



Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

17 March 2016*

(Action for annulment — Article 290 TFEU — Concepts of ‘amending’ and ‘supplementing’ — Regulation (EU) No 1316/2013 — Article 21(3) — Scope of the power conferred on the European Commission — Need to adopt a separate legislative act — Delegated Regulation (EU) No 275/2014)

In Case C-286/14,

ACTION for annulment under Article 263 TFEU, brought on 11 June 2014,

European Parliament, represented by L.G. Knudsen, A. Troupiotis and M. Menegatti, acting as Agents,

applicant,

supported by:

Council of the European Union, represented by K. Michoel and Z. Kupčová, acting as Agents,

intervener,

v

European Commission, represented by B. Martenczuk, M. Konstantinidis and J. Hottiaux, acting as Agents,

defendant,

THE COURT (Fifth Chamber),

composed of T. von Danwitz (Rapporteur), President of the Fourth Chamber, acting as President of the Fifth Chamber, D. Šváby, A. Rosas, E. Juhász and C. Vajda, Judges,

Advocate General: N. Jääskinen,

Registrar: V. Tourrès, Administrator,

having regard to the written procedure and further to the hearing on 9 July 2015,

after hearing the Opinion of the Advocate General at the sitting on 1 October 2015,

gives the following

* Language of the case: French.

Judgment

- 1 By its application, the European Parliament seeks the annulment of Commission Delegated Regulation (EU) No 275/2014 of 7 January 2014 amending Annex I to Regulation (EU) No 1316/2013 of the European Parliament and of the Council establishing the Connecting Europe Facility (OJ 2014 L 80, p. 1) ('the contested regulation').

Legal context

Regulation (EU) No 1316/2013

- 2 Regulation (EU) No 1316/2013 of the European Parliament and of the Council of 11 December 2013 establishing the Connecting Europe Facility, amending Regulation (EU) No 913/2010 and repealing Regulations (EC) No 680/2007 and (EC) No 67/2010 (OJ 2013 L 348, p. 129) establishes, according to Article 1 thereof, the Connecting Europe Facility ('CEF'), which determines the conditions, methods and procedures for providing EU financial assistance to trans-European networks in order to support projects of common interest in the sectors of transport, telecommunications and energy infrastructures and to exploit potential synergies between those sectors. It also establishes the breakdown of the resources to be made available under the multiannual financial framework for the years 2014-2020.

- 3 Recital 59 of Regulation No 1316/2013 reads:

'... As for transport, in order to take into account possible changes in political priorities and technological capabilities, as well as traffic flows, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union (TFEU) should be delegated to the Commission in respect of adopting amendments to Part I of Annex I and detailing the funding priorities for eligible actions under Article 7(2) to be reflected in the work programmes.'

- 4 Article 17(1) of that regulation provides as follows:

'The Commission shall adopt, by means of implementing acts, multiannual and annual work programmes for each of the transport, telecommunications and energy sectors. The Commission may also adopt multiannual and annual work programmes that cover more than one sector. ...'

- 5 Article 21(1) to (3), (5) and (6) of that regulation provides for adoption by the Commission of delegated acts as follows:

'1. Subject to the approval of the [Member State concerned] as provided for in the second paragraph of Article 172 TFEU, the Commission shall be empowered to adopt delegated acts in accordance with Article 26 of this Regulation concerning the modification of Part I of Annex I to this Regulation, to take account of changing financing priorities in the trans-European networks and of changes relating to projects of common interest identified in Regulation (EU) No 1315/2013. ...

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 26 of this Regulation to modify the main terms, conditions and procedures laid down in Part III of Annex I to this Regulation governing the Union contribution to each financial instrument established under the Debt Framework or Equity Framework laid down in Part III of Annex I to this Regulation in accordance with the results of the interim report and the independent full-scale evaluation of the pilot phase of the Europe 2020 Project Bond Initiative established under Decision No 1639/2006/EC and Regulation (EC) No 680/2007, and in order to take into account changing market conditions with a view to optimising the design and implementation of the financial instruments under this Regulation.

...

3. In the transport sector, and within the general objectives set out in Article 3 and the specific sectoral objectives referred to in Article 4(2), the Commission shall be empowered to adopt delegated acts in accordance with Article 26 detailing the funding priorities to be reflected in the work programmes referred to in Article 17 for the duration of the CEF for eligible actions under Article 7(2). The Commission shall adopt a delegated act by 22 December 2014.

...

5. Where it proves necessary to deviate from the allocation for a specific transport objective by more than five percentage points, the Commission shall be empowered to adopt delegated acts in accordance with Article 26 to amend the indicative percentages set out in Part IV of Annex I.

6. The Commission shall be empowered to adopt delegated acts in accordance with Article 26 to modify the list of general orientations in Part V of Annex I to be taken into account when setting award criteria in order to reflect the mid-term evaluation of this Regulation or conclusions drawn from its implementation. This shall be done in a manner compatible with the respective sectoral guidelines.'

6 Article 26 of Regulation No 1316/2013 states:

'1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Article 21 shall be conferred on the Commission from 1 January 2014 to 31 December 2020.

3. The delegation of power referred to in Article 21 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Article 21 shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.'

7 Part I of Annex I to Regulation No 1316/2013 is entitled 'List of pre-identified projects on the core network in the transport sector'. Part III of that annex concerns the terms, conditions and procedures of the financial instruments under the CEF. Part IV of that annex sets out indicative percentages for each specific transport objective, while Part V consists of a list of general orientations to be taken into account when setting award criteria.

The contested regulation

8 Recital 1 of the contested regulation states as follows:

‘Pursuant to Article 21(3) of Regulation (EU) No 1316/2013, within the first year after the entry into force of that Regulation, the Commission is empowered to adopt delegated acts detailing the transport funding priorities to be reflected in the work programmes for the duration of the CEF for eligible actions under Article 7(2). It is therefore necessary that the delegated act detailing the transport funding priorities is adopted before the adoption of the work programmes.’

9 Article 1 of the contested regulation provides as follows:

‘The text set out in the Annex to this Regulation is added as Part VI of Annex I to Regulation (EU) No 1316/2013.’

10 Part VI is entitled ‘Transport funding priorities for the purpose of the multiannual and annual work programmes’.

Forms of order sought and procedure before the Court

11 The Parliament claims that the Court should:

- annul the contested regulation; and
- order the Commission to pay the costs;

12 The Commission contends that the Court should:

- dismiss the action as inadmissible;
- in the alternative, dismiss the action as unfounded;
- rule that the effects of the contested regulation are considered to be definitive; and
- order the Parliament to pay the costs.

13 By decision of the President of the Court of 22 October 2014, the Council was given leave to intervene in support of the form of order sought by the Parliament.

The action

14 The Parliament raises a single plea in law, alleging, in essence, that the Commission exceeded the power conferred on it by Article 21(3) of Regulation No 1316/2013 in so far as it, by Article 1 of the contested regulation, added a Part VI to Annex I to Regulation No 1316/2013 instead of adopting a separate delegated act.

Admissibility

Arguments of the parties

- 15 The Commission claims that the action is inadmissible on the ground that it relates to legislative methodology and to the form chosen by the Commission in order to exercise the delegated power conferred on it and therefore relates to a non-essential procedural defect which cannot entail annulment of the contested regulation.
- 16 By contrast, the Parliament contends that the action is admissible.

Findings of the Court

- 17 In reviewing the legality of acts under Article 263 TFEU, the Court of Justice and the General Court of the European Union have jurisdiction in actions brought on grounds of lack of competence, infringement of an essential procedural requirement, infringement of the Treaty on the Functioning of the European Union or of any rule of law relating to its application, or of misuse of powers (judgments in *Frucona Košice v Commission*, C-73/11 P, EU:C:2013:32, paragraph 89, and in *Portugal v Commission*, C-246/11 P, EU:C:2013:118, paragraph 85).
- 18 Contrary to the Commission's submission, the issue of the infringement of Article 21(3) of Regulation No 1316/2013 raised by the Parliament concerns the scope of the empowerment given to the Commission to adopt delegated acts on the basis of that provision and is for that reason a substantive issue. The action is therefore admissible.

Substance

Arguments of the parties

- 19 The Parliament claims that Article 290(1) TFEU introduces a clear distinction between the power to amend a legislative act and the power to supplement such an act. By using the verb 'to amend', the authors of the Treaty on the Functioning of the European Union, it argues, intended to cover situations in which the Commission is empowered formally to amend a legislative act. The delegated power to 'amend' therefore concerns deletions, replacements and changes to such an act, either in one of the articles of that act or in an annex. By contrast, the verb 'to supplement' refers to the addition of new rules. Accordingly, a delegated act supplementing a legislative act remains a separate act which does not formally amend that act. That position is confirmed by the Communication from the Commission to the European Parliament and the Council of 9 December 2009 on the implementation of Article 290 TFEU [COM(2009) 673 final] and the Guidelines for the services of the Commission of 24 June 2011 on delegated acts [SEC(2011) 855] ('the guidelines on delegated acts').
- 20 Article 21(3) of Regulation No 1316/2013, according to the Parliament, confers on the Commission the power to supplement that regulation. The legislature deemed it appropriate to allow the Commission to supplement the normative framework defined in terms of legislation with measures detailing funding priorities. Several other provisions of that regulation expressly confer on the Commission the power to amend it. The explanatory memorandum to the contested regulation and the Communication from the Commission of 7 January 2014, entitled 'Building the Transport Core Network: Core Network Corridors and Connecting Europe Facility' [SWD(2013) 542 final] also indicate that the contested regulation supplements Regulation No 1316/2013.

- 21 The Parliament submits, moreover, that the contested regulation infringes the normative framework defined by Regulation No 1316/2013, in so far as it does not provide details concerning the funding priorities in a separate act, as Regulation No 1316/2013 requires. Regulation No 1316/2013 distinguishes between the provisions laid down by the legislature itself, delegated acts and the implementing measures that the Commission is empowered to adopt. Article 21(3) of that regulation delegates to the Commission the power to set funding priorities within the general objectives and specific sectoral objectives set out in that regulation. Furthermore, that article provides that priorities fixed in that way are to be reflected in the work programmes adopted by the Commission in the form of implementing acts. The Parliament maintains that it follows that the legislature has decided to introduce an ‘intermediate step’ between determining the essential elements of the CEF funding programme at the level of that regulation and the specific implementation of that programme by implementing acts.
- 22 Finally, the Parliament claims that the contested regulation affects the flexibility required by Regulation No 1316/2013. Since the content of the contested regulation was incorporated in Regulation No 1316/2013, the Commission is not empowered to amend it in future in order to take account of developments associated with the factors referred to in recital 59 of that regulation.
- 23 The Commission contends that the difference between ‘supplementing’ and ‘amending’ a legislative act, within the meaning of Article 290(1) TFEU, is not relevant in the present case, given that the present case does not concern the interpretation of Article 290(1) TFEU but solely that of Article 21(3) of Regulation No 1316/2013. That provision does not include the words ‘amend’ or ‘supplement’ used in Article 290(1) TFEU but simply authorises the Commission to ‘detail’ funding priorities. In the light of the legislature’s choice, the word ‘detail’ should be interpreted in the context of that regulation, without it being possible to rely on preconceived notions such as those put forward by the Parliament.
- 24 The Commission maintains that Article 21(3) of Regulation No 1316/2013 does not specify the way in which the Commission must detail funding priorities. Accordingly, that article does not preclude the addition of a new part in Annex I to that regulation, with no change to the substance of that regulation.
- 25 In the Commission’s view, the Parliament’s counter-argument to the effect that several other provisions of Regulation No 1316/2013 expressly confer on the Commission the power to amend that regulation cannot succeed. Unlike those other provisions, Article 21(3) of Regulation No 1316/2013 does not authorise the Commission to amend the provisions of that regulation. By adopting the contested regulation, the Commission complied fully with that restriction, given that the contested regulation does not amend the provisions of Regulation No 1316/2013 and merely details funding priorities by adding them to Annex I to that regulation.
- 26 By adopting the contested regulation, the Commission complied fully with the ‘intermediate stage’ introduced by the legislature between the legislative act and the implementation of the programme, referred to by the Parliament. The Parliament’s concern that that regulation affects the flexibility required by Regulation No 1316/2013 is unjustified, since, by allowing the Commission to detail funding priorities by a delegated act, Article 21(3) of that regulation also allows the Commission, if necessary, to amend the delegated act adopted.
- 27 In reply to questions put by the Court at the hearing, the Commission maintained, in essence, that the delegated power to ‘detail’ funding priorities, laid down in Article 21(3) of Regulation No 1316/2013, should not be understood as a third, independent category of delegated powers compared with the categories of delegated powers provided for in Article 290(1) TFEU, namely the powers to ‘amend’ or ‘supplement’ the legislative act. Only two categories of delegated powers are laid down in that article. However, according to the Commission, by conferring on it a power to ‘detail’ funding priorities, Article 21(3) of that regulation allows it discretion as to the legislative technique.

Findings of the Court

- 28 Article 21(3) of Regulation No 1316/2013 empowers the Commission to adopt delegated acts ‘detailing’ funding priorities to be reflected in the work programmes referring to in Article 17 of that regulation.
- 29 The Parliament submits, in essence, that the Commission exceeded the scope of that empowerment in so far as, by Article 1 of the contested regulation, it added a Part VI to Annex I to Regulation No 1316/2013 instead of adopting a separate delegated act.
- 30 In that regard, it is necessary, in the first place, to observe that, according to the case-law of the Court, it is clear from Article 290(1) TFEU that a legislative act may delegate to the Commission the power to adopt non-legislative acts of general scope which supplement or amend certain non-essential elements of the legislative act. In accordance with the second subparagraph of that provision, the objectives, content, scope and duration of the delegation of power must be explicitly defined in the legislative act granting such a delegation. That requirement implies that the purpose of granting a delegated power is to achieve the adoption of rules coming within the regulatory framework as defined by the basic legislative act (judgments in *Commission v Parliament and Council*, C-427/12, EU:C:2014:170, paragraph 38, and in *Commission v Parliament and Council*, C-88/14, EU:C:2015:499, paragraph 29).
- 31 Furthermore, it should be noted that the first subparagraph of Article 290(2) provides that legislative acts must explicitly lay down the conditions to which the delegation is subject. In accordance with that provision, those conditions may provide for the possibility of the European Parliament or the Council revoking the delegation or stipulating that the delegated act may enter into force only if, within the period set by the legislative act, the European Parliament or the Council have not expressed any objections.
- 32 Article 290(1) TFEU provides for two categories of delegated powers, namely the powers to ‘supplement’ and to ‘amend’ the legislative act. By contrast, the possibility of ‘detailing’ certain non-essential elements of such an act is not provided for in that article.
- 33 Contrary to the impression that the written observations submitted by the Commission may give, by empowering the Commission to ‘detail’ funding priorities, Article 21(3) of Regulation No 1316/2013 refers, not to an independent category of delegated powers falling outside the scope of Article 290(1) TFEU, but to a delegated power within the meaning of that article.
- 34 It is apparent, *inter alia*, from the context of Article 21(3) of that regulation that the empowerment laid down by that provision concerns one of the categories of delegated powers laid down in Article 290 TFEU.
- 35 In that regard, it must be noted, first, that Article 21(3) of Regulation No 1316/2013 refers to Article 26 of that regulation, which, in turn, aims to ensure compliance with the requirements laid down in Article 290(1) and (2) TFEU, by determining, in paragraph 2 thereof, the duration of the delegation of power and by specifying, in paragraphs 3 and 5, that the delegation of power referred to in Article 21 may be revoked at any time by the Parliament or by the Council, and that a delegated act adopted pursuant to that article is to enter into force only if no objection has been expressed by those institutions within a period of two months of notification of that act.
- 36 Secondly, Article 21(2), (5) and (6) of Regulation No 1316/2013, which confers on the Commission delegated powers to ‘amend’ certain elements of that regulation within the meaning of Article 290 TFEU, also refers to Article 26 of that regulation.

- 37 It would be contradictory to take the view that, while Article 21(2), (5), and (6) of Regulation No 1316/2013 as well as Article 21(3) refer to Article 26 of that regulation, Article 26 applies, pursuant to Article 290 TFEU, only in respect of the delegated powers referred to in Article 21(2), (5), and (6) of that regulation.
- 38 Moreover, at the hearing, the Commission acknowledged that the empowerment provided for in Article 21(3) of that regulation ought to be regarded as conferring a delegated power within the meaning of Article 290(1) TFEU.
- 39 In the second place, it is necessary to examine whether the empowerment to ‘detail’ funding priorities, laid down in Article 21(3) of Regulation No 1316/2013, must be understood as conferring a delegated power to ‘amend’ that regulation or as conferring a delegated power to ‘supplement’ it, within the meaning of Article 290(1) TFEU, or as allowing the Commission to choose to exercise either of those powers as it sees fit.
- 40 In that regard, it follows from the wording ‘to supplement or amend’ that the two categories of delegated powers laid down in Article 290(1) TFEU are clearly distinguished.
- 41 The delegation of a power to ‘supplement’ a legislative act is meant only to authorise the Commission to flesh out that act. Where the Commission exercises that power, its authority is limited, in compliance with the entirety of the legislative act, adopted by the legislature, to development in detail of non-essential elements of the legislation in question that the legislature has not specified.
- 42 By contrast, the delegation of a power to ‘amend’ a legislative act aims to authorise the Commission to modify or repeal non-essential elements laid down by the legislature in that act. In cases where the Commission exercises that power, it is not required to act in compliance with the elements that the authority conferred on it aims precisely to ‘amend’.
- 43 That interpretation is supported, first, by the origins of Article 290 TFEU, which may provide information relevant to the interpretation of a provision of the FEU Treaty (see, to that effect, judgment in *Inuit Tapiriit Kanatami and Others v Parliament and Council*, C-583/11 P, EU:C:2013:625, paragraph 50) and, secondly, as the European Parliament noted, by the explanations provided by the Commission in its guidelines on delegated acts, which, while they cannot bind the Court, may constitute a useful source of guidance (see, by analogy, judgments in *Italy v Commission*, C-310/99, EU:C:2002:143, paragraph 52, and in *T-Mobile Czech Republic and Vodafone Czech Republic*, C-508/14, EU:C:2015:657, paragraph 42).
- 44 As regards the origins of Article 290 TFEU, it must be noted that that article reproduced, in essence, the content of Article I-36 of the draft Treaty establishing a Constitution for Europe (OJ 2004 C 310, p. 1). It is clear from the *travaux préparatoires* relating to that latter provision, and more specifically from page 9 of the final report of Working Group IX on ‘Simplification’ of the European Convention of 29 November 2002 (CONV 424/02), that delegated acts were there defined as acts which ‘would flesh out the detail or amend certain elements of a legislative act’.
- 45 As regards the guidelines on delegated acts, the Commission explains, in point 40 thereof, that, where the legislature confers a power to supplement a legislative act on the Commission, it decides not to legislate comprehensively and merely establishes the essential elements, while leaving it to the Commission to ‘flesh out’ those elements. By contrast, paragraph 34 of those guidelines, in the context of the exercise of the power to amend a legislative act, states that the Commission is to make formal changes to a text by adding new non-essential elements or by replacing or deleting such elements.

- 46 The differences established in the preceding paragraphs between the two categories of delegated powers referred to in Article 290(1) TFEU preclude the Commission from being granted the power to determine the nature of the delegated power conferred on it. Under those conditions, and in order to ensure the transparency of the legislative process, that provision requires the legislature to determine the nature of the delegation that it intends to confer on the Commission.
- 47 As regards the delegation conferred on the Commission in Article 21(3) of Regulation No 1316/2013, it must be observed that, by empowering the Commission to adopt delegated acts ‘detailing’ funding priorities, that provision authorises the Commission to ‘supplement’ that regulation, within the meaning of Article 290 TFEU.
- 48 In Parts I and III to V of Annex I to that regulation, the legislature itself sets out a list of pre-identified projects on the core network in the transport sector, terms, conditions and procedures of financial instruments under the CEF, indicative percentages for specific transport objectives and a list of general orientations to be taken into account when setting award criteria, while expressly empowering the Commission, in Article 21(1), (2), (5) and (6) of that regulation to ‘amend’ those elements.
- 49 Unlike those elements, the funding priorities to be included in the work programmes referred to in Article 17 of Regulation No 1316/2013 were not laid down by the legislature itself in that regulation. By leaving that question open in that regulation, the legislature conferred on the Commission the task of ‘detailing’ those priorities in a delegated act which, in accordance with Article 21(3) of that regulation, was to be adopted by 22 December 2014 at the latest.
- 50 Thus, by empowering the Commission to ‘detail’ the funding priorities to be included in the work programmes referred to in Article 17 of Regulation No 1316/2013, Article 21(3) of that regulation authorises it not to amend elements already set out in that regulation, but to flesh out that regulation by developing details that were not defined by the legislature, while remaining obliged to comply with the provisions laid down by that regulation as a whole.
- 51 That interpretation is confirmed by recital 59 of Regulation No 1316/2013, which draws a clear distinction between the power to ‘amend’ and the power to ‘detail’ certain elements of that regulation, by stating that the Commission has the power to adopt acts in accordance with Article 290 TFEU, in respect of adopting amendments to Part I of Annex I to that regulation and detailing the funding priorities for eligible actions under Article 7(2) of that regulation to be reflected in the work programmes.
- 52 In the third place, it is necessary to examine whether the exercise of the empowerment provided for in Article 21(3) of Regulation No 1316/2013 requires the adoption of an act separate from that regulation.
- 53 In that regard, it is important to note, first, that, for reasons of regulatory clarity and transparency of the legislative process, the Commission may not, in the context of the exercise of a power to ‘supplement’ a legislative act, add an element to the actual text of that act. Such an incorporation would be liable to create confusion as to the legal basis of that element, given that the actual text of a legislative act contains an element arising from the exercise, by the Commission, of a delegated power which does not entitle it to amend or repeal that act.
- 54 Secondly, it must be recalled that the possibility of delegating powers provided for in Article 290 TFEU aims to enable the legislature to focus on the essential elements of a piece of legislation and on the non-essential elements in respect of which it deems it appropriate to legislate, while entrusting the Commission with the task of ‘supplementing’ certain non-essential elements of the legislative act adopted or ‘amending’ such elements in the context of a delegation conferred on it.

- 55 An element adopted by the Commission in the exercise of its power to ‘supplement’ a legislative act, but which forms an integral part of that act, may not, consequently, be replaced or deleted under that power which led to its adoption, since such interventions require a power to ‘amend’ that act. It is therefore for the legislature to intervene where it becomes necessary to replace or delete the element added, either by itself establishing a legislative act or by conferring on the Commission a delegated power to ‘amend’ the act in question. Accordingly, the inclusion, in the context of the exercise of a power to supplement a legislative act, of an element in the actual text of that act would be contrary to the effective application of such a power.
- 56 By contrast, when the Commission ‘supplements’ a legislative act by adopting a separate act, it may, in so far as necessary, amend that act without being required to amend the legislative act itself.
- 57 It follows that the exercise of a delegated power to ‘supplement’ a legislative act within the meaning of Article 290 TFEU requires that the Commission adopt a separate act.
- 58 That finding is, moreover, supported by paragraphs 34 and 40 of the guidelines on delegated acts, to the effect that an act ‘supplementing’ a legislative act takes the form of an act separate from the legislative act and does not formally amend it.
- 59 As stated in paragraph 47 of the present judgment, by empowering the Commission to adopt delegated acts ‘detailing’ the funding priorities to be included in the work programmes referred to in Article 17 of Regulation No 1316/2013, Article 21(3) of that regulation authorises the Commission to ‘supplement’ that regulation, within the meaning of Article 290 TFEU. Consequently, when exercising the power provided for in Article 21(3), the Commission was required to adopt an act separate from that regulation. By adding, by means of Article 1 of the contested regulation, a Part VI to Annex I to Regulation No 1316/2013, the Commission infringed that obligation, thereby failing to have regard to the difference between the two categories of delegated powers provided for in Article 290(1) TFEU.
- 60 That failure is apparent, moreover, from the title of the contested regulation, in which the Commission describes that regulation as ‘amending’ Annex I to Regulation No 1316/2013, whereas the power to ‘detail’ funding priorities, provided for in Article 21(3) of Regulation No 1316/2013, must be regarded as conferring a delegated power to ‘supplement’ the legislative act, within the meaning of Article 290(1) TFEU.
- 61 Consequently, the Commission infringed Article 21(3) of Regulation No 1316/2013. Such an infringement of the rules of competence laid down in Article 290 TFEU entails annulment of the contested regulation.
- 62 In the fourth place, as regards the matter referred to in paragraph 18 of the present judgment and in so far as the Commission disputes that that infringement entails the annulment of the contested regulation, it must be borne in mind that, in so far as it adds the list of funding priorities which appear in the annex to the contested regulation to Regulation No 1316/2013 as Part VI of Annex I to that regulation, Article 1 of the contested regulation henceforth prevents the Commission from amending that list, since Article 21(3) of Regulation No 1316/2013 does not allow the Commission to ‘amend’ that regulation.
- 63 Under those circumstances, the failure to comply with the obligation to adopt a separate act entails the annulment of the contested regulation, all the more since recital 59 of Regulation No 1316/2013 provides that the power to detail funding priorities was conferred on the Commission ‘in order to take into account possible changes in political priorities and technological capabilities, as well as traffic flows’.
- 64 In the light of all of the foregoing considerations, the single plea in law raised by the Parliament must be upheld and, therefore, the contested regulation must be annulled.

The application for the effects of the contested regulation to be maintained

- 65 The Commission requests the Court, in the event that it annuls the contested regulation, to maintain the effects of that regulation until it is replaced by a new act. The Parliament considers that it would be useful to maintain those effects.
- 66 It must be borne in mind that, under the second paragraph of Article 264 TFEU, the Court may, if it considers it necessary to do so, state which of the effects of an act that it has declared void are to be considered as definitive.
- 67 The Court has held in this regard that, on grounds of legal certainty, the effects of such an act may be maintained, in particular where the immediate effects of its annulment would give rise to serious negative consequences for the persons concerned and where the lawfulness of the act in question is contested, not because of its aim or content, but on grounds of lack of competence or infringement of an essential procedural requirement (judgment in *Parliament and Commission v Council*, C-103/12 and C-165/12, EU:C:2014:2400, paragraph 90 and the case-law cited).
- 68 In the present case, the contested regulation serves as a legal basis for the work programmes referred to in Article 17 of Regulation No 1316/2013, which, in turn, serve as the basis for calls for proposals for projects of common interest financed by the CEF.
- 69 As the Commission states, simple annulment of the contested regulation would affect both the annual and multiannual work programmes based on that regulation and the calls for proposals for the selection of projects of common interest initiated on the basis of those programmes, which, in turn, would be automatically invalidated. Such invalidation would compromise the implementation of the CEF to the significant detriment of all relevant stakeholders.
- 70 In those circumstances, there are significant grounds of legal certainty justifying the grant by the Court of the request that the effects of the contested regulation be maintained.
- 71 Consequently, the effects of that regulation must be maintained until the entry into force, within a reasonable period, which cannot exceed six months from the date of delivery of the present judgment, of a new act intended to replace it.

Costs

- 72 Under Article 138(1) of the Rules of Procedure of the Court of Justice, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Parliament has applied for costs and the Commission has been unsuccessful, the latter must be ordered to pay the costs. In accordance with Article 140(1) of the Rules of Procedure, the Council is to bear its own costs.

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

- 1. Annuls Commission Delegated Regulation (EU) No 275/2014 of 7 January 2014 amending Annex I to Regulation (EU) No 1316/2013 of the European Parliament and of the Council establishing the Connecting Europe Facility;**
- 2. Orders that the effects of Delegated Regulation No 275/2014 be maintained until the entry into force, with a reasonable period, which may not exceed six months from the date of delivery of the present judgment, of a new act intended to replace it;**
- 3. Orders the European Commission to pay the costs;**

4. Orders the Council of the European Union to bear its own costs.

[Signatures]