

## Judgment of the Court of Justice, EP v Council, Case C-42/97 (23 February 1999)

**Caption:** In order to determine whether a dual legal basis is necessary for Community action, the Court of Justice verifies, in Case C-42/97, Parliament v Council, whether culture is an essential component of the contested decision, in the same way as industry, and cannot be dissociated from industry or whether the 'centre of gravity' of the decision is to be found in the industrial aspect of the Community action.

**Source:** CVRIA. Case-law: Numerical access to the case-law. [ON-LINE]. [Luxembourg]: Court of Justice of the European Communities, [19.04.2006]. C-42/97. Available on <http://curia.eu.int/en/content/juris/index.htm>.

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**Judgment of the Court of 23 February 1999 (1)**  
**European Parliament v Council of the European Union**

Case C-42/97

*(Council Decision 96/664/EC - Promotion of linguistic diversity of the Community in the information society - Legal basis)*

In Case C-42/97,

**European Parliament**, represented by Johann Schoo, Head of Division in its Legal Service, and Norbert Lorenz, of its Legal Service, acting as Agents, with an address for service in Luxembourg at its General Secretariat, Kirchberg,

applicant,

v

**Council of the European Union**, represented by Bjarne Hoff-Nielsen, Head of Division in its Legal Service, and Frédéric Anton, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Alessandro Morbilli, Director-General, Legal Directorate, European Investment Bank, 100 Boulevard Konrad Adenauer, Kirchberg,

defendant,

APPLICATION for annulment of Council Decision 96/664/EC of 21 November 1996 on the adoption of a multiannual programme to promote linguistic diversity of the Community in the information society (OJ 1996 L 306, p. 40),

THE COURT,

composed of: P.J.G. Kapteyn, President of the Fourth and Sixth Chambers, acting as President, G. Hirsch and P. Jann (Presidents of Chambers), G.F. Mancini, J.C. Moitinho de Almeida, C. Gulmann, J.L. Murray, L. Sevón (Rapporteur), M. Wathelet, R. Schintgen and K.M. Ioannou, Judges,

Advocate General: A. La Pergola,

Registrar: H. von Holstein, Deputy Registrar,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 17 March 1998,

after hearing the Opinion of the Advocate General at the sitting on 5 May 1998,

gives the following

**Judgment**

1. By application lodged at the Court Registry on 31 January 1997, the European Parliament brought an action under the third paragraph of Article 173 of the EC Treaty for the annulment of Council Decision 96/664/EC of 21 November 1996 on the adoption of a multiannual programme to promote the linguistic diversity of the Community in the information society (OJ 1996 L 306, p. 40, hereinafter 'the contested decision'), on the ground that the legal basis of that decision should have been not only on Article 130 of the

EC Treaty but also Article 128 thereof.

2. Article 128 of the Treaty provides:

'1. The Community shall contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore.

2. Action by the Community shall be aimed at encouraging cooperation between Member States and, if necessary, supporting and supplementing their action in the following areas:

- improvement of the knowledge and dissemination of the culture and history of the European peoples;
- conservation and safeguarding of cultural heritage of European significance;
- non-commercial cultural exchanges;
- artistic and literary creation, including in the audiovisual sector.

...

4. The Community shall take cultural aspects into account in its action under other provisions of this Treaty.

5. In order to contribute to the achievement of the objectives referred to in this Article, the Council:

- acting in accordance with the procedure referred to in Article 189b and after consulting the Committee of the Regions, shall adopt incentive measures, excluding any harmonisation of the laws and regulations of the Member States. The Council shall act unanimously throughout the procedure referred to in Article 189b;
- acting unanimously on a proposal from the Commission, shall adopt recommendations.'

3. Article 130(1) and (3) provide:

'1. The Community and the Member States shall ensure that the conditions necessary for the competitiveness of the Community's industry exist.

For that purpose, in accordance with a system of open and competitive markets, their action shall be aimed at:

- speeding up the adjustment of industry to structural changes;
- encouraging an environment favourable to initiative and to the development of undertakings throughout the Community, particularly small and medium-sized undertakings;
- encouraging an environment favourable to cooperation between undertakings;
- fostering better exploitation of the industrial potential of policies of innovation, research and technological development.

...

3. The Community shall contribute to the achievement of the objectives set out in paragraph 1 through the policies and activities it pursues under other provisions of this Treaty. The Council, acting unanimously on a proposal from the Commission, after consulting the European Parliament and the Economic and Social Committee, may decide on specific measures in support of action taken in the Member States to achieve the objectives set out in paragraph 1.

This Title shall not provide a basis for the introduction by the Community of any measure which could lead to a distortion of competition.'

4. The first three recitals in the preamble to the contested decision are as follows:

'Whereas the advent of the information society provides industry and in particular the language industry with new prospects for communication and trade on European and world markets which are marked by a rich linguistic and cultural diversity;

Whereas industry and all other players concerned must work out specific and adequate solutions to overcome the linguistic barriers if they are to benefit fully from the advantages of the internal market and remain competitive on world markets;

Whereas the private sector in this field consists mainly of small and medium-sized enterprises (SMEs), which face considerable difficulties in addressing different language markets and must thus be supported, especially when their role as a source of employment is considered'.

5. The fourth recital mentions the need to encourage the use of technologies, tools and methods which reduce the cost of transferring information between people.

6. The sixth recital indicates that the emergence of the information society could afford the citizens of Europe greater access to information and offer them an outstanding opportunity for access to the cultural and linguistic wealth and diversity of Europe.

7. The seventh recital states that 'language policies are a matter for the Member States, taking account of Community law; ... however, promoting the development of modern language-processing tools and their use is a field of activity in which Community action is necessary in order to achieve substantial economies of scale and cohesion between the various language areas; ... the measures to be taken at Community level must be commensurate with the objectives to be attained and concern only those fields which are likely to produce an added value for the Community'.

8. The other recitals refer in particular to:

- the need for the Community to take into account the cultural and linguistic aspects of the information society (ninth recital):

- the fact that it is essential to provide citizens with equitable access to information in their own languages (eleventh recital);

- the fact that languages that remain excluded from the information society would run the risk of a more or less rapid marginalisation (twelfth recital).

9. The first paragraph of Article 1 of the contested decision provides:

'A Community programme is hereby adopted, the aims of which shall be:

- to raise awareness of and stimulate provision of multilingual services in the Community, which make use of language technologies, resources and standards,

- to create favourable conditions for the development of the language industries,

- to reduce the cost of information transfer among languages, in particular for the sake of small and medium-sized enterprises,

- to contribute to the promotion of the linguistic diversity of the Community.’

10. Subparagraph (b) of the second paragraph of Article 1 of the Community decision states that 'language industries are defined as companies, institutions and professionals that provide, or enable the provision of, monolingual or multilingual services, in fields such as information retrieval, translation, language engineering and electronic dictionaries.’

11. The first paragraph of Article 2 of the contested decision provides:

'In order to attain the objectives referred to in Article 1, the following actions shall be undertaken in accordance with the action lines contained in Annex I and the procedures for implementing the programme set out in Annex III:

- support for the creation of a framework of services for language resources and encouragement for the associations involved in such a construction,
- encouragement for the use of language technologies, resources and standards and their incorporation into computer applications,
- promotion of the use of advanced language tools in the Community and Member States public sector,
- accompanying measures.’

12. Annex I to the contested decision describes four action lines corresponding to the four indents of the first paragraph of Article 2 thereof.

13. The first action line is entitled 'Support for the creation of a framework of services for language resources and encouragement for the associations involved in such a construction' and its aim is to 'support, for all European languages, the construction of a European infrastructure of multilingual resources and to stimulate the creation of electronic language resources'. It is also stated that '[m]ost of the enterprises operating in this sector are small and medium-sized enterprises, which are often innovative and efficient, but whose financial means are insufficient in view of the level of investments required.’

14. The second action line is entitled 'Encouragement for the use of language technologies, resources and standards and their incorporation into computer applications' and its aim is to 'spur the language industries into action by stimulating technology transfer and demand through a limited number of share-cost demonstration projects which could act as a catalyst in certain key sectors’.

15. The third action line is entitled 'Promotion of the use of advanced language tools in the Community and Member States public sector' and its aim is to 'promote cooperation between administrations in the Member States and the Community institutions in order to reduce the cost of multilingual communication in the European public sector, in particular by centralising advanced language tools’.

16. The fourth action line comprises the accompanying measures, in particular promoting technical standards which meet the linguistic needs of users and organising concertation and coordination between the principal operators involved in developing a multilingual information society.

17. Article 3 of the contested decision provides that the duration of the programme is to be three years as from its adoption and sets the amount of Community financing of the programme at ECU 15 million.

18. Under Article 4 the Commission is to be responsible for the implementation of the programme and its coordination with other Community programmes.

19. Article 6 of the contested decision provides:

1. The Commission shall ensure that actions under this decision are subject to effective prior appraisal, monitoring and subsequent evaluation.

2. During implementation of projects and after their completion, the Commission shall evaluate the manner in which they have been carried out and the impact of their implementation in order to assess whether the original objectives have been achieved.

In so doing, the Commission shall in particular investigate the extent to which the small and medium-sized enterprises target group has benefited from the projects implemented'.

20. According to the documents before the Court, on 8 November 1995 the Commission submitted to the Council a proposal for a Council decision on the adoption of a multiannual programme to promote the linguistic diversity of the Community in the information society (OJ 1996 C 364, p. 5, hereinafter 'the MLIS programme'). That proposal was preceded by a communication entitled 'The multilingual information society'. The proposed legal basis was Article 130(3) of the Treaty.

21. Having been consulted by the Council, the Parliament expressed the view, in its resolution of 21 June 1996 (OJ 1996 C 198, p. 248), that it should have the dual legal basis of Article 128(1) and (2) and Article 130(3). It also proposed numerous amendments, emphasising the cultural aspect of the MLIS programme.

22. Among other things, the Parliament also proposed adding a number of recitals to the preamble to the decision. According to the Parliament's proposal, the first recitals would be worded as follows:

'Whereas maintaining and encouraging European linguistic diversity is an integral part of the conservation and safeguarding of cultural heritage within the meaning of Article 128 of the Treaty;

Whereas in the information society cultural and social aspects hold as much importance as economic interests'.

23. The Parliament also proposed moving the aim 'to promote the linguistic diversity of the Community in the global information society' into the first sentence of Article 1, in other words putting it first.

24. In its amended proposal of 2 October 1996 (OJ 1996 C 364, p. 11), the Commission nevertheless retained Article 130(3) of the Treaty as the sole legal basis of the measure. The reason it gave for rejecting the dual legal basis was that 'the principal objective is to encourage industrial actions to provide multilingual services. This suffices to choose one legal base (130). There are cultural, social aspects or spin-offs, but that should not lead to a double legal base'. It also rejected the amendments relating to change of the legal basis.

25. The Council adopted the contested decision on the basis of Article 130 of the Treaty whereupon the Parliament brought the present action for annulment.

26. The Parliament's action is based on the view that the Community's linguistic wealth forms part of the cultural heritage which the Community is responsible for conserving and safeguarding in accordance with the second indent of Article 128(2) of the Treaty. By seeking 'to promote the linguistic diversity of the Community' the MLIS programme pursues a cultural object and should therefore have been adopted on the basis of Article 128 in addition to the legal basis chosen.

27. More particularly, the Parliament observes that the use of the word 'promotion' in the title of the contested decision shows that it is an incentive measure within the meaning of Article 128(5) of the Treaty, going far beyond the obligation arising from Article 128(4), which merely requires the Community to take cultural aspects into account in its action under other provisions of the Treaty.

28. In analysing the aim of the contested decision, the Parliament draws attention to certain of its recitals, in particular the second, which indicates that its aim is 'to overcome the linguistic barriers', the ninth,

according to which 'the Community should take into account the cultural and linguistic aspects of the information society', and the twelfth, which states that 'languages that remain excluded from the information society would run the risk of a more or less rapid marginalisation'. According to the Parliament, technology, as envisaged in the context of the MLIS programme, is merely the instrument of culture, a means of allowing access to culture.

29. As regards the content of the contested decision, the Parliament states that the third indent of Article 2 thereof concerns the public sector of the Community and of the Member States and infers that such participation by the public sector exceeds the scope of Article 130 of the Treaty, which is concerned solely with promoting the competitiveness of undertakings.

30. The Council contends, on the other hand, on the basis of an analysis of the Commission communication preceding the MLIS programme, that the logic of that programme is above all economic and industrial. The aim, it says, is to reduce undertakings' translation costs whilst at the same time maintaining the linguistic diversity needed to ensure the vitality of Community industry. The benefit of that linguistic diversity accrues to all European citizens but is merely a 'spin-off' of the programme, whose aim is industrial.

31. The Council also analyses the four objectives of the programme, laying stress on the order in which they are set out in Article 1 and on their purely economic and industrial character. As regards, more particularly, the fourth and last objective ('to contribute to the promotion of the linguistic diversity of the Community'), there is in its view nothing to indicate that it is cultural, severable and not incidental. In the context of supporting the language industry, the promotion of linguistic diversity could not have anything other than an economic, industrial or commercial purpose. Even if it were conceded that that purpose was cultural, the fact that it was not incorporated in a separate article and that the amendment classifying as cultural, proposed by the Parliament, was rejected shows that it is not severable. Finally, even if it were conceded that that objective is severable, it is only incidental and does not affect the main object of the programme, as demonstrated by the fact that the Council likewise did not adopt the amendment proposed by the Parliament to the effect that cultural and social aspects should be accorded as much importance as economic interests.

32. Finally, with regard to the content of the contested decision, the Council contends that each of its provisions is directly and exclusively attributable to one or more of the actions referred to in Article 130(1) of the Treaty. With regard in particular to the third action line concerning promotion of the use of advanced language tools in the Community and Member States public sector, it contends that its purpose, in conformity with that provision, is to encourage better exploitation of the industrial potential of innovation, research and technological development and also to foster an environment conducive to the development of Community undertakings. Accordingly, there is nothing to justify recourse to Article 128 as an additional legal basis.

33. According to the Council, the MLIS programme does not extend into the areas referred to in Article 128(2) of the Treaty. The persons directly benefiting from the programme are not cultural figures such as the novelists, playwrights and literary translators mentioned by the Council but are persons engaged in economic or institutional activities. Finally, languages are not a cultural element in the context of the decision. The Parliament's argument is, in its view, misconceived as to its basis and relies on terms taken out of context.

34. If the Court should annul the contested decision, the Council asks that its effects be maintained until a new decision is adopted. The Parliament, on the other hand, asks that its effects should be maintained only as regards any measures adopted on the basis of the contested decision before the date of the judgment in this case. To maintain its future effect would deprive the Court's judgment of its effectiveness and would dissuade the Commission from presenting a new proposal without delay.

### **The merits of the application**

35. In the first place, it must be observed that there is no dispute concerning the fact that the contested decision is based on Article 130 of the Treaty. It is therefore only necessary to consider here whether it

should have been based on Article 128 of the Treaty as well.

36. According to settled case-law, in the context of the organisation of the powers of the Community the choice of the legal basis for a measure must be based on objective factors which are amenable to judicial review. Those factors include in particular the aim and the content of the measure (see, in particular, Case C-271/94 Parliament v Council [1996] ECR I-1689, paragraph 14, and Case C-22/96 Parliament v Council [1998] ECR I-3231, paragraph 23).

37. It must be pointed out that the wording of the title of a measure cannot by itself determine its legal basis and, in this case, that the words 'to promote ... linguistic diversity' appearing in the title of the contested decision cannot be isolated from the measure as a whole and interpreted independently.

38. In order to determine whether the dual legal basis contended for by the Parliament was necessary, it is appropriate to consider whether, according to its aim and content, as they appear from its actual wording, the contested decision is concerned, indissociably, both with industry and with culture (see, to that effect, Case C-300/89 Commission v Council [1991] ECR I-2867, paragraph 13).

39. In that connection, it is not sufficient for the contested decision to pursue a twofold purpose or for an analysis of its content to disclose the existence of a twofold component.

40. If it were apparent from an examination of the decision that its 'industrial' component is identifiable as the main or predominant component, whereas the 'cultural' component is merely incidental, it would follow that the only appropriate legal basis for it was Article 130 of the Treaty.

41. That interpretation conforms with the actual text of Article 128(4) of the Treaty, according to which the Community is to take cultural aspects into account in its action under other provisions of the Treaty.

42. It is clear from that provision that not every description of the cultural aspects of Community action necessarily implies that recourse must be had to Article 128 as the legal basis, where culture does not constitute an essential and indissociable component of the other component on which the action in question is based but is merely incidental or secondary to it.

43. It is important therefore to verify in this case whether culture is an essential component of the contested decision, in the same way as industry, and cannot be dissociated from industry, or whether the 'centre of gravity' of the decision is to be found in the industrial aspect of the Community action.

44. It must first be pointed out that the terms of the contested decision and certain recitals in its preamble clearly show that the beneficiaries for which the MLIS programme is directly intended are undertakings. The first recital mentions the language industries for which the advent of the information society opens up new perspectives, the second recital is concerned with the situation of industry and all other players concerned in the internal market and world markets, whilst the third recital is concerned with the private sector, that is to say essentially small and medium-sized enterprises, which experience difficulties in overcoming language barriers and remaining competitive when seeking business in markets with different languages.

45. The fourth recital, however, is concerned with the transfer of information between people and the sixth with access to information for European citizens. Similarly, the tenth and eleventh recitals make reference to European citizens in connection with the need to ensure that they have equal opportunities to participate in the information society and with the importance of ensuring that they have information available to them in their languages.

46. The general terms of those recitals are not, however, such that citizens can be identified as beneficiaries directly targeted by the programme in the same way as the economic operators described in the first recitals.

47. Citizens are seen as beneficiaries of linguistic diversity in general, in the context of the information society. In contrast, economic operators and, more particularly, small and medium-sized enterprises, are



envisaged as beneficiaries of concrete actions that will be undertaken in accordance with the action lines of the programme provided for by the decision.

48. The conclusion drawn from a reading of those recitals, according to which small and medium-sized enterprises are to be the main beneficiaries of the contested decision, is supported by the text of the second subparagraph of Article 6(2) of the decision which identifies them as the 'target group' of the programme and requires the Commission to investigate the extent to which they have benefited from the projects implemented, no such investigation being called for, however, in relation to European citizens.

49. Next, it is important to observe that whilst certain of the recitals, such as the sixth and the ninth, refer to the cultural aspects of the information society, it is nevertheless clear from their wording that they express findings or wishes of a general nature which do not allow those aspects to be seen, in themselves, as objectives of the programme. The sixth recital, in fact, does not set any objective but notes that the emergence of the information society could afford the citizens of Europe greater access to the cultural and linguistic wealth and diversity of Europe, whilst the ninth recital states that 'the Community should take into account the cultural and linguistic aspects of the information society', and in doing so merely reproduces the content of Article 128(4) of the Treaty.

50. As regards marginalisation of the languages that remain excluded from the information society, mentioned in the twelfth recital, it is not a risk of a specifically cultural nature. Marginalisation of languages may be understood as the loss of an element of cultural heritage, but also as the cause of a difference of treatment between economic operators in the Community, who enjoy greater or lesser advantages depending on whether or not the language they use is widespread.

51. Article 1 of the contested decision also presents the aim of the programme as being of an economic nature. The second and third indents of the first paragraph mention, as aims pursued, the creation of favourable conditions for the development of the language industries and reduction of the cost of information transfer for small and medium-sized enterprises.

52. As regards the aim 'to contribute to the promotion of the linguistic diversity of the Community' mentioned in the last indent of the first paragraph of Article 1, it cannot be seen in isolation but must be looked at in conjunction with the other aims set out in that paragraph.

53. In that connection, it must be stated that it does not express a cultural aim pursued as such but merely one of the aspects of the programme of which the main and predominant characteristic is of an industrial nature. Language in that context is seen not as an element of cultural heritage but rather as an object or instrument of economic activity.

54. It must be emphasised, finally, that the Council rejected the Parliament's proposal that that aim be placed at the beginning of Article 1 of the decision, thus manifesting its wish not to move the 'centre of gravity' of the decision but to maintain the latter's essentially economic and industrial character.

55. As regards the content of the contested decision, it must be pointed out that the actions referred to in Article 2 and the action lines mentioned in Annex I relate to the development of infrastructures, the use of technologies and resources, the reduction of costs through centralisation of the tools available and the promotion of technical standards in linguistic fields.

56. Such actions cannot be regarded as having the direct effect of improving the dissemination of culture, conserving or safeguarding cultural heritage of European significance or encouraging artistic and literary creation within the meaning of Article 128(2) of the Treaty.

57. On the contrary, the main aim of those actions is to ensure that undertakings do not disappear from the market or have their competitiveness undermined by communications costs caused by linguistic diversity.

58. As regards more particularly the action line referred to in the third indent of the first paragraph of Article

2 of the contested decision, namely promotion of the use of advanced language tools in the Community and Member States public sector, it must be observed that, according to the seventeenth recital, it is designed in particular to reduce the cost of developing and using language tools. It is also justified by the 'the catalytic role of the public sector for the quicker, widespread adoption of common standards' and the concern to encourage convergence in the future development of language tools, indicated in point 3 of Annex I to the decision.

59. From a review of those factors it cannot be concluded that that action line is specifically cultural. On the contrary, looked at in conjunction with the other action lines, it must be regarded as one of the elements of a comprehensive programme pursuing above all rationalisation of the development of linguistic tools and the rapid establishment of multilingual infrastructures.

60. Even if an action line of that kind concerns the public sector, it cannot be disputed that it comes predominantly within the objectives laid down in Article 130(1) of the Treaty, whether it be speeding up the adjustment of industry to structural changes, encouraging an environment favourable to initiative and to the development of undertakings throughout the Community or the objective of 'fostering better exploitation of the industrial potential of policies of innovation, research and technological development'.

61. It is clear from the foregoing examination that the object of the programme, namely the promotion of linguistic diversity, is seen as an element of an essentially economic nature and incidentally as a vehicle for or element of culture as such.

62. It is not disputed that the programme will have beneficial effects for the dissemination of cultural works, in particular by improving the tools available for the task of translation. The Council was therefore right to take account of them, in accordance with Article 128(4) of the Treaty, and to mention those effects in a number of recitals in the preamble to the contested decision.

63. They are, however, indirect and incidental effects as compared with the direct effects sought, which are of an economic nature and do not justify basing the decision on Article 128 of the Treaty as well.

64. In conclusion, it is clear from the contested decision as a whole, and particularly from the aims mentioned in its preamble and in Article 1, and from the actions envisaged in Article 2 and Annex I, that it was properly based only on Article 130 of the Treaty.

65. The action must therefore be dismissed.

### **Costs**

66. Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. The Council has asked that the Parliament be ordered to pay the costs. Since the Parliament has been unsuccessful, it must be ordered to pay the costs.

On those grounds,

### **THE COURT**

hereby:

- 1. Dismisses the application;**
- 2. Orders the Parliament to pay the costs.**

Kapteyn

Hirsch  
Jann  
Mancini  
Moitinho de Almeida  
Gulmann  
Murray  
Sevón  
Wathelet  
Schintgen  
Ioannou

Delivered in open court in Luxembourg on 23 February 1999.

Registrar  
R. Grass

President  
G.C. Rodríguez Iglesias

(1) Language of the case: French.