OPINION OF ADVOCATE GENERAL GEELHOED

delivered on 15 September 2005 [1]

I — Introduction

1. The Commission is bringing an action under the second paragraph of Article 230 EC for the annulment of Article 17(2) of Regulation (EC) No 2152/2003 of the European Parliament and the Council of 17 November 2003 concerning monitoring of forests and environmental interactions in the Community (Forest Focus) [2] (hereinafter: 'Forest Focus Regulation'). The Commission challenges the contested provision in so far as it makes the adoption of further measures for the implementation of the Forest Focus scheme subject to the regulatory procedure under Article 5 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (hereinafter: 'second comitology decision'). [3]

2. The Commission claims in essence that, as regards these measures, the management procedure under Article 4 of the second comitology decision ought to have been chosen. As the Council and the Parliament did not do so, these institutions ought at least to have provided a statement of reasons justifying their choice. The Commission bases this assertion on the *LIFE* [4] judgment.

II — Legal background

A — *The EC Treaty*

3. Article 202 EC concerns the tasks of the Council and provides as follows:

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

...

1 — Original language: Dutch.

2 — OJ 2003 L 324, p. 1.

3 — OJ 1999 L 184, p. 23.

4 — Case C-378/00 *Commission* v *Parliament and Council* [2003] ECR I-937.

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

B — *The second comitology decision*

4. The second comitology decision was adopted on the basis of the third indent of Article 202 EC and replaces Council Decision 87/373/EEC of 13 July 1987 laying down the procedures for the exercise of implementing powers conferred on the Commission (hereinafter: 'first comitology decision'). [5]

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

6. Article 2 of the second comitology decision states:

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

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

5 — OJ 1987 L 197, p. 33.

(b) measures of general scope designed to apply essential provisions of basic instruments, including measures concerning the protection of the health or safety of humans, animals or plants, should be adopted by use of the regulatory procedure; where a basic instrument stipulates that certain non-essential provisions of the instrument may be adapted or updated by way of implementing procedures, such measures should be adopted by use of the regulatory procedure;

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

7. In Articles 3 to 6 inclusive of the second comitology decision, four procedures are specified: the 'advisory procedure' (Article 3), the 'management procedure' (Article 4), the 'regulatory procedure' (Article 5) and the 'safeguard procedure' (Article 6). In the present case, the procedures under Articles 4 and 5 are of particular significance:

'*Article 4*

Management procedure

1. The Commission shall be assisted by a management committee composed of the representatives of the Member States and chaired by the representative of the Commission.

2. The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft within a time-limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 205(2) of the Treaty, in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

3. The Commission shall, without prejudice to Article 8, adopt measures which shall

apply immediately. However, if these measures are not in accordance with the opinion of the committee, they shall be communicated by the Commission to the Council forthwith. In that event, the Commission may defer application of the measures which it has decided on for a period to be laid down in each basic instrument but which shall in no case exceed three months from the date of such communication.

4. The Council, acting by qualified majority, may take a different decision within the period provided for by paragraph 3.

Article 5

Regulatory procedure

1. The Commission shall be assisted by a regulatory committee composed of the representatives of the Member States and chaired by the representative of the Commission.

2. The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft within a time-limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 205(2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

3. The Commission shall, without prejudice to Article 8, adopt the measures envisaged if they are in accordance with the opinion of the committee.

4. If the measures envisaged are not in accordance with the opinion of the committee, or if no opinion is delivered, the Commission shall, without delay, submit to the Council a proposal relating to the measures to be taken and shall inform the European Parliament.

5. If the European Parliament considers that a proposal submitted by the Commission pursuant to a basic instrument adopted in accordance with the procedure laid down in Article 251 of the Treaty exceeds the implementing powers provided for in that basic instrument, it shall inform the Council of its position.

6. The Council may, where appropriate in view of any such position, act by qualified majority on the proposal, within a period to

be laid down in each basic instrument but which shall in no case exceed three months from the date of referral to the Council.

If within that period the Council has indicated by qualified majority that it opposes the proposal, the Commission shall re-examine it. It may submit an amended proposal to the Council, resubmit its proposal or present a legislative proposal on the basis of the Treaty.

If on the expiry of that period the Council has neither adopted the proposed implementing act nor indicated its opposition to the proposal for implementing measures, the proposed implementing act shall be adopted by the Commission.'

C — *The Forest Focus regulation*

8. The Forest Focus regulation was adopted on the basis of Article 175(1) EC.

9. According to Article 1 of the Forest Focus regulation, 'A Community scheme for broad-based, harmonised and comprehensive, long-term monitoring of the condition of forests, (hereinafter referred to as "the scheme") is ... established to:

(a) continue and further develop:

— monitoring of air pollution and air pollution effects and of other agents and factors that have an impact on forests, such as biotic and abiotic factors and factors of anthropogenic origin,

— monitoring of forest fires and their causes and effects,

— forest fire prevention;

(b) assess the requirements for and develop the monitoring of soils, carbon sequestration, climate change effects and biodiversity, as well as protective functions of forests;

(c) continuously evaluate the efficiency of the monitoring activities in the assessment of the condition of forests and the further development of monitoring activity.

The scheme shall provide reliable and comparable data and information on the condition of and harmful influences on forests at Community level. It shall also help to evaluate ongoing measures to promote conservation and protection of forests for the benefit of sustainable development, with particular emphasis on actions taken to reduce impacts negatively affecting forests. The scheme will take account of, and where appropriate link to, existing and planned national, European and global monitoring mechanisms and will be in line with relevant international agreements.'

10. Article 2(1) of the regulation states:

'The scheme shall provide for actions designed to:

(a) promote harmonised collection, handling and assessment of data;

(b) improve data evaluation and promote integrated data evaluation at Community level;

(c) improve the quality of data and information gathered under the scheme;

(d) further develop the monitoring activity of the scheme;

(e) enhance the understanding of forests and, in particular, the impact of natural and anthropogenic stresses;

(f) study the dynamics of forest fires and their causes and impacts on forests;

(g) develop indicators as well as methodologies for risk assessment concerning multiple stresses on forests over time and space.'

11. Recital (24) in the preamble reads as follows:

'The measures of general scope necessary for the implementation of this Regulation should be adopted in accordance with [the second comitology decision].'

12. Article 17(2), which the Commission is seeking to have annulled, states:

'Where reference is made to this paragraph, Articles 5 and 7 of [the second comitology decision] shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of [the second comitology decision] shall be set at two months.'

13. The provisions of the Forest Focus regulation which make reference to Article 17(2) encompass the following actions:

— the continuation and further development of the monitoring activities already laid down by Council Regulation (EEC) No 3528/86 of 17 November 1986 on the protection of the Community's forests against atmospheric pollution [6] and Council Regulation (EEC) No 2158/92 of 23 July 1992 on protection of the Community's forests against fire [7] (Articles 4 and 5);

— the implementation of studies, experiments, demonstration projects and tests on a pilot basis in order to further develop the scheme in cooperation with the Member States (Articles 6 and 7);

— the adoption of further rules for the national programmes to be approved by the Commission, under which the activities are carried out, and the determination of the financial contributions to the eligible costs of the programmes (Article 8);

— the establishment of a scientific advisory group by the Commission to assist the Standing Forestry Committee in pre-

6 — OJ 1986 L 326, p. 2. Regulation last amended by Regulation (EC) No 804/2002 (OJ 2002 L 132, p. 1).

7 — OJ 1992 L 217, p. 3. Regulation last amended by Regulation (EC) No 805/2002 (OJ 2002 L 132, p. 3).

paring its work, in particular to develop the scheme as referred to in Article 6 (Article 9);

— the improvement of existing manuals specifying mandatory and optional parameters, monitoring methods and data formats to be used for data transmission in order to guarantee the comparability of data (Articles 10 and 15);

— the approval by the Commission of the bodies designated by the Member States as competent to manage the activities included in the approved national programmes and the control of the management of Community financing (Article 14);

— the laying down of guidelines for the reporting and the reporting period of the reports which each Member State is obliged to draw up on the respective national situations (Article 16).

14. Under Article 12 the scheme is to run for a period of four years from January 2003 to 31 December 2006.

15. Article 13 details the financial framework for the implementation of the scheme for the period 2003–2006, namely, EUR 61 million, of which EUR 9 million can be used for fire prevention measures. The provisions applicable to the financial aspects do not lay down a specific procedure for the determination of implementing measures.

16. When the Forest Focus regulation was being adopted at the Council sitting of 6 November 2003, the Commission made the following statement: [8]

'The Commission takes note of the agreement reached at the second reading between the European Parliament and the Council on the draft of a regulation concerning monitoring of forests and environmental interactions in the Community (Forest Focus).

The Commission would also like to recall the following statement that it made at the time of the adoption of the common position:

The Commission takes note that the Regulation of the European Parliament and the

8 — Document No 14402/03 ADD 1.

Council provides for a regulatory procedure regarding the implementation measures detailed in the proposal, as opposed to the management procedure proposed by the Commission.

In the light of the judgment of the Court of Justice of 21 January 2003 in respect of Regulation (EC) No 1655/2000 concerning the financial instrument for the Environment (LIFE), the Commission insists on the importance of applying the criteria of Article 2 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission.

The Commission believes that, as the measures detailed in the proposal relate to the implementation of programmes with substantial budgetary implications, they should be adopted by means of the management procedure. The measures are quite specific to the programme, therefore they are not general in scope, nor are they designed to apply, adapt or update the provisions of the instrument. For those reasons, the Commission does not consider the regulatory procedure to be appropriate.

In accordance with the judgment of the Court of Justice mentioned above, clear reasons must be given for any choice of procedure which does not comply with the criteria for guidance contained in Article 2 of the Council Decision on the exercise of implementing powers conferred on the Commission.

The Commission considers that in this case the text of the recital specifying the use of the comitology procedure does not sufficiently justify departing from the criteria contained in the Council Decision.

The Commission therefore reserves its right to make use of the legal means at its disposal.'

III — Procedure

17. The application was lodged at the Court Registry on 5 March 2004.

18. The Commission claims that the Court should:

— annul Article 17(2) of Regulation (EC) No 2152/2003 of the European Parlia-

ment and of the Council of 17 November 2003 concerning monitoring of forests and environmental interactions in the Community (Forest Focus), in so far as it makes the adoption of implementing measures for the Forest Focus programme subject to the regulatory procedure laid down in Article 5 of Council Decision 1999/468/EC of 28 June 1999;

— maintain the effects of the above regulation until its amendment, which should take place as soon as possible after the judgment of the Court;

— order the defendants to pay the costs.

19. The Council claims that the Court should dismiss the action as unfounded and order the Commission to pay the costs.

20. The Parliament contends that the application should be dismissed and that the Commission should be ordered to pay the costs.

21. By order of 15 July 2004, the President of the Court granted the the Kingdom of Spain and the Republic of Finland leave to intervene in support of the form of order sought by the Parliament and the Council. A hearing took place on 30 June 2005.

IV — Appraisal

A — *Preliminary remark*

22. It follows from what I have already stated in my introductory remarks that the appraisal of the Commission's claim will be based on the answers to two or three questions.

23. To begin with, the question of the demarcation of the respective scopes of the management procedure and the regulatory procedure will have to be resolved. It will then be necessary to determine whether the implementing rules for the Forest Focus scheme as laid down in Regulation No 2152/2003 are of a management or of a regulatory nature. If the latter is the case, the Parliament and the Council have chosen the correct procedure and the Commission's claim will fail for that reason. Should it transpire, however, that the implementing rules for the scheme are, by virtue of their nature and scope, of a management nature, the question that remains to be answered is whether the Parliament and the Council have adequately stated their reasons for their choice of the regulatory procedure in spite of the management nature of the scheme.

B — *Management procedure or regulatory procedure: the choice criteria*

24. It is striking that the parties have not, either in their written submissions or in their statements at the hearing, examined the line of demarcation of the scope of the management procedure and the regulatory procedure respectively, even though the answer to this question is of crucial importance for the purpose of answering subsequent questions. In a certain sense they are allowing themselves to be led in the position they are taking by their own interpretation of the choice which is appropriate for the contested implementing measures.

25. The text of Article 2 of the second comitology decision provides valuable pointers to such a demarcation, despite the fact that it does not provide any conclusive definitions.

26. The wording of Article 2(a) of the second comitology decision, which speaks of 'management measures', such as those relating to the implementation of the common agricultural policy, or to the implementation of programmes with substantial budgetary implications, leads us to deduce that the measures in question are particularly suited to policy-related schemes or programmes which can be progressively implemented and which have one or more substantive objectives, for the achievement of which mainly financial support is provided in the Community budget. The implementing measures may be general in scope but they are subordinate to the scheme or the programme for the realisation of which they were drawn up. They lapse when the scheme or the programme ends. This type of measure could cover regulations for Member States or private individuals wishing to participate in such a scheme or programme or apportionment formulae for the resources allocated to a programme.

27. Where Article 2(b) of the second comitology decision mentions 'measures of general scope designed to apply essential provisions of basic instruments', including 'measures concerning the protection of the health or safety of humans, animals or plants', the choice of wording leads one to deduce that the basic instrument itself is already presumed to have a normative content or scope and that the implementing actions can be binding on natural and legal persons. The absence of terms indicative of a certain dynamic in the implementation process points to measures of a regulatory nature.

C — *The Forest Focus scheme: the nature of the implementing measures*

28. In answering the question concerning the nature of the provisions for the imple-

mentation of the Forest Focus scheme, the Commission, on the one hand, and the Council and the Parliament, together with the Finnish and the Spanish Governments, on the other, have adopted opposing positions.

29. The Commission maintains that the provisions are in the nature of management measures for the implementation of an action programme. In support of its position, it refers to various provisions in the regulation, such as Articles 4 to 8 and Articles 10, 15 and 16. It concludes from these provisions that the further implementation measures that it must take are measures to implement the Forest Focus action programme and measures closely associated with it. In addition, the fact that the regulation provides for Community joint financing of the programmes envisaged in the basic instrument, which could have substantial budgetary implications, indicates that the management procedure should have been chosen for the implementing measures.

30. The defendants in the principal action, together with the Governments of Finland and Spain, are of the opinion that the implementing measures of the Forest Focus scheme are of a regulatory nature. To substantiate this claim they invoke recital (24) in the preamble, which states that the further implementation measures are measures of general scope.[9] The Council adds that the measures, which have no time-limits, are applicable to objectively defined situations and have legal consequences for categories of persons defined in a general and abstract way. Furthermore, the objective of the Forest Focus regulation — protection of the forests — is consistent with the wording and scope of Article 2(b) of the second comitology decision, namely, the protection of plants.

31. The parties refer in their observations to individual provisions of the regulation which, they claim, demonstrate that the implementing measures are of a management as well as of a regulatory nature. However, in order to resolve the present question of interpretation, it is necessary to consider not so much the content of individual implementing measures but rather the system and the objective of the regulation.

32. The Forest Focus regulation establishes a Community scheme for broad-based, harmonised and comprehensive, long-term monitoring of the condition of forests. The scheme consists of a number of activities designed to promote the exchange of information on the condition of and the harmful influences on forests in the Community and to provide the opportunity to evaluate the ongoing measures designed to promote conservation and protection of forests for the benefit of sustainable development, with particular emphasis on actions taken to reduce impacts negatively affecting forests.

9 — The Dutch version of Regulation (EC) No 2152/2003 does not contain the words 'general scope'.

33. The regulation specifies the activities that make up the scheme and provides detailed instructions for their implementation. The Commission is entrusted with the coordination, the supervision and the further development of the scheme.

34. On the one hand, the scheme consists of concrete activities which are a continuation of two already completed schemes, the scheme for the protection of Community forests against air pollution and the scheme for the protection of Community forests against fire (Articles 4 and 5). On the other hand, the scheme consists of activities which, in order for the Commission to realise the objectives set out in Article 1, must be developed and implemented in close cooperation with the Member States (Articles 6 and 7).

35. The programmatic, progressive and management nature of the activities regulated by Articles 5 to 7 are apparent not only from the scope and the content of the activities but also from the terminology relating to them:

— thus, for example, Article 4(1)(a), Article 4(1)(b) and Article 5(1) refer to networks and to an information system which must be further developed;

— Article 6(1) describes the development of the scheme by means of studies, experiments and demonstration projects in order to enhance the knowledge of the condition of forests;

— Article 7 deals with cooperation between the Commission and the Member States in order to promote and improve the collection and assessment of data.

36. Under Article 8, the monitoring activities and data collection, as well as the studies, experiments and demonstration projects, are implemented by the Member States under two-year national programmes. The Commission must approve these programmes and report on the scheme, in particular to the Standing Forestry Committee. In addition, the regulation also contains provisions for the further implementation of activities, for the transmission, dissemination and processing of the data, for the management of the Community contribution and for the reporting of the various monitoring activities. Here, too, the progressive and management character of the Commission's activities is unambiguously evident from the text of the regulation.

37. The regulation sets out the financial resources for the total duration of the programme — four years, from 1 January

2003 to 31 December 2006. Article 12 indicates the potential beneficiaries of the financial support and the maximum level of financing for each activity, expressed as a percentage. More detailed criteria for the management and control of the Community contribution are also laid down.

38. In conjunction with the material and financial provisions of Articles 12 and 13, which preeminently characterise the objective of the regulation as a programme with budgetary consequences, Article 14 also has particular significance. The provisions of this article set out the procedural obligations of the Member States with a view to the sound and efficient management of the Community contributions. The rules for the implementation of the obligations under Article 14(5) can, in the light of the content and explicit wording of the preceding subsections of that article, only have a management significance. The fact that they regulate the actions of the Member States in relation to the expenditure of Community resources does not detract from their management and programmatic scope.

39. It follows from the foregoing that the implementation rules for the Forest Focus scheme laid down in Regulation No 2152/2003 are of a management nature. The scheme comprises a number of activities which are carried out to achieve the objectives set out in Article 1 of the regulation. These activities consist of the monitoring of forests, the gathering of the resulting data and the evaluation of those data. The regulation provides clear, action-oriented, specific instructions for the implementation of this scheme.

40. The scheme is progressive in nature. This scheme is a continuation of two completed schemes. The present scheme has a duration of four years and once it has been evaluated, a decision will have to be made on its continuation after 2006 (Article 18). The evaluation can further improve the system for the monitoring of the condition of forests, and the continuation of the scheme will guarantee the continuity of the monitoring activities.

41. On the basis of the foregoing, it must be concluded that the measures which the Commission is entitled to lay down in terms of the implementing powers conferred on it by Regulation No 2152/2003 are management measures within the meaning of Article 2(a) of the second comitology decision.

D — *Consideration of the obligation to state reasons*

42. The Commission submits that the Forest Focus regulation does not contain an

adequate statement of reasons for the choice of committee procedure made in that regulation, and that recital (24) in the preamble, which states that the implementation measures are measures of general scope,[10] does not satisfy the obligation to state reasons relating to that point.

43. The Council and the Parliament, together with the Governments of Finland and Spain, submit that the Community legislature has provided adequate reasons in recital (24) for its choice of a regulatory committee.

44. Recital (24) in the preamble states that the measures of general scope necessary for the implementation of the Forest Focus regulation should be adopted in accordance with the second comitology decision.

45. I now wish to make the following point. Since the answer to the second question (see point 23) states that, in terms of the criteria of the second comitology decision, the management procedure is appropriate for the implementation measures of the Forest Focus regulation, explicit reasons should have been provided in the preamble for the choice of the regulatory procedure. This follows from paragraphs 52 to 62 of the *LIFE*[11] judgment.

46. Recital (24) in the preamble falls short in this regard. In so far as a statement of reasons can be read into it at all — in the language versions other than Dutch — it is based on the measures being characterised as measures of general scope, whereas, as already explained above, the fact that the implementation measures are of general scope is not in itself sufficient to 'therefore' deem the regulatory procedure to be applicable.

47. Moreover, where the implementation measures, on the basis of their context, objective and wording, are characterised as primarily management measures, this will be attributable to a manifestly incorrect classification and will, without more, simply fall short as a statement of reasons for the choice of the regulatory procedure. The Parliament and the Council therefore fail in their defence.

48. As to whether the requirement that there be a statement of reasons has been satisfied in the present case, I must again point out, perhaps unnecessarily, that the Parliament and the Council have adopted an inconsistent position. Their argument rests on the assertion that the implementation measures, being of general scope, must, in accordance with the second comitology decision, be adopted in conformity with the regulatory procedure. The 'statement of reasons' contained in recital (24) in the preamble supposedly corresponds with this. As soon as it appears that it is not the regulatory procedure but the management

10 — See footnote 9.

11 — Already cited in footnote 4.

procedure that is required for the implementation measures, the basis of the statement of reasons falls away; with that, the position of the Council and the Parliament also becomes logically untenable.

49. It follows that Article 17(2) should be annulled on the ground that the choice, in that provision, of the regulatory procedure for the adoption of the implementing measures under the aforementioned regulation is not based on a sound statement of reasons.

E — *Limitation of the effects of the annulment*

50. As in the case of its action for the annulment of Regulation (EC) No 1655/2000 of the European Parliament and of the Council of 17 July 2000 concerning the Financial Instrument for the Environment (LIFE), which gave rise to the *LIFE*[12] judgment, the Commission also claims in the present case that the Court should maintain the effects of the Forest Focus regulation in force until its amendment, which should take place as soon as possible after the present judgment.

51. I am of the opinion that, in the interests of legal certainty, the Court must use the power conferred on it under the second paragraph of Article 231 EC to state which of the effects of a regulation which it has annulled are to be considered definitive.

52. By analogy with the Court's reasoning in paragraph 76 of the *LIFE*[13] judgment, already mentioned several times, I ask the Court to consider making a declaration that the measures for the implementation of the Forest Focus regulation already adopted at the date of the present judgment are not to be affected by it and that the effects of Article 17(2) of the Forest Focus regulation are to be fully maintained until the Parliament and the Council have adopted new provisions concerning the committee procedure to which the measures for the implementation of that regulation are subject.

V — Costs

53. Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for costs to be awarded against the Parliament and the Council and the latter have been unsuccessful, they must be ordered to pay the costs. Under Article 69(4), the Member States which have intervened in support of the Parliament and the Council must bear their own costs.

12 — Cited in footnotes 11 and 4.

13 — See footnotes 12, 11 and 4.

VI — Conclusion

54. Based on the foregoing, I propose that the Court should:

— annul Article 17(2) of Regulation (EC) No 2152/2003 of the European Parliament and the Council of 17 November 2003 concerning monitoring of forests and environmental interactions in the Community (Forest Focus) in so far as it makes the adoption of implementing measures for the Forest Focus programme subject to the regulatory procedure under Article 5 of Council Decision 1999/468/EC of 28 June 1999;

— maintain in force the effects of the partially annulled regulation until a new provision has been adopted in this regard;

— order the Council and the European Parliament to pay the costs;

— order the Kingdom of Spain and the Republic of Finland to pay their own costs.