutions. By virtue of point (a) of the sole article of that protocol, it submits, the Parliament is required to exercise the budgetary powers conferred on it by Article 314(5), (6) and (9) TFEU, in principle, in their entirety, during the ordinary plenary part-sessions held in Strasbourg. The French Republic submits that, in the present case, the Parliament failed to have regard to the necessary reconciliation between the obligations stemming from those articles by including the debate and the vote on the joint text on the draft annual budget of the European Union for the financial year 2018, under Article 314(6) TFEU, in the agenda for the additional plenary part-session held in Brussels on 29 and 30 November 2017, and by declaring, by act of the President of the Parliament based on Article 314(9) TFEU, that that budget had been definitively adopted during that additional plenary part-session.

13 In this regard, the French Republic maintains that the Parliament made an error of assessment by adopting and subsequently maintaining its calendar for the ordinary plenary part-sessions for the year 2017 in such a way that the vote on the joint text on the draft annual budget for the financial year 2018 could take place within the period prescribed by Article 314(6) TFEU only during the additional plenary part-session referred to in the preceding paragraph, held in Brussels, and not during the ordinary plenary part-session held in Strasbourg.

14 The French Republic considers that it is possible to anticipate the date of the agreement reached in the course of the conciliation procedure. In that regard, it submits, first, that, in practice, the vote on the joint text for the budget, provided for in Article 314(4) TFEU, invariably takes place during the second ordinary plenary part-session of October, known as 'the "October II" part-session'. Secondly, it argues that, since the entry into force of the Treaty of Lisbon, recourse has systematically been had to the conciliation procedure. Finally, it adds that, in the very likely event that there is a conciliation procedure, any conciliation agreement will in all likelihood be reached in the final days of the conciliation period provided for in Article 314(5) TFEU. Under those circumstances, the French Republic takes the view that the European Parliament is obliged to schedule the ordinary plenary part-session of the month of November during the fourth or the fifth week after the 'October II' part-session, since, in its view, such timing maximises the likelihood that the Parliament's vote on the joint text on the budget can take place during the ordinary plenary part-session held in Strasbourg, within the period of 14 days prescribed by Article 314(6) TFEU. However, in the present case, the Parliament scheduled the ordinary plenary part-session of the month of November 2017 for the third week after the 'October II' part-session of 2017, which prevented it from exercising its budgetary powers under Article 314(6), (7) and (9) TFEU in Strasbourg.

15 In any event, the French Republic submits that the European Parliament could have adjusted the calendar of the ordinary plenary part-sessions, subsequent to the adoption of the pragmatic calendar which sets out the schedule for the budgetary procedure, by common agreement between the institutions. Once the pragmatic calendar had been adopted, the Parliament had confirmation of the dates of the conciliation procedure and of the meetings of the conciliation committee, in the very likely event there would be such a procedure following the 'October II' part-session.

16 The Parliament submits that it did not make an error of assessment by exercising its budgetary powers under Article 314(6), (7) and (9) TFEU during the additional plenary part-session held on 29 and 30 November 2017. Owing to the unpredictability inherent in the budgetary procedure, it was, at the time when the calendar of plenary sessions was adopted for the year 2017, fundamentally

uncertain whether there would be a conciliation procedure and equally uncertain when that procedure would begin and, in the event of agreement on a joint text on the draft annual budget, when it would end.

Findings of the Court

17 As Article 314(10) TFEU affirms, the Parliament is required to exercise the budgetary powers conferred upon it in compliance with the Treaties and the acts adopted thereunder.

18 In the first place, the Parliament must comply with the Protocol concerning the seats of the institutions, which, in accordance with Article 51 TEU, forms an integral part of the Treaties. Point (a) of the sole article of the protocol provides that 'the European Parliament shall have its seat in Strasbourg where the 12 periods of monthly plenary sessions, including the budget session, shall be held'.

19 In that regard, the Court held, in paragraphs 32, 35 and 37 of the judgment of 2 October 2018, *France* v *Parliament (Exercise of budgetary powers)* (C-73/17, EU:C:2018:787), that, in the absence of any specific provision in point (a) of the sole article of that protocol, the words 'budget session' must be regarded as referring to all of the periods of plenary part-sessions during which the Parliament exercises its budgetary powers and to all of the acts adopted by the Parliament for that purpose. The exercise by the Parliament of its budgetary powers in plenary sitting constitutes a fundamental event in the democratic life of the European Union and requires, inter alia, a public debate in plenary sitting enabling the citizens of the European Union to acquaint themselves with the various political orientations expressed and, as a result, to form a political opinion on the European Union's actions. Furthermore, the transparency afforded by a parliamentary debate in a plenary sitting is likely to strengthen the democratic legitimacy of the budgetary procedure in the eyes of citizens of the European Union and the credibility of the latter's actions. Accordingly, the words 'budget session' in point (a) of the sole article of the Protocol concerning the seats of the institutions encompass not only the ordinary plenary part-session during which the draft budget is considered at first reading, under Article 314(4) TFEU, but also the second reading, under Article 314(6) of that Treaty, which guarantees a public debate and vote, in a plenary sitting, on the joint text on the draft annual budget adopted under the conciliation procedure.

20 In the second place, the Parliament is obliged to comply with the requirements that Article 314 TFEU imposes on it for the exercise of its budgetary powers in plenary sitting. The purpose of the deadlines and time limits prescribed by that provision is to ensure that the annual budget of the European Union is adopted before the end of the year preceding the financial year in question, as a possible failure to observe them may result in the application of Article 315 TFEU concerning a revisionary budget (judgment of 2 October 2018, *France* v *Parliament (Exercise of budgetary powers)*, C-73/17, EU:C:2018:787, paragraph 38).

21 If, within the 14-day period prescribed by Article 314(6) TFEU, the debate and vote in the Parliament on the joint text on the draft annual budget have not taken place, the joint text may be adopted by the Council alone, under the conditions laid down in paragraph 7(a) of that article. It is of particular importance for the transparency and democratic legitimacy of action taken by the European Union, which are given expression through the procedure for adopting the annual budget, that the Parliament should exercise its powers under Article 314(6) TFEU and vote in plenary sitting on that joint text (judgment of 2 October 2018, *France* v *Parliament (Exercise of budgetary powers)*, C-73/17, EU:C:2018:787, paragraph 40).

22 In the third place, given that point (a) of the sole article of the Protocol concerning the seats of the institutions and Article 314 TFEU have the same legal value, the obligations arising under the sole article of the Protocol cannot, as such, prevail over those arising under Article 314 TFEU, and vice

versa. Their application must be on a case-by-case basis and in a manner that reconciles those obligations and strikes a fair balance between them (judgment of 2 October 2018, *France* v *Parliament (Exercise of budgetary powers)*, C-73/17, EU:C:2018:787, paragraph 42).

23 Moreover, it is settled case-law that the Protocol concerning the seats of the institutions is predicated on mutual respect on the part of the Member States and the Parliament for each other's areas of competence and on a reciprocal duty of sincere cooperation (judgment of 2 October 2018, *France* v *Parliament (Exercise of budgetary powers)*, C-73/17, EU:C:2018:787, paragraph 43 and the case-law cited).

24 Thus, the Parliament is obliged to exercise its budgetary powers in an ordinary plenary part-session held in Strasbourg, although that obligation, arising under point (a) of the sole article of the Protocol concerning the seats of the institutions, does not preclude the annual budget from being debated and voted on during an additional plenary part-session held in Brussels, if that is called for by essential requirements relating to the proper conduct of the budgetary procedure laid down in Article 314 TFEU. If that procedure were conducted in such a way as to give absolute precedence to observance of point (a) of the sole article of the Protocol to the detriment of the Parliament's full participation in the budgetary procedure, that would be incompatible with the need to reconcile the obligations arising under those provisions, to which reference has been made in paragraph 22 of this judgment (judgment of 2 October 2018, *France* v *Parliament (Exercise of budgetary powers)*, C-73/17, EU:C:2018:787, paragraph 44).

25 As regards judicial review of compliance with the requirements stemming from paragraphs 22 to 24 of this judgment, the Court specified, in paragraph 45 of the judgment of 2 October 2018, *France* v *Parliament (Exercise of budgetary powers)* (C-73/17, EU:C:2018:787), that when the Parliament undertakes the necessary reconciliation between the obligations under point (a) of the sole article of the Protocol concerning the seats of the institutions and those stemming from Article 314 TFEU, it has a discretion deriving from the essential requirements relating to the proper conduct of the budgetary procedure. That judicial review therefore concerns the question whether the Parliament made errors of assessment by opting to exercise some of its budgetary powers in the course of an additional plenary part-session.

26 The question whether the contested acts respect the necessary reconciliation of the obligations arising under point (a) of the sole article of the Protocol concerning the seats of the institutions and those arising under Article 314 TFEU must be examined in the light of those considerations.

27 In that regard, while the French Republic acknowledges that, within the framework laid down by the calendar of ordinary plenary part-sessions for the year 2017, the additional plenary part-session held in Brussels on 29 and 30 November 2017 was the only occasion on which the Parliament could vote on the joint text on the draft annual budget for the financial year 2018 within the period prescribed by Article 314(6) TFEU, it argues, with the support of the Grand Duchy of Luxembourg, that the Parliament's planning of the parliamentary calendar is vitiated by an error of assessment. According to those Member States, it would have been possible to adjust that calendar so as to allow the debate and the vote on the joint text on the draft annual budget of the European Union for the financial year 2018 to take place in Strasbourg within the period prescribed. The possibility of making such an adjustment, or even a change to the calendar of ordinary plenary part-sessions for the year 2017, arose both when that calendar was adopted on 7 October 2015, and following the adoption of the pragmatic calendar in April 2017.

28 As regards, in the first place, the adoption of the parliamentary calendar for the year 2017, which occurred on 7 October 2015, the reasoning put forward by the French Republic, supported by the Grand Duchy of Luxembourg, is based on the premiss that the date on which the Conciliation Committee reached an agreement on the joint text on the draft annual budget was reasonably foreseeable by the Parliament at the time when that calendar was adopted.

29 However, the Court has already rejected such a premiss by ruling, in paragraph 50 of the judgment of 2 October 2018, *France* v *Parliament (Exercise of budgetary power)* (C-73/17, EU:C:2018:787), that, at the time when the calendar of ordinary plenary part-sessions was adopted, it was fundamentally uncertain whether there would be a conciliation procedure and equally uncertain when that procedure would begin and, in the event of agreement on a joint text on the draft annual budget, when it would end.

30 None of the arguments put forward by the French Republic and the Grand Duchy of Luxembourg is such as to call into question the considerations in relation to the unpredictability inherent in the budgetary procedure, upon which the case-law referred to in the preceding paragraph is founded.

31 Furthermore, the arguments of those Member States, according to which the Parliament is obliged to schedule the ordinary plenary part-session of the month of November during either the fourth or the fifth week after the 'October II' session, necessarily imply that that institution has discretion in that regard. In particular, in so far as the French Republic bases its argument on the premiss that such scheduling 'maximises the likelihood' of the debate and the vote on the joint text on the draft budget being held during the ordinary plenary session of the month of November in Strasbourg, it concedes, in essence, that such timing is no guarantee that that debate and vote will in fact take place in Strasbourg and, consequently, confirms that the scheduling of the parliamentary calendar cannot eliminate the unpredictability inherent in the budgetary procedure.

32 Consequently, the view must be taken that the Parliament did not exceed the bounds of the discretion referred to in paragraph 25 above when it adopted, on 7 October 2015, its calendar of ordinary plenary part-sessions for the year 2017.

33 In the second place, the French Republic criticises the Parliament on the ground that it failed to adjust that calendar once the pragmatic calendar for the budgetary procedure for the financial year 2018 had been adopted, in the month of April 2017, on the ground that that pragmatic calendar confirmed the dates of the conciliation procedure, in the very likely event that recourse were to be had to that procedure.

34 That pragmatic calendar specified the dates envisaged by the Council, the Parliament and the Commission, in the month of April 2017, for the budgetary procedure with respect to the financial year 2018 and, in particular, for a possible conciliation procedure, notwithstanding the possibility that the unpredictability inherent in the budgetary procedure might prevent those institutions from adhering to the dates envisaged.

35 As regards such unpredictability, the Parliament noted, and has not been challenged on this point, that the outcome of the conciliation procedure is uncertain, as is apparent from, inter alia, the fact that that period expired without agreement in three out of the five procedures completed under the Article 314 TFEU rules prior to the adoption of the parliamentary calendar for the year 2017, with the result that the annual budget of the European Union could not be adopted until the month of December of the year preceding the financial year in question in those three procedures. Furthermore, in response to a question put by the Court during the hearing, the Parliament specified, and has not been challenged on this point either, that the precise starting point for the conciliation period can be determined only at the last minute, in relation to the updated calendars of the Parliament, the Council and the Commission.

36 Thus, following the adoption, in April 2017, of the pragmatic calendar for the budgetary procedure for the financial year 2018, the answer to the question whether and on what date the conciliation committee could actually reach a conciliation agreement still remained uncertain.

37 Under those circumstances, the Parliament also did not make an error of assessment in maintaining the calendar of the ordinary plenary sessions for the year 2017 following the adoption of the pragmatic calendar in April of that year.

38 Consequently, the contested acts are not vitiated by the error of assessment invoked by the French Republic.

39 Having regard to all of the foregoing considerations, the French Republic's single plea in law must be rejected and, consequently, the action must be dismissed.

Costs

40 Under Article 138(1) of the Rules of Procedure of the Court of Justice, 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 Parliament has applied for the French Republic to be ordered to pay the costs and the latter has been unsuccessful, the French Republic must be ordered to bear its own costs and to pay those incurred by the Parliament. Pursuant to Article 140(1) of those rules, the Grand Duchy of Luxembourg, which has intervened in the proceedings, is to bear its own costs.

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

1. **Dismisses the action;**

2. **Orders the French Republic to pay, in addition to its own costs, those of the European Parliament;**

3. **Orders the Grand Duchy of Luxembourg to bear its own costs.**

[Signatures]