JUDGMENT OF THE COURT
3 July 1986 *

In Case 34/86

Council of the European Communities, represented by its Legal Advisers, Mr D. Gordon-Smith and Mr F. van Craeyenest, acting as Agents, with an address for service in Luxembourg at the office of Mr J. Käser, Director of the Legal Affairs Department of the European Investment Bank, Plateau de Kirchberg,

applicant,

supported by

Federal Republic of Germany, represented by Mr M. Seidel, Ministerialrat at the Federal Ministry for the Economy at Bonn, acting as Agent,

French Republic, represented by Mr G. Guillaume, Director of Legal Affairs at the Ministry of External Relations, acting as Agent, and

United Kingdom of Great Britain and Northern Ireland, represented by its Agent, Mr T. J. G. Pratt, Principal Assistant Treasury Solicitor, assisted by Mr F. Jacobs, Queen's Counsel,

interveners,

v

European Parliament, represented by its jurisconsult, Mr F. Pasetti-Bombardella, acting as Agent, assisted by Mr J. Lever, Queen's Counsel, of London and by Maître Lyon-Caen, Avocat, of Paris, with an address for service in Luxembourg at the General Secretariat of the Parliament, plateau de Kirchberg,

defendant,

APPLICATION for annulment relating to the legality of the general budget of the European Communities for the financial year 1986,

* Language of the Case: English.

THE COURT

composed of: Lord Mackenzie Stuart, President, T. Koopmans, U. Everling, K. Bahlmann and R. Joliet (Presidents of Chambers), G. Bosco, O. Due, Y. Galmot, C. Kakouris, T. F. O'Higgins, F. Schockweiler, J. C. Moitinho de Almeida and G. C. Rodríguez Iglesias, Judges,

Advocate General: G. F. Mancini
Registrar: P. Heim

gives the following

JUDGMENT

Facts

The facts of the case, the course of the procedure and the conclusions, submissions and arguments of the parties may be summarized as follows:

I — Facts and procedure

1. *Legal background to the dispute*

The origin of the present dispute is to be traced to the Council's belief that the general budget of the European Communities for the financial year 1986, as annexed to the act whereby the President of the European Parliament declared, on 18 December 1985, the final adoption of the budget (Official Journal L 358, p. 1), was adopted in contravention of the provisions of Articles 78 of the ECSC Treaty, 203 of the EEC Treaty and 177 of the EAEC Treaty. In the Council's opinion the Parliament has in particular gone beyond what is allowed by Article 203 (9) of the EEC Treaty,[1] inasmuch as it increased on the occasion of its second reading of the draft budget, certain budgetary appropriations in the absence of a new rate of increase fixed by agreement between the Council and the Parliament.

Article 203 (9) of the EEC Treaty provides, in the case of what is known as non-compulsory expenditure, that is to say the total expenditure other than that necessarily resulting from the Treaty or from acts adopted in accordance therewith, that a maximum rate of increase in relation to the expenditure of the same type to be incurred during the current year is to be fixed annually. That maximum rate, which results from three different factors (the trend, in terms of volume, of the gross national product within the Community, the average variation in the budgets of the Member States, and the trend of the cost of living during the preceding financial year), is to be declared by the Commission and communicated, before 1 May, to all the institutions of the Community. The latter are required to conform to this during the

1 — For reasons of simplicity all references to Article 203 (9) of the EEC Treaty are to be understood as including also Article 78 (9) of the ECSC Treaty and Article 177 (9) of the EAEC Treaty.

budgetary procedure (third subparagraph of Article 203 (9)).

According to the fourth and fifth subparagraphs of paragraph (9) of Article 203 non-compulsory expenditure may, in two cases, exceed that which results from the application of the maximum rate as calculated by the Commission:

(a) If the increase in non-compulsory expenditure resulting from the draft budget established by the Council is over half the maximum rate declared by the Commission, the Parliament may, exercising its right of amendment, further increase the total amount of that expenditure to a limit not exceeding half the maximum rate (fourth subparagraph of Article 203 (9)).

(b) If the activities of the Community require that the maximum rate should be exceeded, another rate may be fixed by agreement between the Council, acting by a qualified majority, and the Parliament, acting by a majority of its members and three-fifths of the votes cast (fifth subparagraph of Article 203 (9)).

2. *The course of the procedure relating to the 1986 budget*

By a letter dated 23 April 1985, the Commission informed the Council that the maximum rate of increase in respect of non-compulsory expenditure relating to the 1986 budget was 7.1% in relation to expenditure of the same type in the 1985 budget. By letter dated 31 July 1985, it submitted to the Council the preliminary draft budget for 1986, indicating that the draft was based on two events the effects of which would begin to be felt as from 1 January 1986, namely the new own resources at the maximum VAT call-in rate of 1.4% and the enlargement of the Community to include Spain and Portugal. In the general political introduction to its preliminary draft, the Commission also stated that it had set itself, in so far as the Community of Ten was concerned, the following objective:

'In the field of non-compulsory expenditure to contain the present abnormal growth of the budgetary burden of honouring commitments from earlier financial years ("the cost of the past").

Since 1978, in the case of differentiated appropriations, the volume of commitment appropriations has grown significantly faster than that of payment appropriations. This means that since the operations to which they relate are spread over a period of time the payment requirements to honour these commitments are rising ever higher. Since 1978, some 10 300 million ECU in commitments have accumulated, some 8 200 million ECU of which are for the three structural Funds . . .

In 1986 then, around 4 400 million ECU in payment appropriations (of which about 4 000 million ECU in non-compulsory expenditure) is considered necessary to honour part of these commitments, compared with only 3 200 million ECU in 1985.

In these circumstances, assuming constant own resources, the margin available for financing new Community policies, narrow as it already is, becomes even narrower still.

Consequently, in order to restrict this increase in the future, the Commission is planning to limit the growth of new commitments, in non-compulsory expenditure, within the maximum rate, i.e. 7.1%.'

Basing itself on the non-compulsory expenditure of the same type contained in the 1985 budget, the Commission went on to indicate that the application of the maximum rate of 7.1% would make it possible to increase commitment appropri-

ations by 588 million ECU and payment appropriations by 435 million ECU. In that respect, it appears from the documents before the Court that the Council, referring to another base not accepted by the Parliament, calculated that the margin of increase in non-compulsory expenditure was 582 million ECU in respect of commitment appropriations and 433 million ECU in respect of payment appropriations.

At its meeting on 17 and 18 September 1985, the Council established a draft budget which provided for an increase of 578 million ECU, that is to say 7.05%, in respect of commitment appropriations, and 430 million ECU, that is to say 7.04%, in respect of payment appropriations. In those circumstances the Parliament's margin for manoeuvre under the fourth subparagraph of Article 203 (9) was, according to the calculation made by the Commission in its preliminary draft budget, 294 million ECU in respect of commitment appropriations and 217 million ECU in respect of payment appropriations. Consequently, the maximum possible increase in expenditure by comparison with the 1985 budget was 872 million ECU in respect of commitment appropriations and 647 million ECU in respect of payment appropriations.

At its session held on 14 November 1985, the Parliament expressed its views in a first reading of the draft budget by making a series of amendments to it which together provided for an increase in non-compulsory expenditure of 1 764 million ECU in respect of commitment appropriations and 1 784 million ECU in respect of payment appropriations. On that occasion the Parliament adopted a resolution on the draft general budget which was transmitted on the same day to the Council and which contained *inter alia* the following paragraphs:

'*The European Parliament,*

...

1. Recalls the political and legal obligations that are incumbent upon the budgetary authority and those entered into by the Council with regard to the new Member States; decides, therefore, on the basis of the figures deemed necessary by the Commission, to reinstate, principally on the individual budgetary lines, both the amounts essential to meet enlargement and the greater part of the payments arising out of commitments that have already been voted in previous years, on the grounds that these two categories of expenditure are inextricably linked;

2. Considers it essential

(a) that the final clearance of commitments entered into in previous financial years should be completed in the financial years immediately ahead;

(b) that the level of commitment appropriations should be such as to ensure that, in the years ahead, the structural Funds can once again operate normally;

...

10. Deplores the fact that the Council, faced with the implementation of its internal rules on budgetary discipline, has submitted to Parliament nothing more than a truncated draft budget; insists that the Council has thereby failed to give a complete first reading, thus acting in breach of the provisions of the Treaty with regard to the budgetary procedure;

11. Considers it unacceptable that the Council did not enter all expenditure in the budget, contrary to Article 199, and that contrary to the provisions of the Fund

Regulations neither the expenditure for an enlarged Community nor appropriations for the contractual obligations for which payment has fallen due, were fully taken into account;

...

16. Takes the view that the Community cannot ignore or curtail, via the budget for 1986, the financial commitments it has entered into; is therefore resolved to ensure compliance with this principle throughout the budgetary procedure.'

At its second reading of the budget on 26 and 27 November 1985, the Council decided, for its part, to increase non-compulsory expenditure by 1 199 million ECU in respect of commitment appropriations and 1 251 million ECU in respect of payment appropriations. On that occasion, and in respect of the enlargement, the Council entered supplementary appropriations in the draft budget established at the first reading, appropriations which amounted to 500 million ECU in respect of commitment appropriations and 321 million ECU in respect of payment appropriations. Following that proposal, which the Council made unconditionally, it proposed to the Parliament, in a letter dated 29 November 1985, that new maximum rates of increase should be fixed: 14.6% in respect of commitment appropriations and 20.5% in respect of payment appropriations over the 1985 base.

Following a final reconciliation meeting which it held on 11 and 12 December 1985 with a delegation from the Parliament with a view to arriving at an agreement, the Council authorized its President to submit to the Parliament a compromise proposal, namely a supplementary increase in non-compulsory expenditure of 196 million ECU (17.02%) in respect of commitment appropriations and 242 million ECU (24.46%) in respect of payment appropriations; that proposal was made subject to acceptance by the Parliament.

At its meeting on 12 December 1985, the Parliament again adopted a resolution on the draft general budget. That resolution was worded as follows:

'*The European Parliament*,

...

1. Notes, after considering the Council's statements and the modifications it made to Parliament's first reading and having heard the opinion of the Commission, that the draft budget does not cover the commitments entered into by the Community; once again amends the draft budget so as to ensure that the expenditure relating to enlargement and the "cost of the past" is taken into account in such a way as to provide all Member States with the minimum necessary for the normal operation and development of the structural Funds under the rules in force;

2. Notes that the exceptional expenditure which the Community will have to meet in 1986 to ensure that the commitments entered in previous budgets and those entered into *vis-à-vis* Spain and Portugal are honoured have no equivalent of the same nature in the 1985 budget; considers therefore that this expenditure is not subject to the Treaty provisions concerning the determination of the maximum rate of increase in non-compulsory expenditure in relation to expenditure of the same nature in the 1985 financial year; considers

accordingly that the procedure laid down in Article 203 (9) of the Treaty providing for the fixing of a new rate of increase in non-compulsory expenditure is not applicable in the present instance;

...

5. Notes that the appropriations provided for the structural Funds are insufficient to provide a real increase for the existing 10 Member States and to make an effective contribution to resolving the structural problems in Spain and Portugal; points out that the failure to increase the structural Funds in real terms (for the 10 Member States) infringes the requirements of Article 11 (1) of the regulation on the integrated Mediterranean programmes which foresees "increases in real terms accruing to the Funds" (from 1986 to 1992) that "shall help to finance the IMPs, but without adversely affecting transfers from the Funds to other less prosperous and priority regions"; notes that, once again, Parliament has been forced to attempt, through its budgetary powers, to make the Council fulfil obligations that the Council itself created when it adopted legislation.'

The outcome of the Parliament's deliberations of 12 December 1985 was an additional increase in non-compulsory expenditure of 402 million ECU (19.5%) in respect of commitment appropriations and 563 million ECU (29.7%) in respect of payment appropriations. Following the votes of the Parliament, the President of the Council made it known, in an oral intervention at the full session of the Council, that the Council's compromise proposal was accordingly withdrawn.

On 18 December 1985 the President of the Parliament declared, pursuant to Article 203 (7) of the Treaty, that the budgetary procedure for the financial year 1986 was completed and that the general budget had been finally adopted. He then officially informed the Council of the final adoption of the budget by a letter dated 19 December 1985 which was received at the General Secretariat of the Council on 23 December 1985.

3. *Subsequent events: The interim measures in Case 23/86 R*

Following the act of the President of the European Parliament of 18 December 1985, a series of actions for annulment were brought against the general budget for 1986 and/or against the declaration of the final adoption of that budget. Those actions were brought, in chronological order, by Luxembourg (15/86), the Netherlands (17/86), France (18/86), the Federal Republic of Germany (19/86), the United Kingdom (23/86) and the Council (34/86).

By an application lodged at the Court Registry on 13 February 1986 the United Kingdom requested the Court, pursuant to Articles 185 and 186 of the Treaty, to grant an interim order, pending final judgment in the main action, that the Member States should make payments in respect of VAT own resources for the 1986 budget limited to such amounts as resulted from the Council's second reading of the budget on 26 and 27 November 1985. The United Kingdom took the view that the increase in non-compulsory expenditure, as it resulted from the second reading of the draft budget by the Parliament, might lead the Commission, as the institution responsbile

for implementing the budget, to call on the Member States, in the context of the transfer of part of the revenue from VAT, contributions which would go beyond the limits of the powers of the Community.

By order of 17 March 1986, the President of the Court, by way of an interim decision ordered *inter alia* as follows:

'(1) The Commission shall implement, until 10 July 1986 or until the date on which the Court delivers its judgment in Case 34/86 *Council* v *European Parliament*, whichever date shall be the earlier, the budget for the financial year 1986, as regards both payment appropriations and commitment appropriations, on the basis of the draft budget established by the Council at its second reading on 27 November 1985, subject to those amendments decided by the Parliament on 12 December 1985 which do not have the effect of increasing non-compulsory expenditure, . . . '.

4. *The subject-matter of the present case*

The present action for annulment, which was brought pursuant to Articles 173 of the EEC Treaty and 146 of the EAEC Treaty, is directed against the general budget for 1986. The Council's primary application is for a partial annulment of that budget in so far as, following the deliberations of the Parliament on 12 December 1985, certain budgetary appropriations were increased in breach of the Treaties. In making that proposal, the Council sought to take into account the requirements of the efficient functioning of the Community. For the same reason, it is only in the alternative that the Council seeks the annulment of the budget as a whole and, as a consequence, the annulment of the act of the President of the Parliament declaring the final adoption of the budget; in the latter case it requests the Court to state which of the effects of the budget are to be considered as definitive.

5. *The procedure before the Court*

The Council's originating application was registered at the Court Registry on 11 February 1986.

The written procedure followed the normal course. The Council, however, waived its right to lodge a reply.

As the Council had requested in its application that the case should be given priority since it was a matter of urgency that the Court should give its decision before the establishment of the draft budget for the financial year 1987, the President of the Court decided on 12 February 1986 to grant that request, pursuant to the second subparagraph of Article 55 (1) of the Rules of Procedure.

By applications registered at the Court Registry on 1, 3 and 4 April 1986 respectively, the German, British and French Governments applied to intervene in this case in support of the conclusions of the Council. By orders of 14 April 1986, the Court granted, pursuant to Article 91 of the Rules of Procedure, the applications to intervene.

The United Kingdom and French Governments lodged within the prescribed period written observations in documents registered at the Court Registry on 3 and 4 April 1986 respectively. By letter of 7 April 1986 the representative of the German Government informed the Court that he would explain his government's position at the hearing.

On hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral

procedure without holding a preparatory inquiry. It did however request the Council and the Parliament to reply to certain questions at the hearing.

II — Conclusions of the parties

The *Council of the European Communities*, the applicant in this case, claims in its application that the Court should:

(a) Annul the budget for 1986 to the extent that, as a result of amendments adopted by the Parliament on 12 December 1985 at its second reading of the draft budget, the appropriations for commitments and the appropriations for payments for non-compulsory expenditure exceeded by respectively 293 828 185 ECU and 527 383 692 ECU, or by such other amounts as may be determined by the Court, the new rates of increase proposed by the Council in its letter addressed for that purpose to the President of the Parliament;

(b) Annul the budget for 1986 to the extent that the Parliament amended, at its second reading of the draft budget, eight budgetary lines which constituted compulsory expenditure and which are specified in Annex XVIII to the Council's application;

(c) Decide that the declaration made by the President of the Parliament on 18 December 1985 that the 1986 budget had been finally adopted involved the infringement of the provisions of Article 78 (7) and (9) of the ECSC Treaty, Article 203 (7) and (9) of the EEC Treaty and Article 177 (7) and (9) of the EAEC Treaty;

(d) *Alternatively*, annul the budget for 1986 as a whole and, as a consequence, annul the act of the President of the Parliament of 18 December 1985, and in that case state which of the effects of the budget are to be considered as definitive.

The *European Parliament*, the defendant in this case, contends in its defence that the Court should:

(a) Declare the application inadmissible or unfounded;

(b) *Alternatively*, if the Court considers that the application is admissible and well founded, rule that the annulment should relate, on the one hand, to the budget in its entirety and, on the other, to the whole of the procedure preparatory to the drawing-up of the budget, owing in particular to the unlawful conduct of the Council throughout that procedure;

(c) Order the Council to pay the costs.

III — Submissions and arguments of the parties

Admissibility

The *European Parliament* puts forward three submissions in support of its objection of inadmissibility. First of all, it disputes the Council's capacity to contest the legality of acts of the Parliament by means of an action brought pursuant to Article 173 of the Treaty, since that article does not provide expressly or by implication for such review of legality *vis-à-vis* the Parliament. In that respect the Parliament points out that at the Conference of the Representatives of the Member States which took place in Luxembourg at the end of 1985 a proposal that the Parliament should have the right to bring and the capacity to be made a defendant to proceedings under Article 173 of the Treaty was not adopted.

The Parliament goes on to argue that the declaration of the final adoption of the

budget made by the President of the Parliament pursuant to Article 203 (7) of the Treaty cannot be deemed to be an act which is open to challenge. This, according to the Parliament, is because what is before its President at that stage of the procedure is not a draft budget but a budget which has already been adopted by the Parliament. Furthermore, it is not possible to create a third arm of the budgetary authority separate from the other two arms. Similarly, the Parliament maintains that the budget, as adopted at the end of the second reading, does not constitute an act open to challenge since it is a combined act of two institutions which together form the Community budgetary authority.

The Parliament adds that the view which it adopts in this respect does not imply that the Court could not exercise any right of judicial review of the Community budget. On the other hand, any measure implementing the budget could be contested either by means of an action for annulment or by a reference for a preliminary ruling within the meaning of Article 177 of the Treaty.

The *Council* points out in the first place that the Parliament does not have any special characteristics which would exempt it from all judicial review. The mere fact that Articles 173 of the EEC Treaty and 146 of the EAEC Treaty expressly mention only acts of the Council and Commission is not decisive. On the other hand, those provisions must be interpreted in the light of the extension of the Parliament's powers in budgetary matters. Under the original systems of the two Treaties only the Council and the Commission could adopt measures of a legal nature whereas, apart from one exception (Article 144 of the EEC Treaty; Article 114 of the EAEC Treaty), the Parliament was only called upon to give opinions. Viewed against that background, the amendments to the Treaties which took place in 1970 and 1975 and which were designed to effect a sharing of the budgetary powers between the Parliament and the Council, call for a broader interpretation of Article 173 of the EEC Treaty and Article 146 of the EAEC Treaty, so that judicial review must also cover the legality of the general budget of the Community. Such review is moreover indispensable since a failure to comply with the Community provisions on the budgetary procedure calls in question the institutional balance intended by the Treaties.

The Council goes on to contest the argument according to which, in the circumstances of this case, an action for annulment should be brought instead against a measure adopted by the Commission in implementation of the budget. In the Council's opinion that solution is neither logical nor satisfactory since it would be obliged to await a decision of the Commission implementing the budget and to bring before the Court an institution which is not directly responsible for the alleged illegality of the budget.

Substance of the case

In support of its application the *Council* puts forward three submissions. It maintains in the first place that there has been an infringement of essential procedural requirements, inasmuch as the President of the Parliament, in making the contested declaration of 18 December 1985, regarded the budgetary procedure in question as completed within the meaning of Article 203 (7) of the Treaty. Furthermore, Article 203 (9) was infringed, inasmuch as the Parliament, by adopting the 1986 budget on the occasion of the second reading, unilaterally increased non-compulsory expenditure beyond the new rates of increase resulting from the draft budget as amended,

on the second reading, by the Council. Finally, the Council maintains that subparagraphs (5) and (6) of Article 203 were not complied with, inasmuch as the Parliament amended, at its second reading, a certain number of budgetary lines which, in the Council's opinion, constitute non-compulsory expenditure.

The *Council* points out, in regard to its *first submission*, that the declaration of the President of the Parliament made pursuant to Article 203 (7) is not a purely declaratory measure. On the contrary, it follows from the very terms of that provision that the constitutive effect of such a measure is to transform a draft budget into a budget. From this the Council infers that the President of the Parliament is always under a duty to verify whether in fact all the conditions laid down by that provision are satisfied, and in particular the condition that the budgetary procedure must have been completed. That is not the case, however, so long as a new and necessary maximum rate of increase has not yet been fixed in accordance with the fifth subparagraph of Article 203 (9).

With regard to its *second submission*, the *Council* maintains in the first place that compliance with the provisions of Article 203 (9) of the Treaty is of considerable importance since the mechanism of the maximum rate of increase constitutes a necessary delimitation of the power conferred on the Parliament to decide on non-compulsory expenditure in the last resort. That delimitation is indispensable so long as the balance between expenditure and revenue in the Community budget, which is required by Article 199 of the Treaty, is ensured by means of the calling-in of part of the revenue from VAT (as from 1 January 1986 1.4%). Accordingly it is the Member States which must finance any increase in Community expenditure. Hence the necessity of the Council's agreement as regards the fixing of new rates of growth.

The Council goes on to contest the Parliament's argument to the effect that the Parliament was under no obligation, during the budgetary procedure for 1986, to act in conformity with the maximum rate mechanism as regards the exceptional expenditure occasioned by the enlargement of the Community and by the 'cost of the past'. In that respect it refers to the actual terms of Article 203 (9) which, it maintains, show that the maximum rate applies to *the total* non-compulsory expenditure and that the expression 'expenditure of the same type' must be understood as referring to the same *kind* of expenditure. Furthermore, had the authors of the amending Treaties of 1970 and 1975 intended that in certain circumstances new non-compulsory expenditure should be exempt from the application of the maximum rate, they would have expressed that intention clearly.

With regard to its *third submission*, the *Council* observes that the Parliament was not empowered to amend certain budgetary lines constituting compulsory expenditure. Those lines are specified in Annex XVIII to the application. It states that among the items in question two budgetary lines (Articles 450 and 926) which had appeared in previous budgets and had been classified as compulsory expenditure in the Joint Declaration of 30 June 1982 of the Parliament, the Council and the Commission (Official Journal C 194, p. 1). In the other cases new budgetary lines are involved.

The *European Parliament* states, by way of a general observation, that the budgetary procedure for 1986 must be seen against the background of the difficulties encountered in the course of previous budgetary

procedures, in particular those relating to 1983 and 1984. Among those difficulties there should be mentioned in particular the exhaustion of own resources available in the context of the transfer of part of the revenue from VAT, the 'British reimbursement', the indispensable reinforcement of the structural Funds (Regional Fund, Social Fund, EAGGF Guidance Section), the unilateral adoption by the Council of a 'budgetary discipline' and the problems arising from the systematic under-estimation of appropriations ('under-budgeting'). In that respect the Parliament further points out that, owing to the inadequacy of the appropriations entered in the budget for the financial year 1984, that budget had to be topped up by a supplementary budget. In addition, since the Council had proposed in 1984 a draft budget which did not cover the totality of the financial resources necessary to finance the expenditure for 1985, the Parliament had to remedy that manifest omission by rejecting the draft in its entirety. As regards the financial year 1986 the Council again submitted a manifestly incomplete draft budget, inasmuch as it did not contain appropriations to meet the enlargement of the Community and the absorption of the 'cost of the past'. At its first reading, moreover, the Parliament seriously contemplated accepting the incomplete draft as such, which would have precluded any second reading by the Council. In that case the budget would have been deemed to have been adopted without the necessary appropriations entered in it. Such a decision would have clearly demonstrated the inadequacies of the Council's draft. However, the Parliament did not pursue that possibility as it did not wish to jeopardize the proper functioning of the Community in 1986. For the same reason a rejection of the draft budget in its entirety was not called for at the time, since, under the system of provisional twelfths (Article 204), the Community would still not have been in the position to meet the obligations arising from the enlargement and from the structural Funds.

As regards the Council's contentions on the substance of the case, the *Parliament* goes on to maintain that the expenditure relating to the commitments entered into *vis-à-vis* Spain and Portugal and those relating to the 'cost of the past', although of the same type as the non-compulsory expenditure in general, had no equivalent in the 1985 budget. In that respect the Parliament also points out that in its preliminary draft budget the Parliament had expressly put outside the maximum rate of increase the expenditure relating to the two above-mentioned categories. It follows, furthermore, from the first and third subparagraphs of Article 203 (9) that if the two arms of the budgetary authority cannot arrive at an agreement they are bound by the method adopted by the Commission. For those reasons the Parliament considers that it was entitled to take the view that the maximum rate mechanism was not applicable to those two categories of expenditure.

Should the Court not accept that interpretation of Article 203 (9), the *Parliament* maintains, in the alternative, that the unlawful conduct of the Council in fact compelled it to adopt, in the interests of the Community, the position which it took. The Parliament states that the Council's conduct during the budgetary procedure in question was illegal from two points of view. Firstly, by submitting on the occasion of the first reading an incomplete draft budget the Council failed to comply with the provisions of Articles 199 and 203 (10) of the Treaty. Secondly, by deliberately establishing a more complete draft budget only on the

occasion of the second reading, the Council refused to recognize the budgetary powers of the Parliament. Under-budgeting at the first reading by the Council not only deprives the Parliament of its right to two readings of the budget but also places in jeopardy its right to have the last word in the matter of non-compulsory expenditure, inasmuch as the Parliament is thus prompted to enter by way of amendment the appropriations improperly omitted. In other words, under-budgeting by the Council at its first reading is a manifest abuse and misuse of procedure, inasmuch as it reduces the Parliament's freedom of amendment guaranteed by the Treaty.

In that exceptional situation and in view of the fact that, for the reasons set out above, the other means of avoiding a conflict with the Council were not appropriate, the final decision taken by the Parliament, namely to consider the expenditure relating to enlargement and the 'cost of the past' as 'outside the rate', was the only solution which could ensure compliance both with the requirement of a complete budget within the meaning of Article 199 of the Treaty and with the principle of continuity in the functioning of the Community.

In the further alternative, the *Parliament* puts forward the consideration that the Community budget is a single act. It is therefore inconceivable that any annulment might apply only to part of the budget, thereby allowing another part to remain in existence. Furthermore, a partial annulment would allow the draft, as amended by the Council at its second reading, to remain and would thus lead to a result contrary to Article 203 (9) because the new maximum rates would have been fixed by the Council *unilaterally*. For those reasons the Parliament considers that the Court should annul, if need be, the budget in its entirety.

Observations of the interveners

In their respective statements by way of intervention the United Kingdom and the French Government essentially maintain that the Parliament has not succeeded in putting forward in its defence any submission capable of justifying its own acts and in particular the irregularities committed by it during the second reading of the draft budget for 1986.

IV — Oral procedure

The Council of the European Communities, represented by Mr D. Gordon-Smith and Mr F. van Craeyenest, the government of the Federal Republic of Germany, represented by Mr M. Seidel, the government of the French Republic, represented by Mr G. Guillaume, the United Kingdom, represented by its Agent, Mr T. J. G. Pratt, assisted by Mr F. Jacobs, QC, and the European Parliament, represented by its jurisconsult, Mr F. Pasetti-Bombardella, acting as Agent, assisted by Mr J. Lever, QC, and by Maître Lyon-Caen, presented oral argument at the hearing on 30 April 1986.

In the course of the hearing the *Council* explained, with regard to the precise object of its second head of claim, that it was not essential for the Court to rule on the difference of opinion in regard to the classification of the budgetary lines in question. The increase in the amounts entered in these lines, as adopted by the Parliament at its second reading of the draft budget, was

illegal, whatever might have been their correct classification. If the appropriations concerned constituted compulsory expenditure, the Parliament had no power to modify them during the second reading, since only the Council was entitled to do so. If, on the other hand, they constituted non-compulsory expenditure the increase at issue involved, in the absence of an agreement with the Council, an excess over the maximum rate of increase even greater than that referred to in the Council's first head of claim. It followed that, in either case, the budget should be annulled to the extent to which the appropriations in question were increased by the Parliament at its second reading.

The Advocate General delivered his Opinion at the sitting on 2 June 1986.

Decision

1 By application lodged at the Court Registry on 11 February 1986, the Council of the European Communities brought an action pursuant to Article 173 of the EEC Treaty and Article 146 of the EAEC Treaty against the European Parliament for the partial or, in the alternative, total annulment of the general budget of the European Communities for the financial year 1986 (Official Journal L 358) and also for the annulment of the act of 18 December 1985 whereby the President of the European Parliament declared the final adoption of that budget.

2 The Council, as well as the German, French and United Kingdom Governments which have intervened in the case in support of its conclusions, complain in particular that the European Parliament increased, as the result of amendments voted at the second reading of the draft budget on 12 December 1985, certain budgetary appropriations in breach of the Treaties and in particular of Article 203 (9) of the EEC Treaty and of the corresponding provisions of the EAEC and ECSC Treaties. They maintain that these increases bring about a rise in the non-compulsory expenditure in the 1986 budget, as compared with the like expenditure for the financial year 1985, which exceeds the maximum rate of increase fixed in conformity with Article 203 (9).

3 The European Parliament's primary contention is that the application is inadmissible. In the alternative, it contends that it respected the letter and spirit of Article 203 (9) of the EEC Treaty. It was the Council that disregarded the provisions of the Treaties, in particular those of Article 199 of the EEC Treaty, by submitting to the Parliament a draft budget and, after the Parliament's first reading, a modified draft the adoption of which would have rendered it impossible for the Communities to meet their commitments.

Admissibility

4 The Parliament denies in the first place that the Council may rely on Article 173 of the EEC Treaty for the purposes of seeking the annulment of the budget as an act of the European Parliament. According to that institution, Article 173 does not provide for a review of the legality of the acts of the European Parliament any more, for that matter, than it allows the Assembly to challenge before the Court the legality of the acts of the Council and the Commission of the Communities.

5 However, it must be pointed out that the Court has already held in its judgment of 23 April 1986 (Case 294/83 *Parti écologiste 'Les Verts'* [1986] ECR 1339) that by virtue of Article 173 of the EEC Treaty an action for annulment may be brought against the acts of the European Parliament which are intended to have legal effects *vis-à-vis* third parties, provided that the other conditions laid down by that article are satisfied.

6 In this regard, it must be noted that the general budget of the Communities is the instrument which sets out forecasts of, and authorizes in advance, the revenue and expenditure for each year. According to the second paragraph of Article 199 of the EEC Treaty, the revenue and expenditure must be in balance. It is for the Commission to implement the budget, by virtue of Article 205, within the limits of the appropriations allocated, whilst the revenue entered in the budget determines the level of the value-added tax to be transferred by the Member States to the own resources of the Communities. It follows that, once the President of the Parliament has made the declaration referred to in Article 203 (7), the budget ranks among the acts which are capable of producing legal effects *vis-à-vis* third parties.

7 The Parliament goes on to maintain that, in any event, its President's declaration, pursuant to Article 203 (7) of the EEC Treaty, that the budget has been finally adopted, may not be regarded as an act open to challenge. The President of the Parliament does not intervene until after the close of the budgetary procedure and

cannot exert any influence on the outcome of that procedure. To deem the declaration of the President of the Parliament to be an act open to challenge would amount, in those circumstances, to establishing a third, independent arm of the budgetary authority, distinct from the two others, namely the Council and the Parliament.

8 That argument must also be rejected. It is the President of the Parliament who formally declares that the budgetary procedure has been brought to a close by the final adoption of the budget and thus endows the budget with binding force *vis-à-vis* the institutions and the Member States. In exercising that function, the President of the Parliament intervenes by means of a separate legal act of an objective nature at the conclusion of a procedure characterized by the joint action of various institutions. He adopts that act, not as a distinct authority not provided for in the Treaty, but in his capacity as an organ of the European Parliament.

9 Finally, the Parliament submits that the deliberation of the Parliament, at its second reading, on the draft modified by the Council is not a matter which may be made the subject of an action for annulment.

10 In developing this argument, the Parliament explains that, in the context of the budgetary procedure, the roles of the Council and the Parliament are complementary and that the joint action of these two institutions leads to the establishment of the budget which constitutes a combined act that has no equivalent in any other act of the Community institutions. It is therefore out of the question that the annulment of such an act, should it occur, may concern only the deliberations of one of the two institutions concerned. In that respect the Parliament points out that according to Article 176 of the EEC Treaty '[The] institution whose act has been declared void' is required to take the necessary measures to comply with the judgment of the Court. Since the budget of the Community is the product of two institutions, that provision does not apply to it. It must therefore be concluded that it is not possible to review the budget by means of the action for annulment.

11 In reply to that argument the Council observes that until the financial year 1975 the budget was in any event subject to the review provided for by Article 173 of the EEC Treaty, since the adoption of the budget constituted an act of the Council which produced legal effects. It is inconceivable that the authors of the revisions of the Treaties relating to budgetary matters intended, when enlarging the Parliament's role in that sphere, to remove the budget from the category of

acts subject to review by the Court. That review is, moreover, the necessary corollary to the institutions' duty to act within the limits of the powers conferred on them.

12 It must be observed that under Article 203 (10) of the EEC Treaty each institution is to exercise the powers conferred upon it in respect of the budget with due regard for the provisions of the Treaty. If it were not possible to refer the acts of the budgetary authority for review by the Court, the institutions of which that authority is composed could encroach upon the powers of the Member States or of the other institutions or exceed the limits which have been set to their own powers. The Treaty does not, moreover, contain any provision which excludes the bringing of the action for annulment against acts of a budgetary nature.

13 The budgetary nature of the contested acts does not therefore have the effect of rendering the application inadmissible. The Parliament's observations on the measures to be taken in the event of annulment will be considered after the substance of the case has been examined.

14 It follows from all the foregoing considerations that the submissions put forward against the admissibility of the application must be rejected in their entirety.

Substance

15 *In limine* it is appropriate to examine those provisions of Article 203 of the EEC Treaty which are at the centre of the dispute between the parties and also the application which was made of the said provisions during the procedure followed for the establishment of the budget for the financial year 1986. Paragraph (9) of that article governs that procedure in so far as it concerns the fixing of what is known as non-compulsory expenditure, that is to say expenditure other than that necessarily resulting from the Treaty or from acts adopted in accordance therewith.

16 It is clear from the second subparagraph of paragraph (4) and from paragraphs (5) (a) and (6) of Article 203 that the Parliament is entitled to amend the budget as regards non-compulsory expenditure, that the Council may modify each of the amendments so adopted but that the Parliament may, in the course of its second reading of the draft budget as modified by the Council, amend or reject the modifications made by the Council to those amendments. On the other hand, in the case of compulsory expenditure the Parliament is no longer able, at the second

reading, to call in question the Council's decision on the proposals for modification made by the Parliament in the course of the first reading.

17 Article 203 (9) provides, however, for a limit to the increase which may be made in non-compulsory expenditure in relation to the expenditure of the same type appearing in the budget for the previous financial year. That limit is expressed by a 'maximum rate of increase' which the Community institutions are, by virtue of the third subparagraph of paragraph (9), required to respect during the budgetary procedure.

18 According to the second subparagraph of paragraph (9), the maximum rate is to be fixed annually by the Commission on the basis of three objective factors, namely the trend of the gross national product, the average variation in the national budgets and the trend of the cost of living. Where, during the budgetary procedure, the Parliament, the Council or the Commission consider that the activities of the Communities require that the said rate should be exceeded, another rate may be fixed, pursuant to the fifth subparagraph of paragraph (9), by agreement between the Council and the Parliament.

19 For the financial year 1986 the Commission declared, after consulting the Economic Policy Committee, that the maximum rate of increase amounted to 7.1%. When it submitted the preliminary draft budget, the Commission indicated that it had set itself the target of keeping the increase in the payment appropriations needed for non-compulsory expenditure within the limit of the maximum rate of 7.1%. It added, however, that certain exceptions would have to be made to that principle.

20 In that respect the Commission, in the 'general political introduction' to the preliminary draft budget, pointed out in particular that since 1978 the volume of commitment appropriations had grown significantly faster than that of payment appropriations. That meant that since the operations to which they related were spread over a period of time the financial requirements in order to honour those commitments were rising constantly. Some 10 300 million ECU had accumulated since 1978 of which 8 200 million ECU were for the three structural Funds, namely the Social Fund, the Regional Fund and the Guidance Section of the EAGGF. In order to absorb this 'cost of the past' and to ensure that it was covered financially, the Commission considered that the increase in payment appropriations

must exceed the rate of 7.1% to the extent necessary to cover the commitments in question in 1986.

21 In adopting the draft budget at its first reading, the Council fixed the increase in commitment appropriations and the increase in payment appropriations in amounts which were within the limit of the maximum rate of 7.1%. According to the Council's calculations, the draft budget showed an increase of 578.1 million ECU in commitment appropriations, namely 7.05%, and 430 million ECU in payment appropriations, namely 7.04%.

22 In the comments accompanying its draft budget the Council stated that it was 'prepared to reconsider the appropriations entered against [the] ERDF and the ESF at the second reading of the draft budget and to ensure on that occasion that the amounts necessary to comply with the commitments arising out of the accession negotiations in respect of the two new Member States are made available to the countries concerned'. It also said that it was convinced 'that this is a complex issue needing to be resolved by both parts of the budgetary authority together, and that any solution will perforce be spread over a number of financial years'.

23 The fourth subparagraph of paragraph (9) provides that if the rate of increase in the draft budget established by the Council is over half the maximum rate the Parliament may, exercising its right of amendment, further raise the level of non-compulsory expenditure within the limit of the maximum rate. In the event, the Council calculated this margin for manoeuvre enjoyed by the Parliament at 291.1 million ECU for commitments and 216.65 million ECU for payments.

24 It must be pointed out that the Council's figures are not calculated with reference to those resulting from the 1985 budget as adopted and published but with reference to a corrected base, since the Parliament adopted, at the time of the budgetary procedure which led to the 1985 budget, certain amendments in regard to which the Council had formulated reservations and objections. However, since no action on the subject of the 1985 budget has been brought in due time, the Council may not, in the present proceedings relating to the 1986 budget, introduce a correction of the base for the increase in non-compulsory expenditure by contending that certain amendments adopted during the previous budgetary

procedure were irregular. The increases in expenditure resulting from those amendments are part of the expenditure 'to be incurred during the current year' which constitutes, according to the first subparagraph of paragraph (9), the basis of calculation for the purposes of the application of the maximum rate of increase. If the correction made to the base by the Council is disregarded, the Parliament's margin for manoeuvre was 294 million ECU for commitment appropriations and 217 million ECU for payment appropriations.

25 It is common ground that the amendments adopted by the Parliament at the first reading gave rise to a total increase in non-compulsory expenditure appreciably in excess of the margin for manoeuvre which has just been mentioned. According to the different methods of calculation employed by the Council and the Parliament, that increase was in any event, in relation to the draft budget adopted by the Council, in excess of 1 700 million ECU for commitment appropriations as well as for payment appropriations.

26 It is clear from the debates of the Parliament that the increases were in particular intended to contribute towards the absorption of the 'cost of the past', as the Commission had proposed in its preliminary draft budget, and also towards the reinforcement of the three structural Funds in order to enable them to cope with the problems connected with the accession to the Community of Spain and Portugal on 1 January 1986. In its resolution of 14 November 1985 on the draft general budget the Parliament, after recalling the political and legal obligations entered into *vis-à-vis* the new Member States, declared that it was necessary to reinstate, on the basis of the figures deemed necessary by the Commission, 'the amounts essential to meet enlargement and the greater part of the payments arising out of commitments that have already been voted in previous years', since these two categories of expenditure were inextricably linked.

27 At its second reading of the budget the Council decided to increase non-compulsory expenditure, in relation to the figures adopted in the draft budget, by 1 199 million ECU for commitment appropriations and 1 251 million ECU for payment appropriations. These amounts represented a rate of increase, founded on the corrected 1985 base as calculated by the Council, of 14.63% for commitment appropriations and 20.5% for payment appropriations. By letter of 29 November 1985 addressed to the President of the Parliament, the Council explained the

manner in which it had decided on the amendments adopted by the Parliament at its first reading and indicated that the Council had 'therefore' agreed to propose to the Assembly that for 1986, in the case of non-compulsory expenditure, new rates should be fixed in respect of commitment appropriations (14.63%) and in respect of payment appropriations (20.5%).

28 In commencing the debates relating to the second reading of the budget, the Parliament let it be known that it considered the modifications accepted by the Council to be too modest and that it was not prepared to agree either to the amounts adopted by the Council at its second reading or to the modified figures of the maximum rate of increase. The debates were characterized by a concern to establish a budget of such a nature that the expenditure connected with the enlargement and the 'cost of the past' would be adequately taken into account.

29 During its 1052nd session held at Strasbourg on 11 and 12 December 1985 the Council went on to formulate a compromise proposal which it described as a last offer. On that occasion the Council declared itself ready to accept a new increase in the amounts adopted at the second reading, namely 195.7 million ECU by way of commitment appropriations and 241.8 million ECU by way of payment appropriations. It also proposed to raise the maximum rate of increase to 17.02% for commitment appropriations and 24.46% for payment appropriations. The Council authorized its President to submit these proposals to the Parliament but stated that they would be withdrawn if the Parliament did not agree to them.

30 As the Parliament did not accept these compromise proposals, the President of the Council formally withdrew them. The Parliament, on the other hand, adopted amendments which brought the increase in appropriations, in relation to those adopted in the Council's modified draft, to 401.7 million ECU for commitment appropriations and to 563.3 million ECU for payment appropriations. The total of the appropriations for non-compulsory expenditure was thus raised to 9 801.9 million for commitment appropriations and 7 917.7 million for payment appropriations. On 18 December 1985 the President of the Parliament declared that the budgetary procedure had been completed and that as a result the general budget for the financial year 1986, as approved by the Parliament at its second reading, was finally adopted.

31 The figures set out above show that the increase in non-compulsory expenditure resulting from the Parliament's second reading of the budget was 18.17% (commitments) and 29.10% (payments) as compared with the 1985 budget as adopted. The figures were 19.53% and 29.73% respectively as compared with the corrected base for 1985 as calculated by the Council.

32 It is possible on the basis of this brief account to make three findings of fact in regard to the application which was made of the provisions on the maximum rate of increase:

(a) The Commission, the Council and the Parliament all concurred in the view that the maximum rate of increase as fixed by the Commission was not adequate to enable the Community to function properly during the financial year 1986;

(b) The Council and the Parliament were unable to agree on a new maximum rate of increase although the positions which those two institutions finally adopted were quite close to each other;

(c) The appropriations adopted by the Parliament at the second reading and ratified by the budget as adopted on 18 December 1985 by the President of the Parliament exceed the maximum rate of increase as fixed by the Commission and the various modified rates which had been proposed by the Council.

33 The finding under (b) above is disputed by the Council, which has argued that, in exceeding the increases proposed at the second reading by the Council, the Parliament accepted by implication the figures on the maximum rate established by the Council. The Parliament has, however, observed that such a view would amount to accepting a new rate which would be unilaterally fixed by the Council whereas the Treaty requires an agreement between the Council and the Parliament. It has also pointed out that not only does it have the choice of accepting or refusing the new rate proposed by the Council but it may also at any time, by virtue of Article 203 (8) of the Treaty, reject the draft budget in its entirety.

34 It should be stated in this respect that, although the Treaty provides that the maximum rate must be fixed by the Commission on the basis of objective factors, no criterion has been laid down for the modification of that rate. According to the fifth subparagraph of Article 203 (9), it is sufficient that the Council and the

Parliament come to an agreement. In view of the importance of such an agreement, which confers on the two institutions, acting in concert, the freedom to increase the appropriations in respect of non-compulsory expenditure in excess of the rate declared by the Commission, that agreement may not be inferred on the basis of the presumed intention of one or other of those institutions.

35 The finding under (c) above is disputed by the Parliament. That institution maintains that the non-compulsory expenditure for the financial year 1986 relating to the enlargement and to the absorption of the 'cost of the past' had no equivalent in the financial year 1985. That expenditure could not therefore be covered by the procedure laid down by Article 203 (9) and consisting of the application of a maximum rate of increase to the non-compulsory expenditure for the current financial year.

36 That argument cannot be accepted. The first subparagraph of paragraph (9) provides that a maximum rate 'in relation to the expenditure of the same type to be incurred during the current year' is to be fixed annually 'for the total expenditure other than that necessarily resulting from this Treaty or from acts adopted in accordance therewith'. The expression 'expenditure of the same type' can only refer to the expenditure mentioned later in the sentence, namely non-compulsory expenditure. It follows that the Treaty does not recognize the existence of non-compulsory expenditure whose increase falls outside the scope of the maximum rate of increase.

37 In its defence the Parliament further charges the Council with having acted illegally in submitting an incomplete draft budget, particularly inasmuch as it did not include the appropriations necessary in order to cover the enlargement and the absorption of the 'cost of the past'. The Council thus infringed the general principle of complete and authentic budgetization. The Parliament maintains that this conduct compelled it to complete the budget and thus limited its powers.

38 Whatever may be the impact of that argument on the exceeding of the maximum rate of increase by the amendments adopted by the Parliament, it is sufficient to state on this point that the determination of the exigencies posed, for the budget of the Communities, by special situations such as the accession of new Member States

or the absorption of the 'cost of the past' is not a matter for the Court but for the Council and the Parliament, acting in concert.

39 It must therefore be held that the act of the President of the Parliament of 18 December 1985 whereby he declared the budget for 1986 finally adopted occurred at a time when the budgetary procedure was not yet completed for want of an agreement between the two institutions concerned on the figures to be adopted for the new maximum rate of increase. That act is therefore vitiated by illegality.

The consequences to be drawn from the said illegality

40 The Council seeks the annulment of the 1986 budget in so far as the commitment appropriations and the payment appropriations in respect of non-compulsory expenditure exceed the new rates of increase proposed by the Council by letter of 29 November 1985 addressed to the President of the Parliament. It also requests the Court to decide that the declaration by the President of the Parliament on 18 December 1985 that the 1986 budget had been finally adopted was made in breach of the Treaties, and in particular infringed Article 203 (7) and (9) of the EEC Treaty and the parallel provisions of the EAEC and ECSC Treaties. Alternatively, the Council requests the Court to annul the budget for 1986 in its entirety and, as a consequence, the act of the President of the Parliament of 18 December 1985, and in that case to state which of the effects of the budget are to be considered as definitive.

41 The Parliament requests the Court to hold, if it considers that the application is well-founded, that the annulment should relate to the budget in its entirety so as to cover the whole of the budgetary procedure which, according to the Parliament, is vitiated *ab initio* by the unlawful conduct of the Council. The Parliament stresses that a partial annulment would be contrary to the nature of the budget as a single act and that, in addition, it would allow the draft modified by the Council at its second reading to remain in existence, a result which would be contrary to Article 203 (9).

42 It must be observed in the first place that, although it is incumbent on the Court to ensure that the institutions which make up the budgetary authority keep within the

limits of their powers, it may not intervene in the process of negotiation between the Council and the Parliament which must result, with due regard for those limits, in the establishment of the general budget of the Communities. It is therefore necessary to reject the principal claim of the Council for a partial annulment of the budget, the effect of which would be to bring into force the version of that document resulting from the proposals made by the Council to the Parliament on 29 November 1985.

43 It must next be remarked that the irregularity attaching to the act of the President of the Parliament of 18 December 1985 is to be traced to the fact that he declared, in the language of Article 203 (7), that the budget was 'finally' adopted whereas a final adoption had not yet been achieved, since the two institutions had not yet come to an agreement on the figures concerning a new maximum rate of increase.

44 Looking back on the situation as it presented itself at the time of the second reading of the budget by the Parliament, the Court is left with the impression that the respective positions taken by the two institutions could hardly have constituted a serious obstacle to the possibility of arriving at an agreement. The increases in non-compulsory expenditure established by the Parliament represented rates of increase of 18.17% for commitment appropriations and 29.10% for payment appropriations, whereas the rates resulting from the last proposals made by the Council — the compromise proposals, although later 'withdrawn' — were 17.02% and 24.46% respectively.

45 The Court does not have to consider to what extent the Council's or the Parliament's attitude during the entire negotiations on the budget prevented them from arriving at an agreement. It must confine itself to holding that, since that essential agreement was lacking, the President of the Parliament could not lawfully declare that the budget had been finally adopted. That declaration must therefore be annulled.

46 The effect of the annulment of the act of the President of the Parliament is to deprive the 1986 budget of its validity. It is therefore not necessary to give a decision on the Council's claim for the total annulment of the budget.

47 It is for the Council and the Parliament to take the measures necessary to comply with this judgment and to resume the budgetary procedure at the very point at which the Parliament, at its second reading, increased the appropriations in respect

of non-compulsory expenditure beyond the maximum rate of increase fixed by the Commission and without having come to an agreement with the Council on the figure for a new rate.

48 The declaration that the 1986 budget is illegal comes at a time when a substantial part of the financial year 1986 has already elapsed. In these circumstances, the need to guarantee the continuity of the European public service and also important reasons of legal certainty, which may be compared with those which apply in the case of the annulment of certain regulations, justify the Court in exercising the power expressly conferred on it by the second paragraph of Article 174 of the EEC Treaty in the case of the annulment of a regulation and in stating the effects of the 1986 budget which must be considered as definitive. In the particular circumstances of this case it must be held that the annulment of the act of the President of the Parliament may not call in question the validity of the payments made and the commitments entered into in implementation of the 1986 budget up to the date of delivery of this judgment.

49 The Council has also put forward in these proceedings a request which does not concern the application which has been made of the maximum rate of increase but the raising by the Parliament, at its second reading, of the amounts entered in certain budgetary lines relating to expenditure which, according to the Council, constitutes compulsory expenditure.

50 Following the annulment of the act of the President of the Parliament of 18 December 1985, this request has become redundant. It should also be noted that the problems regarding the delimitation of non-compulsory expenditure in relation to compulsory expenditure are the subject of an interinstitutional conciliation procedure set up by the Joint Declaration of the European Parliament, the Council and the Commission of 30 June 1982 (Official Journal C 194) and that they are capable of being resolved in that context.

51 In the result, it is therefore necessary:

(i) to declare void the act of the President of the Parliament of 18 December 1985 whereby he declared that the budget for 1986 had been finally adopted ('Final adoption of the general budget of the European Communities for the financial year 1986');

(ii) to state that the said annulment may not call in question the validity of the payments made and the commitments entered into, in implementation of the budget for 1986 as published in the Official Journal, before the date of delivery of this judgment;

(iii) to dismiss the remainder of the application.

Costs

52 Under Article 69 (2) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs. However, according to the first subparagraph of paragraph (3) of that article, the Court may, where each party succeeds on some and fails on other heads, order that the parties bear their own costs. Since the original parties have failed in certain of their submissions, they should be ordered to pay their own costs. The interveners must bear their own costs.

On those grounds,

THE COURT

hereby:

(1) Declares void the act of the President of the European Parliament of 18 December 1985 whereby he declared that the budget for 1986 had been finally adopted ('Final adoption of the general budget of the European Communities for the financial year 1986');

(2) Declares that the annulment of the aforesaid act of the President of the European Parliament of 18 December 1985 may not call in question the validity of the payments made and the commitments entered into, in implementation of the budget for 1986 as published in the Official Journal, before the date of delivery of this judgment;

(3) Dismisses the remainder of the application;

(4) Orders the parties, including the interveners, to bear their own costs.

Mackenzie Stuart Koopmans Everling Bahlmann Joliet

Bosco Due Galmot Kakouris

O'Higgins Schockweiler Moitinho de Almeida Rodríguez Iglesias

Delivered in open court in Luxembourg on 3 July 1986.

P. Heim
Registrar

A. J. Mackenzie Stuart
President