

JUDGMENT OF THE COURT (Grand Chamber)

24 June 2014 (\*)

(Action for annulment — Decision 2011/640/ CFSP — Legal basis — Common foreign and security policy (CFSP) — Article 37 TEU — International agreement relating exclusively to the CFSP — Second subparagraph of Article 218(6) TFEU — Obligation to inform the Parliament immediately and fully — Article 218(10) TFEU — Maintenance of effects)

In Case C-658/11,

ACTION for annulment under Article 263 TFEU, brought on 21 December 2011,

**European Parliament**, represented by R. Passos, A. Caiola and M. Allik, acting as Agents, with an address for service in Luxembourg,

applicant,

supported by:

**European Commission**, represented by M. Konstantinidis, R. Troosters and L. Gussetti, acting as Agents, with an address for service in Luxembourg,

intervener,

v

**Council of the European Union**, represented by F. Naert, G. Étienne, M. Bishop and G. Marhic, acting as Agents,

defendant,

supported by:

**Czech Republic**, represented by M. Smolek, E. Ruffer and D. Hadroušek, acting as Agents,

**French Republic**, represented by G. de Bergues, N. Rouam and E. Belliard, acting as Agents,

**Italian Republic**, represented by G. Palmieri, acting as Agent, and by P. Gentili, avvocato dello Stato, with an address for service in Luxembourg,

**Kingdom of Sweden**, represented by A. Falk, acting as Agent,

**United Kingdom of Great Britain and Northern Ireland**, represented by L. Christie and A. Robinson, acting as Agents, and by D. Beard QC and G. Facenna, Barrister,

interveners,

THE COURT (Grand Chamber),

composed of V. Skouris, President, K. Lenaerts, Vice-President, A. Tizzano (Rapporteur), M. Ilešič, T. von Danwitz and M. Safjan, Presidents of Chambers, J. Malenovský, E. Levits, A. Ó Caoimh, J.-C. Bonichot, A. Arabadjiev, D. Šváby, M. Berger, A. Prechal and E. Jarašiūnas, Judges,

Advocate General: Y. Bot,

Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 17 September 2013,

after hearing the Opinion of the Advocate General at the sitting on 30 January 2014,

gives the following

### Judgment

- 1 By its action, the European Parliament seeks (i) annulment of Council Decision 2011/640/CFSP of 12 July 2011 on the signing and conclusion of the Agreement between the European Union and the Republic of Mauritius on the conditions of transfer of suspected pirates and associated seized property from the European Union-led naval force to the Republic of Mauritius and on the conditions of suspected pirates after transfer (OJ 2011 L 254, p. 1; ‘the contested decision’, and ‘the EU-Mauritius Agreement’, respectively), and (ii) the maintenance of the effects of that decision.

#### Legal context

- 2 Title V of the EU Treaty contains a Chapter 2, entitled ‘Specific provisions on the common foreign and security policy’, in which Article 36 TEU provides:

‘The High Representative of the Union for Foreign Affairs and Security Policy shall regularly consult the European Parliament on the main aspects and the basic choices of the common foreign and security policy and the common security and defence policy and inform it of how those policies evolve. He shall ensure that the views of the European Parliament are duly taken into consideration. Special representatives may be involved in briefing the European Parliament.

The European Parliament may address questions or make recommendations to the Council or the High Representative. Twice a year it shall hold a debate on progress in implementing the common foreign and security policy, including the common security and defence policy.’

- 3 Article 37 TEU, in the same chapter, is worded as follows:

‘The Union may conclude agreements with one or more States or international organisations in areas covered by this Chapter.’

- 4 Article 218 TFEU reads as follows:

1. Without prejudice to the specific provisions laid down in Article 207, agreements between the Union and third countries or international organisations shall be negotiated and concluded in accordance with the following procedure.

2. The Council shall authorise the opening of negotiations, adopt negotiating directives, authorise the signing of agreements and conclude them.

3. The Commission, or the High Representative of the Union for Foreign Affairs and Security Policy where the agreement envisaged relates exclusively or principally to the common foreign and security policy [“CFSP”], shall submit recommendations to the Council, which shall adopt a decision authorising the opening of negotiations and, depending on the subject of the agreement envisaged, nominating the Union negotiator or the head of the Union’s negotiating team.

...

5. The Council, on a proposal by the negotiator, shall adopt a decision authorising the signing of the agreement and, if necessary, its provisional application before entry into force.

6. The Council, on a proposal by the negotiator, shall adopt a decision concluding the agreement.

Except where agreements relate exclusively to the [CFSP], the Council shall adopt the decision concluding the agreement:

(a) after obtaining the consent of the European Parliament in the following cases:

...

(v) agreements covering fields to which either the ordinary legislative procedure applies, or the special legislative procedure where consent by the European Parliament is required.

...

(b) after consulting the European Parliament in other cases. ...

...

10. The European Parliament shall be immediately and fully informed at all stages of the procedure.

...'

5 Council Joint Action 2008/851/CFSP of 10 November 2008 on a European Union military operation to contribute to the deterrence, prevention and repression of acts of piracy and armed robbery off the Somali coast (OJ 2008 L 301, p. 33), as amended by Council Decision 2010/766/CFSP of 7 December 2010 (OJ 2010 L 327, p. 49; Joint Action 2008/851'), is based on Article 14 EU, the third paragraph of Article 25 EU, and Article 28(3) EU.

6 Article 1 of Joint Action 2008/851, entitled 'Mission', provides, in paragraph 1:

'The European Union ... shall conduct a military operation in support of Resolutions 1814 (2008), 1816 (2008) and 1838 (2008) of the United Nations Security Council (UNSC), in a manner consistent with action permitted with respect to piracy under Article 100 et seq. of the United Nations Convention on the Law of the Sea signed in Montego Bay on 10 December 1982 (hereinafter referred to as the "United Nations Convention on the Law of the Sea") and by means, in particular, of commitments made with third States, hereinafter called "Atalanta" in order to contribute to:

- the protection of vessels of the [World Food Programme] delivering food aid to displaced persons in Somalia, in accordance with the mandate laid down in UNSC Resolution 1814 (2008),
- the protection of vulnerable vessels cruising off the Somali coast, and the deterrence, prevention and repression of acts of piracy and armed robbery off the Somali coast, in accordance with the mandate laid down in UNSC Resolution 1816 (2008)'.

7 Article 2 of Joint Action 2008/851, entitled 'Mandate', provides:

'Under the conditions set by applicable international law, in particular the United Nations Convention on the Law of the Sea, and by UNSC Resolutions 1814 (2008), 1816 (2008) and 1838 (2008), Atalanta shall, as far as available capabilities allow:

...

- (e) in view of prosecutions potentially being brought by the relevant States under the conditions in Article 12, arrest, detain and transfer persons suspected of intending, as referred to in Articles 101 and 103 of the United Nations Convention on the Law of the Sea, to commit, committing or having committed acts of piracy or armed robbery in the areas where it is present and seize the vessels of the pirates or armed robbers or the vessels caught following an act of piracy or an armed robbery and which are in the hands of the pirates or armed robbers, as well as the property on board;

...'

8 Article 10 of Joint Action 2008/851, entitled 'Participation by third States', is worded as follows:

'1. Without prejudice to the decision-making autonomy of the [Union] or to the single institutional framework, and in accordance with the relevant guidelines of the European Council, third States may be invited to participate in the operation.

...

3. Detailed modalities for the participation by third States shall be the subject of agreements concluded in accordance with the procedure laid down in Article [37 TEU]. Where the [Union] and a third State have concluded an agreement establishing a framework for the latter's participation in [Union] crisis management operations, the provisions of such an agreement shall apply in the context of this operation.

...

6. The conditions for the transfer to a State participating in the operation of persons arrested and detained, with a view to the exercise of jurisdiction of that State, shall be established when the participation agreements referred to in paragraph 3 are concluded or implemented.'

9 Under Article 12 of Joint Action 2008/851, entitled 'Transfer of persons arrested and detained with a view to their prosecution':

'1. On the basis of Somalia's acceptance of the exercise of jurisdiction by Member States or by third States, on the one hand, and Article 105 of the United Nations Convention on the Law of the Sea, on the other hand, persons suspected of intending, as referred to in Articles 101 and 103 of the United Nations Convention on the Law of the Sea, to commit, committing or having committed acts of piracy or armed robbery in Somali territorial waters or on the high seas, who are arrested and detained, with a view to their prosecution, and property used to carry out such acts, shall be transferred:

- to the competent authorities of the Member State or of the third State participating in the operation, of which the vessel which took them captive flies the flag, or
- if that State cannot, or does not wish to, exercise its jurisdiction, to a Member State or any third State which wishes to exercise its jurisdiction over the aforementioned persons and property.

2. No persons referred to in paragraphs 1 and 2 may be transferred to a third State unless the conditions for the transfer have been agreed with that third State in a manner consistent with relevant international law, notably international law on human rights, in order to guarantee in particular that no one shall be subjected to the death penalty, to torture or to any cruel, inhuman or degrading treatment.'

10 Article 2 of the EU-Mauritius Agreement provides, under the heading 'Definitions':

'For the purposes of this Agreement:

- (a) "European Union-led naval force (EUNAVFOR)" shall mean EU military headquarters and national contingents contributing to the EU operation "Atalanta", their ships, aircrafts and assets;

...'

11 Article 1 of that agreement, entitled 'Aim', provides:

'This Agreement defines the conditions and modalities for

- (a) the transfer of persons suspected of attempting to commit, committing or having committed acts of piracy within the area of operation of EUNAVFOR ...;
- (b) the transfer of associated property seized by EUNAVFOR from EUNAVFOR to Mauritius; and
- (c) the treatment of transferred persons.'

12 Furthermore, the EU-Mauritius Agreement sets out in Article 3 the general principles governing the modalities and the conditions for the transfer to the Republic of Mauritius of suspected pirates detained by EUNAVFOR and associated property seized by EUNAVFOR. In addition, the agreement governs, in Article 4, the treatment, prosecution and trial of transferred persons, and, under Article 5, prohibits the death penalty for them. The agreement includes measures in Article 6 concerning documents linked to the transfer of such persons, in particular records and notifications, and provides, in Article 7(1) and (2), that EUNAVFOR, within its means and capabilities, is to provide all assistance to the Republic of Mauritius with a view to the investigation and prosecution of transferred persons. In that regard, Article 7(3) of the EU-Mauritius Agreement envisages the possibility of the parties to that agreement developing implementing arrangements on financial, technical and other assistance to enable the transfer, detention, investigation, prosecution and trial of transferred persons. Finally, the agreement lays down in Articles 10 and 11 the rules relating to the arrangements for its implementation and its entry into force.

### **Background to the dispute and the contested decision**

13 On 22 March 2010, the Council authorised the High Representative of the Union for Foreign Affairs and Security to open negotiations with a view to concluding agreements for the transfer of persons between the European Union and certain third States, including the Republic of Mauritius.

14 By letter of the same date, the Council informed the Parliament of that decision.

15 Following those negotiations, on 12 July 2011 the Council, on the basis of Article 37 TEU and Article 218(5) and (6) TFEU, adopted the contested decision by which it authorised the signing of the EU-Mauritius Agreement. That decision was published in the *Official Journal of the European Union* on 30 September 2011.

16 The EU-Mauritius Agreement was signed on 14 July 2011 and has been applied provisionally since that date.

17 The Council informed the Parliament of the adoption of the contested decision by letter of 17 October 2011.

### **Forms of order sought and the proceedings before the Court**

18 The Parliament claims that the Court should annul the contested decision, order that the effects of that decision be maintained until it is replaced, and order the Council to pay the costs.

19 The Council requests the Court, principally, to declare the action inadmissible in part, to dismiss the remainder of the action as unfounded and to order the Parliament to pay the costs. In the alternative, the Council requests that, should the Court annul the contested decision, the effects of that decision be maintained until such time as it is replaced.

- 20 By order of the President of the Court of 5 June 2012, the Czech Republic, the French Republic, the Italian Republic, the Kingdom of Sweden and the United Kingdom of Great Britain and Northern Ireland were granted leave to intervene in support of the form of order sought by the Council.
- 21 By decision of the President of the Court of 20 November 2012, the Commission was granted leave to intervene, in support of the Parliament, in the oral part of the procedure.

### **The action**

- 22 The Parliament relies on two pleas in law in support of the action, alleging infringement of the second subparagraph of Article 218(6) TFEU and of Article 218(10) TFEU, respectively.

#### *First plea in law, alleging infringement of the second subparagraph of Article 218(6) TFEU*

#### Arguments of the parties

- 23 By its first plea, the Parliament submits that the Council was wrong to consider that the contested decision concerned an agreement relating ‘exclusively’ to the CFSP within the meaning of the first part of the second subparagraph of Article 218(6) TFEU, and that that decision could therefore be adopted without the Parliament’s involvement.
- 24 The Parliament, supported in that regard by the Commission, states at the outset that Article 218(6) TFEU establishes a general rule that the conclusion of an international agreement by the Council must be preceded by the consent or the consultation of the Parliament, as the case may be. It is only by way of an exception that the first part of the second subparagraph of Article 218(6) authorises the Council to conclude such agreements without any involvement of the Parliament ‘where agreements relate exclusively to the [CFSP]’. Since that provision is an exception, it should be interpreted narrowly, so that if an agreement relates not only to the CFSP but also to other policies of the European Union, the Parliament should be involved in the procedure for concluding that agreement.
- 25 In the present case, in view of its aim and content, the EU-Mauritius Agreement relates not only to the CFSP, but also to judicial cooperation in criminal matters, police cooperation and development cooperation.
- 26 As regards, first of all, judicial cooperation in criminal matters, the EU-Mauritius Agreement contains a number of provisions — in particular Articles 3 to 7 — to facilitate cooperation between the European Union and the authorities of the Republic of Mauritius in relation both to proceedings in criminal matters, including admissibility of evidence, rights of individuals and certain specific aspects to these proceedings, and to the enforcement of decisions within the meaning of Article 82(1)(d) and (2)(a) and (b) TFEU. Moreover, that agreement also covers, in particular in Article 7(3), support for the training of the judiciary and judicial staff within the meaning of Article 82(1)(c) TFEU. Furthermore, according to the Parliament, the fact that Article 11(5) of the EU-Mauritius Agreement provides that the tasks performed by EUNAVFOR under that agreement may, in essence, be executed by administrative authorities rules out the possibility that those tasks might be of a military nature. The Commission adds in that regard that the aim and content of the EU-Mauritius Agreement would have justified Article 82 TFEU as the chosen legal basis of the contested decision.
- 27 Next, as regards police cooperation, the activities referred to in Articles 6 and 7 of the EU-Mauritius Agreement concern in particular ‘the collection, storage, processing, analysis and exchange of relevant information’ within the meaning of Article 87(2)(a) TFEU and fall within those generally carried out by police forces in accordance with Article 87(1) TFEU.
- 28 Lastly, the EU-Mauritius Agreement concerns development cooperation, in so far as Articles 7 and 10(2)(f) thereof envisage the provision of assistance to the Republic of Mauritius, which is a developing country within the meaning of Article 208 TFEU. That assistance is provided in the fields of ‘revision of legislation,

training of investigators and prosecutors, investigative and judicial procedures, and particularly, arrangements for storage and handing-over of evidence and appeal procedures?

- 29 The Parliament and the Commission conclude that since the ordinary legislative procedure applies to those fields of EU action, the contested decision should have been based on Article 218(6)(a)(v) TFEU and, therefore, adopted after the consent of the Parliament had been obtained.
- 30 The Council, supported by all the intervening Member States, responds, in essence, that the contested decision is correctly based on Article 37 TEU and Article 218(5) and (6) TFEU, given that, according to its aim and content, the EU-Mauritius Agreement relates exclusively to the CFSP.
- 31 First, that agreement implements Joint Action 2008/851 and, in particular, Article 12 thereof, which aims to strengthen international security in the framework of the European Union's common security and defence policy, as is confirmed, moreover, by Article 2 of Joint Action 2008/851, which defines the tasks of Atalanta. Article 42(1) TEU provides that that policy is an integral part of the CFSP.
- 32 Secondly, it cannot be inferred from the content of the EU-Mauritius Agreement and, more specifically, from the fact that a suspected pirate is transferred by Atalanta to the authorities of the Republic of Mauritius with a view to his prosecution, that the actions undertaken by Atalanta constitute police or judicial cooperation within the meaning of Title V of Part Three of the FEU Treaty. While some of Atalanta's tasks may share some features with police tasks, the forces deployed generally do not have police or judicial powers under their respective national laws.
- 33 The Council adds that the EU-Mauritius Agreement includes, in particular in Articles 4 to 6 and 8, measures which aim to promote the rule of law and respect for human rights by the Republic of Mauritius. According to Article 21(2)(b) TEU, the promotion of human rights in third countries is an objective that falls within the CFSP.
- 34 The Council also states that neither the aim nor the content of that agreement supports the conclusion that it concerns the area of freedom, security and justice or development cooperation.
- 35 First, it is apparent in particular from Articles 82 TFEU and 87 TFEU that any measure falling within the area of freedom, security and justice — whether or not it has any external dimension — must be taken with the aim of furthering freedom, security and justice inside the European Union. In the present case however, the EU-Mauritius Agreement essentially relates to measures taken for the purpose of strengthening international security off the Somali coast and thus outside the European Union.
- 36 Secondly, the Court has already acknowledged that a measure does not fall within development cooperation if it has as its main purpose the implementation of the CFSP, even if it contributes to the economic and social development of the developing country (Case C-91/05 *Commission v Council* EU:C:2008:288, paragraph 72). In the present case, the assistance provided to the Republic of Mauritius relates to the transfer operations referred to in the EU-Mauritius Agreement and to the ability of the Republic of Mauritius to implement that agreement in accordance with international human rights law. Such assistance does not have as its objective the development of the Republic of Mauritius nor, therefore, constitute development cooperation.
- 37 The Parliament replies, first of all, that Article 218(3) TFEU introduces a distinction between agreements which relate 'exclusively' to the CFSP and those which relate 'principally' to the CFSP. Paragraph 6 of that article therefore authorises the Council to conclude agreements without the involvement of the Parliament only if they relate 'exclusively' to the CFSP. On the other hand, where those agreements relate only 'principally' to the CFSP and include incidental measures relating also to other policies, the Council cannot conclude them without first having involved the Parliament.
- 38 Next, the Parliament maintains that the fact that the contested decision implements Joint Action 2008/851 and that the latter falls within the CFSP is not sufficient for it to be concluded that the contested decision also falls within that policy. Joint Action 2008/851 and the contested decision have different scope and

objectives, given that Atalanta is a military operation under the common security and defence policy with the aim of capturing suspected pirates, whereas the tasks entrusted to representatives of the European Union and EUNAVFOR under the EU-Mauritius Agreement, in so far as they provide, in particular, for the possible later transfer and prosecution of suspects, are not of a military nature and go beyond Atalanta's objective.

- 39 The Council and the intervening Member States counter, in essence, that the question whether an agreement relates 'exclusively' to the CFSP within the meaning of the second subparagraph of Article 218(6) TFEU must be determined solely in the light of the substantive legal basis of that agreement. An agreement, such as that at issue in this case, which is based only on Article 37 TEU relates 'exclusively' to the CFSP.
- 40 In the Council's opinion, such an approach is not affected by the distinction between the terms 'principally' and 'exclusively' in Article 218(3) and (6) TFEU. In referring to agreements which relate 'exclusively or principally' to the CFSP, paragraph 3 of that article seeks to specify the authority which is empowered to submit recommendations to the Council in the context of the procedure for negotiating those agreements, whereas paragraph 6, which mentions agreements that relate 'exclusively' to the CFSP, concerns the conclusion of such agreements.
- 41 The Czech Republic adds that Article 218(6) TFEU is based on a parallelism between the Parliament's powers on the internal and external levels. The aim of that provision, therefore, is to guarantee that the Parliament has the same role in respect of the adoption of a decision concluding an agreement as in respect of the adoption of an internal act. In that context, noting that the provision in question is only procedural in nature, the Czech Republic submits that it is not procedures that define the legal basis of a measure but the legal basis of a measure that determines the procedure to be followed in adopting that measure.
- 42 The Kingdom of Sweden and the United Kingdom state that the interpretation of the second subparagraph of Article 218(6) TFEU advocated by the Parliament would upset the institutional balance laid down by the Treaties, which provide for a strictly limited role for the Parliament in the implementation of the CFSP, as is evident, in particular, from Article 36 TEU. Moreover, such an interpretation, by which the scope of application of CFSP procedures is restricted, to the benefit of the procedures laid down by the FEU Treaty, would fall foul of Article 40 TEU. The latter guarantees that competences conferred by the FEU Treaty do not encroach on CFSP competences. Furthermore, that interpretation would give the Parliament a veto in relation to the CFSP, contrary to the choice made by the framers of the Treaty of Lisbon to confer a more limited role on the Parliament with regard to EU action under the CFSP.

#### Findings of the Court

- 43 It should be noted at the outset that the choice of the legal basis for an EU measure must rest on objective factors amenable to judicial review, which include the aim and content of that measure. If examination of a measure reveals that it pursues two aims or that it has two components, and if one of those aims or components is identifiable as the main one, whereas the other is merely incidental, the measure must be founded on a single legal basis, namely that required by the main or predominant aim or component. If, on the other hand, a measure simultaneously pursues a number of objectives, or has several components, which are inseparably linked without one being incidental to the other, so that various provisions of the Treaty are applicable, such a measure will have to be founded, exceptionally, on the various corresponding legal bases (see, to that effect, Case C-130/10 *Parliament v Council* EU:C:2012:472, paragraphs 42 to 44).
- 44 For the purposes of defining the scope of the first plea in law, it must be noted that, as it confirmed moreover at the hearing, the Parliament is not maintaining by that plea that the contested decision should have been founded on a substantive legal basis other than Article 37 TEU, since the Parliament expressly recognises that that decision and the EU-Mauritius Agreement pursue an aim that falls within the CFSP.
- 45 In addition, the Parliament acknowledges that, notwithstanding the fact that that decision and that agreement also pursue aims that fall within EU policies other than the CFSP, those aims are incidental to that falling within the CFSP, and that, since the latter aim can therefore be regarded as the main one for the purposes of

determining the legal basis of the contested decision, that decision could legitimately be founded solely on Article 37 TEU, to the exclusion of any other substantive legal basis.

- 46 By contrast, the Parliament contends that the fact that the contested decision and the EU-Mauritius Agreement pursue, albeit only incidentally, aims other than those falling within the CFSP is sufficient to preclude that decision from falling exclusively within that policy for the purposes of Article 218(6) TFEU.
- 47 Such an interpretation of that provision cannot be accepted.
- 48 Admittedly, in accordance with the wording of Article 218(6) TFEU, the Council is to adopt a decision concluding an international agreement after obtaining the consent of or consulting the Parliament, [e]xcept where agreements relate exclusively to the [CFSP].
- 49 However, that form of words does not, by itself, permit only one interpretation of that provision.
- 50 In particular, as regards a decision concluding an agreement that pursues a main aim falling within the CFSP, that form of words does not establish that, as the Council claims, such a decision may be regarded as ‘relating exclusively to the [CFSP]’ solely because it is founded on a substantive legal basis falling within that policy and no other substantive legal basis, nor does it establish that, as the Parliament maintains, that decision must be regarded as relating also to other areas of EU law on account of incidental aims other than its main aim falling within the CFSP.
- 51 In those circumstances, it should be borne in mind that the Court has consistently held that, in interpreting a provision of EU law, it is necessary to consider not only its wording but also its objectives and the context in which it occurs (see, to that effect, Case C-466/07 *Klarenberg* EU:C:2009:85, paragraph 37, and Case C-84/12 *Koushkaki* EU:C:2013:862, paragraph 34).
- 52 As regards the objectives of Article 218 TFEU, it must be noted that, following the entry into force of the Treaty of Lisbon, in order to satisfy the requirements of clarity, consistency and rationalisation, that article now lays down a single procedure of general application concerning the negotiation and conclusion of international agreements which the European Union is competent to conclude in the fields of its activity, including the CFSP, except where the Treaties lay down special procedures.
- 53 However, precisely because of its general nature, that procedure must take account of the specific features which the Treaties lay down in respect of each field of EU activity, particularly as regards the powers of the institutions.
- 54 In that regard, it must be noted that, in order to take account of those specific features, Article 218(6) TFEU covers three types of procedure for concluding international agreements, each one prescribing a different role for the Parliament. Thus, the Parliament may be called upon to consent to the conclusion of an agreement, or it may only be consulted in that regard, or it may even be excluded from the process of concluding the agreement, without prejudice, however, to its right to be immediately and fully informed at all stages of the procedure, in accordance with Article 218(10) TFEU.
- 55 As may be inferred in particular from Article 218(6)(a)(v) TFEU, that distinction is designed to reflect externally the division of powers between institutions that applies internally. The Treaty of Lisbon required the Parliament’s consent for the conclusion of international agreements specifically in the case of agreements covering areas to which, in the internal field, the ordinary legislative procedure laid down in Article 294 TFEU applies, or the special legislative procedure, but only where that procedure requires the consent of the Parliament. Moreover, the Parliament is precluded from participating in the conclusion of such an agreement only where the agreement relates exclusively to the CFSP, in relation to which the Treaty of Lisbon conferred a limited role on the Parliament (see, to that effect, *Parliament v Council* EU:C:2012:472, paragraph 82).

56 Thus, as the Advocate General noted in essence in points 30 to 32 of his Opinion, Article 218(6) TFEU establishes symmetry between the procedure for adopting EU measures internally and the procedure for adopting international agreements in order to guarantee that the Parliament and the Council enjoy the same powers in relation to a given field, in compliance with the institutional balance provided for by the Treaties.

57 In those circumstances, it is precisely in order to ensure that that symmetry is actually observed that the rule identified by the case-law of the Court — that it is the substantive legal basis of a measure that determines the procedures to be followed in adopting that measure (see *Parliament v Council* EU:C:2012:472, paragraph 80) — applies not only to the procedures laid down for adopting an internal act but also to those applicable to the conclusion of international agreements.

58 Therefore, in the context of the procedure for concluding an international agreement in accordance with Article 218 TFEU, it must be held that it is the substantive legal basis of the decision concluding that agreement which determines the type of procedure applicable under paragraph 6 of that provision.

59 In particular, where the decision concluding the agreement in question is legitimately founded exclusively on a substantive legal basis falling within the CFSP, it is the type of procedure provided for in the first part of the second subparagraph of Article 218(6) TFEU that is applicable.

60 That interpretation is justified particularly in the light of the requirements relating to legal certainty. By anchoring the procedural legal basis to the substantive legal basis of a measure, this interpretation enables the applicable procedure to be determined on the basis of objective criteria that are amenable to judicial review, as noted in paragraph 43 of the present judgment. That ensures consistency, moreover, in the choice of legal bases for a measure. By contrast, the interpretation advocated by the Parliament would have the effect of introducing a degree of uncertainty and inconsistency into that choice, in so far as it would be liable to result in the application of different procedures to acts of EU law which have the same substantive legal basis.

61 Furthermore, the context of the provision concerned does not support a different interpretation. In particular, taking into account the objectives of Article 218 TFEU, the fact as pleaded by the Parliament that Article 218(3) TFEU refers to agreements which relate ‘exclusively or principally’ to the CFSP, whereas paragraph 6 of the same article mentions only agreements relating ‘exclusively’ to the CFSP, does not provide any basis to support the interpretation of the latter provision put forward by the Parliament. Furthermore, those two paragraphs relate to different situations. While paragraph 3 of Article 218 TFEU is intended to specify the authority which is empowered to submit recommendations to the Council in the context of the procedure for negotiating those agreements, and therefore relates to a stage prior to the conclusion of an international agreement, paragraph 6 concerns the Council’s decision concluding such agreements.

62 In those circumstances, the contested decision could be adopted without the consent or consultation of the Parliament.

63 It follows from this that the first plea is unfounded.

*Second plea in law, alleging infringement of Article 218(10) TFEU*

*Arguments of the parties*

64 By its second plea, the Parliament submits that, by failing to inform it ‘immediately and fully’ at all stages of the negotiations and of the conclusion of the EU-Mauritius Agreement, the Council infringed Article 218(10) TFEU, which applies to all agreements concluded by the European Union, including those falling within the CFSP.

65 In particular, the Parliament was not informed immediately, given that the Council did not send it the text of the contested decision and of the EU-Mauritius Agreement until 17 October 2011, that is to say, more than three months after the adoption of that decision and the signing of that agreement, which took place on 12 and 14 July 2011, respectively, and 17 days after their publication in the *Official Journal of the European Union*.

- 66 The Council, whose arguments are in essence supported by the Czech Republic, the French Republic, the Kingdom of Sweden and the United Kingdom, pleads principally that the second plea is inadmissible. Since the contested decision falls exclusively within the CFSP, the Court, having regard to the final sentence of the second subparagraph of Article 24(1) TEU and Article 275 TFEU, does not have jurisdiction to rule on its legality.
- 67 In the alternative, the Council maintains that the second plea is unfounded, since the Parliament was in fact duly informed. In particular, the period within which the Parliament was informed of the contested decision, albeit slightly longer than usual, was still reasonable, taking into account also the fact that this period included the summer break.
- 68 The Parliament argues that the second subparagraph of Article 24(1) TEU precludes the Court's jurisdiction only with respect to the specific provisions on the CFSP in Chapter 2 of Title V of the EU Treaty, and not in relation to Article 218(10) TFEU, which the second plea claims to have been infringed.

#### Findings of the Court

- 69 As regards, first of all, the question of the Court's jurisdiction to rule on the second plea, it must be noted, as the Council submits, that it is apparent from the final sentence of the second subparagraph of Article 24(1) TEU and the first paragraph of Article 275 TFEU that the Court does not, in principle, have jurisdiction with respect to the provisions relating to the CFSP or with respect to acts adopted on the basis of those provisions.
- 70 Nevertheless, the final sentence of the second subparagraph of Article 24(1) TEU and the first paragraph of Article 275 TFEU introduce a derogation from the rule of the general jurisdiction which Article 19 TEU confers on the Court to ensure that in the interpretation and application of the Treaties the law is observed, and they must, therefore, be interpreted narrowly.
- 71 In this instance it must be noted that, although the contested decision was adopted on the basis of a single substantive legal basis falling within the CFSP, that is Article 37 TEU, it is evident from the preamble to that decision that its procedural legal basis is Article 218(5) and (6) TFEU, which governs the procedure for the signing and conclusion of international agreements.
- 72 However, as stated in paragraph 52 of the present judgment, the procedure covered by Article 218 TFEU is of general application and is therefore intended to apply, in principle, to all international agreements negotiated and concluded by the European Union in all fields of its activity, including the CFSP which, unlike other fields, is not subject to any special procedure.
- 73 In those circumstances, it cannot be argued that the scope of the limitation, by way of derogation, on the Court's jurisdiction envisaged in the final sentence of the second subparagraph of Article 24(1) TEU and in Article 275 TFEU goes so far as to preclude the Court from having jurisdiction to interpret and apply a provision such as Article 218 TFEU which does not fall within the CFSP, even though it lays down the procedure on the basis of which an act falling within the CFSP has been adopted.
- 74 The Court therefore has jurisdiction to rule on the second plea.
- 75 Next, as regards the merits of that plea, it must be noted that Article 218(10) TFEU provides that the Parliament 'shall be immediately and fully informed at all stages of the procedure' for negotiating and concluding international agreements envisaged in that article.
- 76 However, it must be held that, in this case, the Parliament was not immediately informed at all stages of the procedure for negotiating and concluding the EU-Mauritius Agreement.
- 77 It is apparent from the file submitted to the Court that, after having announced the opening of negotiations to the Parliament, the Council did not inform it of the adoption of the contested decision and the signing of

that agreement until three months later and 17 days after their publication in the *Official Journal of the European Union*.

- 78 It follows from this that the Council infringed Article 218(10) TFEU.
- 79 That finding is not called into question by the Council's argument that the contested decision had in any event been published in the *Official Journal of the European Union*, and therefore the Parliament had been in a position to take note of it. In fact, such a publication is prescribed in Article 297 TFEU and satisfies the publicity requirements to which an EU act is subject if it is to enter into force, whereas the information requirement arising under Article 218(10) TFEU is prescribed in order to ensure that the Parliament is in a position to exercise democratic scrutiny of the European Union's external action and, more specifically, to verify that its powers are respected precisely in consequence of the choice of legal basis for a decision concluding an agreement.
- 80 Lastly, as regards the consequences of infringement of Article 218(10) TFEU in terms of the validity of the contested decision, it should be noted that the procedural rule laid down in that provision constitutes an essential procedural requirement within the meaning of the second paragraph of Article 263 TFEU and its infringement leads to the nullity of the measure thereby vitiated.
- 81 That rule is an expression of the democratic principles on which the European Union is founded. In particular, the Court has already stated that the Parliament's involvement in the decision-making process is the reflection, at EU level, of the fundamental democratic principle that the people should participate in the exercise of power through the intermediary of a representative assembly (see, to that effect, Case 138/79 *Roquette Frères v Council* EU:C:1980:249, paragraph 33, and *Parliament v Council* EU:C:2012:472, paragraph 81).
- 82 From that point of view, the Treaty of Lisbon has even enhanced the importance of that rule in the treaty system by inserting it in a separate provision that is applicable to all types of procedures envisaged in Article 218 TFEU.
- 83 Admittedly, as noted in paragraph 55 of the present judgment, the role which the Treaty of Lisbon has conferred on the Parliament in relation to the CFSP remains limited.
- 84 Nevertheless, it cannot be inferred from that fact that despite its exclusion from the procedure for negotiating and concluding an agreement relating exclusively to the CFSP, the Parliament has no right of scrutiny in respect of that EU policy.
- 85 On the contrary, it is precisely for that purpose that the information requirement laid down in Article 218(10) TFEU applies to any procedure for concluding an international agreement, including agreements relating exclusively to the CFSP.
- 86 If the Parliament is not immediately and fully informed at all stages of the procedure in accordance with Article 218(10) TFEU, including that preceding the conclusion of the agreement, it is not in a position to exercise the right of scrutiny which the Treaties have conferred on it in relation to the CFSP or, where appropriate, to make known its views as regards, in particular, the correct legal basis for the act concerned. The infringement of that information requirement impinges, in those circumstances, on the Parliament's performance of its duties in relation to the CFSP, and therefore constitutes an infringement of an essential procedural requirement.
- 87 That being the case, the second plea is well founded and the contested decision must accordingly be annulled.

#### **The maintenance of the effects of the contested decision**

- 88 Both the Parliament and the Council, and the majority of the intervening Member States, request that, should the Court annul the contested decision, the effects of that decision be maintained until it is replaced.

- 89 Under the second paragraph of Article 264 TFEU the Court may, if it considers this necessary, state which of the effects of the act which it has declared void are to be considered as definitive.
- 90 It must be acknowledged that annulment of the contested decision without maintenance of its effects would be liable to hamper the conduct of operations carried out on the basis of the EU-Mauritius Agreement and, in particular, the full effectiveness of the prosecutions and trials of suspected pirates arrested by EUNAVFOR.
- 91 Consequently, the Court must exercise the power conferred on it by the second paragraph of Article 264 TFEU and maintain the effects of the contested decision which is annulled by the present judgment.

### **Costs**

- 92 Under Article 138(1) 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. However, under Article 138(3), the parties are to bear their own costs where each party succeeds on some and fails on other heads.
- 93 Since the Parliament and the Council have each been partially unsuccessful in this case, they must be ordered to bear their own costs.
- 94 Under Article 140(1) of the Rules of Procedure, the Member States and institutions which have intervened in the proceedings are to bear their own costs.

On those grounds, the Court (Grand Chamber) hereby

1. **Annuls Council Decision 2011/640/CFSP of 12 July 2011 on the signing and conclusion of the Agreement between the European Union and the Republic of Mauritius on the conditions of transfer of suspected pirates and associated seized property from the European Union-led naval force to the Republic of Mauritius and on the conditions of suspected pirates after transfer;**
2. **Orders that the effects of Decision 2011/640 be maintained in force;**
3. **Orders the European Parliament and the Council of the European Union to bear their own costs;**
4. **Orders the Czech Republic, the French Republic, the Italian Republic, the Kingdom of Sweden, the United Kingdom of Great Britain and Northern Ireland and the European Commission to bear their own costs.**