

JUDGMENT OF THE COURT

3 December 1996

In Case C-268/94,

**Portuguese Republic**, represented by Professor Joao Mota de Campos, Luis Fernandes, Director of the Legal Service of the European [Union] Directorate-General in the Ministry of Foreign Affairs, and Maria Luisa Duarte, Legal Adviser in the same service, acting as Agents, with an address for service in Luxembourg at the Portuguese Embassy, 33 Allee Scheffer,

applicant,

supported by

**Hellenic Republic**, represented by Aikaterini Samoni-Rantou, Assistant Special Legal Adviser in the [Union] Legal Service of the Ministry of Foreign Affairs, and Georgios Karipsiadis, Special Adviser in the same Service, acting as Agents, with an address for service in Luxembourg at the Greek Embassy, 117 Val Sainte Croix,

intervener,

v

**Council of the European Union**, represented by Jorge Monteiro and Antonio Tanca, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Bruno Eynard, Director of the Legal Affairs Directorate of the European Investment Bank, 100 Boulevard Konrad Adenauer,

defendant,

supported by

**Kingdom of Denmark**, represented by Peter Biering, Legal Adviser in the Ministry of Foreign Affairs, acting as Agent, with an address for service in Luxembourg at the Danish Embassy, 4 Boulevard Royal,

by

**United Kingdom of Great Britain and Northern Ireland**, represented by Lindsey Nicholl, of the Treasury Solicitor's Department, acting as Agent, with an address for service in Luxembourg at the British Embassy, 14 Boulevard Roosevelt,

and by

**Commission of the European [Union]**, represented by Claire Bury and Ana Maria Vieira, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Carlos Gomez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

interveners,

APPLICATION for annulment of Council Decision 94/578/EC of 18 July 1994 concerning the conclusion of the Cooperation Agreement between the European [Union] and the Republic of India on Partnership and Development (OJ 1994 L 223, p. 23),

THE COURT,

composed of: G. C. Rodriguez Iglesias, President, G. F. Mancini, J. C. Moitinho de Almeida, J. L. Murray and L. Sevón (Rapporteur) (Presidents of Chambers), C. N. Kakouris, P. J. G. Kapteyn, C. Gulmann, D. A. O. Edward, J.-P. Puissochet, G. Hirsch, P. Jann and M. Wathelet, 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 5 March 1996 at which the Portuguese Republic was represented by Professor Joao Mota de Campos and Luis Fernandes, the Hellenic Republic by Aikaterini Samoni-Rantou and Georgios Karipsiadis, the Council by Ramon Torrent, Director of its Legal Service, acting as Agent, Antonio Tanca, and Isabel Lopes-Cardoso, of its Legal Service, acting as Agent, the Kingdom of Denmark by Peter Biering and the Commission by Claire Bury and Ana Maria Alves Vieira,

after hearing the Opinion of the Advocate General at the sitting on 23 May 1996,

gives the following

## Judgment

- 1 By application lodged at the Court Registry on 26 September 1994 the Portuguese Republic brought an action under [Article 263 TFEU] for annulment of Council Decision 94/578/EC of 18 July 1994 concerning the conclusion of the Cooperation Agreement between the European [Union] and the Republic of India on Partnership and Development (OJ 1994 L 223, p. 23, 'the contested decision').
- 2 The contested decision is based on [Article 207 TFEU] and [Articles 209(2) and 211 TFEU] in conjunction with [Article 218(8) TFEU] and [indent (b) of the second paragraph of Article 218(6) TFEU].
- 3 The contested decision was adopted by the Council, acting by a qualified majority and after consulting the European Parliament. At the meeting in the course of which that decision was adopted, the Portuguese Republic, in a statement recorded in the minutes, expressed its disagreement as regards the choice of legal basis.
- 4 The Cooperation Agreement between the European [Union] and the Republic of India on Partnership and Development ('the Agreement') entered into force on 1 August 1994 (OJ 1994 L 223, p. 35).
- 5 Article 1(1) of the Agreement provides: 'Respect for human rights and democratic principles is the basis for the cooperation between the Contracting Parties and for the provisions of this Agreement, and it constitutes an essential element of the Agreement.'
- 6 According to Article 1(2), first subparagraph, 'The principal objective of this

Agreement is to enhance and develop, through dialogue and partnership, the various aspects of cooperation between the Contracting Parties in order to achieve a closer and upgraded relationship.' The second subparagraph sets out the points on which such cooperation is centred.

- 7 Article 2 of the Agreement provides that the [Union] and India are to grant each other most-favoured nation treatment in their trade.
- 8 Article 3 of the Agreement contains provisions concerning trade and commercial cooperation and Article 4 relates to economic cooperation.
- 9 Articles 5 to 19 of the Agreement set out the other fields of cooperation including those concerning energy (Article 7), intellectual property (Article 10), tourism (Article 13), information and culture (Article 15) and the control of drug abuse (Article 19), which provide as follows:

#### 'Article 7 Energy

The Contracting Parties recognize the importance of the energy sector to economic and social development and undertake to step up cooperation relating particularly to the generation, saving and efficient use of energy. Such improved cooperation will include planning concerning energy, non-conventional energy including solar energy and the consideration of its environmental implications.'

#### 'Article 10 Intellectual property

The Contracting Parties undertake to ensure as far as their laws, regulations and policies allow that suitable and effective protection is provided for

intellectual property rights, including patents, trade or service marks, copy right and similar rights, geographical designations (including marks of origin), industrial designs and integrated circuit topographies, reinforcing this protection where desirable. They also undertake, wherever possible, to facilitate access to the data bases of intellectual property organizations.'

#### 'Article 13 Tourism

The Contracting Parties agree to contribute to cooperation on tourism, to be achieved through specific measures, including:

- (a) interchange of information and the carrying out of studies;
- (b) training programmes;
- (c) promotion of investment and joint ventures.'

#### 'Article 15 Information and culture

The Contracting Parties will cooperate in the fields of information and culture, both to create better mutual understanding and culture and to strengthen cultural ties between the two regions. Such cooperation may include:

- (a) exchange of information on matters of cultural interest;
- (b) preparatory studies and technical assistance in the preservation of

cultural heritage;

(c) cooperation in the field of media and audio-visual documentation;

(d) organizing cultural events and exchanges.'

'Article 19 Drug abuse control

(1) The Contracting Parties affirm their resolve, in conformity with their respective competences, to increase the efficiency of policies and measures, to counter the supply and distribution of narcotic and psychotropic substances as well as preventing and reducing drug abuse, taking into account work done in this connection by international bodies.

(2) Cooperation between the Parties shall comprise the following:

(a) training, education, health promotion and rehabilitation of addicts, including projects for the reintegration of addicts into work and social environments;

(b) measures to encourage alternative economic opportunities;

(c) technical, financial and administrative assistance in the monitoring of precursors' trade, prevention, treatment and reduction of drug abuse;

(d) exchange of all relevant information, including that relating to money laundering.'

- 10 By virtue of Article 24(1), the Contracting Parties may, by mutual consent, expand the Agreement in order to enhance the level of cooperation and add to it by means of agreements in specific sectors or activities. Article 24(2) provides that within the framework of the Agreement, either of the Contracting Parties may put forward suggestions for expanding the scope of the cooperation, taking into account the experience gained in its application.
- 11 Article 25 of the Agreement provides that, without prejudice to the relevant provisions of the Treaties establishing the European [Union], neither the Agreement nor any action taken thereunder is in any way to affect the powers of the Member States of the [Union] to undertake bilateral activities with India in the framework of economic cooperation or to conclude, where appropriate, new economic cooperation agreements with India.
- 12 By order of 14 February 1995 the President of the Court granted leave to the Hellenic Republic to intervene in support of the forms of order sought by the Portuguese Republic. By three orders of 14 March 1995 the President of the Court granted leave to the Kingdom of Denmark, the United Kingdom and the Commission to intervene in support of the forms of order sought by the Council. By letter of 7 June 1995, however, the United Kingdom Government informed the Court that it did not intend to lodge a statement in intervention.
- 13 In its action, the Portuguese Government challenges the validity of the legal basis of [Union] competence and the corresponding procedure by which the [Union] concluded the Agreement. It considers that the legal basis of the contested decision does not confer on the [Union] the necessary powers to conclude the Agreement as regards, first, the provision therein relating to human rights and, second, the provisions relating to various specific fields of cooperation. It considers that recourse should also have been had to [the first sentence of Article 352(1) TFEU]

and to participation of all the Member States in the conclusion of the Agreement.

### **Respect for human rights and democratic principles**

- 14 The argument of the Portuguese Government to the effect that Article 1(1) of the Agreement required recourse to [the first sentence of Article 352(1) TFEU] as the legal basis of the contested decision must be considered first.
- 15 The Portuguese Government points out first of all that in cooperation agreements concluded before the Treaty on European Union entered into force [the first sentence of Article 352(1) TFEU] provided the [Union] with the appropriate legal basis for incorporating a provision concerning human rights.
- 16 Next, it considers that the fact that respect for fundamental rights ranks among the general principles whose observance is mandatory in the [Union] legal order does not justify the conclusion that the [Union] is competent to adopt measures in that field, whether internal or external. Moreover, according to the Portuguese Government, the references to fundamental rights in the preamble to the Single European Act and in the preamble to and certain articles of the Treaty on European Union are 'programmatic'; they define a general objective but do not confer on the [Union] any specific powers of action.
- 17 Similarly, according to the Portuguese Government, [Article 21(2)(b) TEU] merely defines a general objective. As a result, it claims, [Articles 209(2) and 211 TFEU] forms a sufficient legal basis for the conclusion of a cooperation agreement only in so far as respect for human rights is prescribed merely as a general objective of that agreement. However, the Agreement concluded with India goes further, since it states in Article 1(1) that 'Respect for human rights (...) constitutes an essential element' of the Agreement. It does not

specify the consequences of that particular characterization, which presupposes, however, that the [Union] may resort to certain means of action which can be based solely on [the first sentence of Article 352(1) TFEU].

- 18 The Council, supported by the Danish Government and the Commission, considers that Article 1(1) of the Agreement is a corollary of the requirement laid down in [Article 21(2)(b) TEU]. Since that requirement is an essential Element of development policy, it is logical to mention it in the Agreement.
- 19 In addition, the Council and the parties supporting it argue that a provision of that kind in a cooperation agreement enables the [Union], where there is grave abuse of human rights by the other contracting party, to suspend the application of the agreement for infringement of an essential provision. In that connection, they refer to Article 60 of the Vienna Convention on the Law of Treaties.
- 20 The Danish Government adds that [the first sentence of Article 352(1) TFEU] would constitute the proper legal basis if the [Union] decided to conclude a specific agreement with a nonmember country, the main purpose of which was to safeguard human rights. That is not, however, the object of the agreement concluded with India. It considers that Article 1(1) of the Agreement was included for the sole purpose of enabling the other provisions of the Agreement to be applied.
- 21 As a preliminary point, it should be borne in mind that the Court has consistently held that the use of [the first sentence of Article 352(1) TFEU] as the legal basis for a measure is justified only where no other provision of the Treaty gives the [Union] institutions the necessary power to adopt the measure in question (see, *inter alia*, Case 45/86 *Commission v Council* [1987] ECR 1493, paragraph 13, and Case C-271/94 *Parliament v Council* [1996] ECR I-1689, paragraph 13).
- 22 In the context of the organization of the powers of the [Union], 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 content of the measure (see in particular Case C-300/89 *Commission v Council* [1991] ECR I-2867, paragraph 10, and Case C-84/94 *United Kingdom v Council* [1996] ECR I-5755, paragraph 25).

- 23 By declaring that '[Union] policy (...) shall contribute to the general objective of developing and consolidating democracy and the rule of law, and to that of respecting human rights and fundamental freedoms', [Article 21(2)(b) TEU] requires the [Union] to take account of the objective of respect for human rights when it adopts measures in the field of development cooperation.
- 24 The mere fact that Article 1(1) of the Agreement provides that respect for human rights and democratic principles 'constitutes an essential Element' of the Agreement does not justify the conclusion that that provision goes beyond the objective stated in [Article 21(2)(b) TEU]. The very wording of the latter provision demonstrates the importance to be attached to respect for human rights and democratic principles, so that, amongst other things, development cooperation policy must be adapted to the requirement of respect for those rights and principles.
- 25 Moreover, as the Advocate General pointed out in paragraph 27 of his Opinion, the importance of human rights in the context of development cooperation was emphasized in various declarations and documents of the Member States and the [Union] institutions which had already been drawn up before the Treaty on European Union, and in consequence [Part V, Chapter 1 TFEU], entered into force.
- 26 With regard, more particularly, to the argument of the Portuguese Government that the characterization of respect for human rights as an essential element in cooperation presupposes specific means of action, it must first be stated that to adapt cooperation policy to respect for human rights necessarily entails establishing a certain connection between those matters whereby one of them is made subordinate to the other.

- 27 In that regard, it should be borne in mind that a provision such as Article 1(1) of the Agreement may be, amongst other things, an important factor for the exercise of the right to have a development cooperation agreement suspended or terminated where the non-member country has violated human rights.
- 28 Furthermore, Article 1 of the Agreement, headed 'Basis and objectives', and the wording of the first paragraph of that provision, provide confirmation that the question of respect for human rights and democratic principles is not a specific field of cooperation provided for by the Agreement.
- 29 It must therefore be held that, so far as Article 1(1) of the Agreement is concerned, the contested decision could be validly based on [Articles 209(2) and 211 TFEU].

**The provisions of the Agreement concerning specific cooperation matters**

- 30 The Portuguese Government claims that the scope of some of the provisions of the Agreement, relating to specific matters falling within the sphere of cooperation, is such that the legal basis of the contested decision is inadequate.
- 31 In its submission, an interpretation of [Part V, Chapter 1 TFEU], which is entitled 'Development cooperation', should take particular account of the fact that in the sphere of development cooperation the competences of the [Union] and of the Member States are complementary. A cooperation agreement cannot be based on [Articles 209(2) and 211 TFEU] alone, irrespective of the specific matters covered by that agreement and of the nature of the contractual obligations which it lays down. That article

constitutes an appropriate and sufficient basis only for cooperation agreements the provisions of which remain within the limits of the [Union]'s powers of action, whether defined expressly or by implication. If, therefore, a matter included in a cooperation agreement falls within the scope of the Member States' own competence, their participation in the conclusion of that agreement is required. In this case, the same holds true as regards the provisions relating to intellectual property and drug abuse control. At the hearing the Portuguese Government stated that cooperation in the spheres of tourism and culture also required participation of the Member States in the conclusion of the Agreement.

- 32 According to the Portuguese Government, the provision in the Agreement relating to energy requires recourse to be had to [the first sentence of Article 352(1) TFEU] since, although that matter is included in the objectives of the [Union], the [FEU] Treaty contains no specific provision concerning the means of taking action.
- 33 By contrast, the Council considers that it has correctly applied the case-law of the Court according to which measures which are ancillary to the principal objective of the act of which they form part must be based on the provision or provisions relevant to that objective and do not require a separate legal basis. In the circumstances, only the commercial aspect of the Agreement finds expression in commitments the scope and role of which in the scheme of the Agreement require recourse to a specific legal basis, namely [Article 207 TFEU].
- 34 The Commission, which concurs with the Council's arguments, states that in its opinion the [Union]'s competence in the sphere of development cooperation policy in the matter of external relations derives from [Article 209 TFEU] rather than from [Articles 209(2) and 211 TFEU].
- 35 The Portuguese Government's arguments raise the question of the extent to which an agreement concluded between the [Union] and a non-member country and adopted on the basis of [Articles 209(2) and 211 TFEU] may lay down provisions on specific matters without there being any need to have

recourse to other legal bases, or indeed to participation of the Member States in the conclusion of the agreement.

- 36 It should first be observed that it is apparent from [Part Five, Chapter 1 TFEU], in particular from [the first paragraph of Article 208(1) TFEU and Article 21(2)(d) and (e) TEU], [Article 209(1) TFEU], [Article 210 TFEU] and [Articles 209(2) and 211 TFEU], that, on the one hand, the [Union] has specific competence to conclude agreements with nonmember countries in the sphere of development cooperation and that, on the other hand, that competence is not exclusive but is complementary to that of the Member States.
- 37 In order to qualify as a development cooperation agreement for the purposes of [Articles 209(2) and 211 TFEU], an agreement must pursue the objectives referred to in [Articles 208 TFEU and 21(2)(b), (d) and (e) TEU]. [The first paragraph of Article 208(1) TFEU and Article 21(2)(d) and (e) TEU] in particular makes it clear that those are broad objectives in the sense that it must be possible for the measures required for their pursuit to concern a variety of specific matters. That is so in particular in the case of an agreement establishing the framework of such cooperation.
- 38 That being so, to require a development cooperation agreement concluded between the [Union] and a non-member country to be based on another provision as well as on [Articles 209(2) and 211 TFEU] and, possibly, also to be concluded by the Member States whenever it touches on a specific matter would in practice amount to rendering devoid of substance the competence and procedure prescribed in [Articles 209(2) and 211 TFEU].
- 39 It must therefore be held that the fact that a development cooperation agreement contains clauses concerning various specific matters cannot alter the characterization of the agreement, which must be determined having regard to its essential object and not in terms of individual clauses, provided that those clauses do not impose such extensive obligations concerning the specific matters referred to that those obligations in fact constitute objectives distinct from those of development cooperation (see, in

particular, to this effect, Opinion 1/78 [1979] ECR 2871, paragraph 56).

- 40 In the light of those considerations, the objectives of the Agreement and the general scheme of the provisions in question must first be examined in the case in point.
- 41 According to the first subparagraph of Article 1(2), the principal objective of the Agreement is to enhance and develop the various aspects of cooperation between the contracting parties. Both the second subparagraph of Article 1(2) of and the preamble to the Agreement emphasize *inter alia*, first, the development of relations between the contracting parties in the areas of common interests and, second, the need to support Indian efforts for development. The second subparagraph lays particular stresses on development of economic cooperation.
- 42 While Articles 2 to 4 of the Agreement are concerned in a general way with commercial relations and economic cooperation between the contracting parties, Articles 5 to 15 and 17 to 19 contain provisions on specific matters most of which are, however, linked to economic cooperation.
- 43 Article 16 of the Agreement governs development cooperation in general. According to Article 16(1), the [Union] 'is prepared to strengthen its cooperation and enhance its efficiency in order to contribute to India's own efforts in achieving sustainable economic development and social progress of its people through concrete proposals and programmes'. That paragraph continues: '[Union] support will be in accordance with [Union] policies, regulations and limits of the financial means available for cooperation and be in accordance with an elaborated development strategy.' Article 16(2) provides *inter alia* that 'Projects and programmes will be targeted towards the poorer sections of the population'.
- 44 The examination thus carried out shows that the cooperation provided for by the Agreement is specified in terms that take particular account of the

needs of a developing country and, consequently, amongst other things, contributes to furthering the pursuit of the objectives mentioned in [the first paragraph of Article 208(1) TFEU and Article 21(2)(d) and (e) TEU].

- 45 As regards more particularly the provisions of the Agreement which relate to specific matters, those provisions establish the framework of cooperation between the contracting parties. Taken as a whole, they are limited to determining the areas for cooperation and to specifying certain of its aspects and various actions to which special importance is attached. By contrast, those provisions contain nothing that prescribes in concrete terms the manner in which cooperation in each specific area envisaged is to be implemented.
- 46 That finding is reinforced by the fact that some of the provisions of the Agreement contemplate extending and achieving cooperation by other measures. Thus, the fifth subparagraph of Article 22(2) provides that the joint commission referred to in that article is also to have the task of ensuring the proper functioning of any sectoral agreements concluded or which may be concluded between the [Union] and India. Similarly, under Article 24(1) it is possible for cooperation to be developed and added to by means of agreements on specific sectors or activities. Furthermore, according to Article 24(2), either of the contracting parties may, within the framework of the Agreement, put forward suggestions for expanding the scope of the cooperation. Finally, Article 25 states that neither the Agreement nor any action taken thereunder is in any way to affect the powers of the Member States to undertake bilateral activities with India in the framework of economic cooperation or to conclude, where appropriate, new economic cooperation agreements with India.
- 47 The mere inclusion of provisions for cooperation in a specific field does not therefore necessarily imply a general power such as to lay down the basis of a competence to undertake any kind of cooperation action in that field. It does not, therefore, predetermine the allocation of spheres of competence between the [Union] and the Member States or the legal basis of [Union] acts for implementing cooperation in such a field.

- 48 In order to verify whether that analysis is valid, the Court must go on to examine in more detail the objective and content of each of the provisions challenged by the Portuguese Government.

*Energy, tourism and culture*

- 49 The Portuguese Government contends that Article 7 of the Agreement relating to energy constitutes the basis for subsequent adoption of specific measures, especially legislative measures, in order to implement the objectives and give effect to the commitments laid down in the Agreement. The provisions of that article are not ancillary clauses or mere declarations of intent made by the contracting parties. Article 7 provides for a high degree of cooperation in such areas as non-conventional energy. In the absence of specific powers of action in that sphere, the applicant considers that the [Union] should have had recourse to [the first sentence of Article 352(1) TFEU].
- 50 As regards Article 13 of the Agreement, the Portuguese Government points out that its actual wording provides for specific measures, in particular for training programmes. It claims that [Article 165(3) TFEU] and [Article 166(3) TFEU] make it clear that the [Union] is not empowered to conclude a tourism agreement on its own.
- 51 As regards culture, the applicant government notes first that [Article 167 TFEU] is aimed only at encouraging cooperation between Member States and, if necessary, supporting and supplementing their action in a number of areas. What is concerned, therefore, is a [Union] competence clearly subordinate to an objective of coordinating cultural policies defined by each Member State within the sphere of its own competences. It is, admittedly, mentioned in [Article 167(3) TFEU] that the [Union] and the Member States are to foster cooperation with third countries, but that provision does not confer on the Community any external competence. The Portuguese Government stresses that, even if such competence were recognized, measures could be taken only by the Council acting unanimously and

following the co-decision procedure. It concludes that the inclusion of provisions relating to culture in cooperation agreements necessitates at the very least recourse to [the first sentence of Article 352(1) TFEU] and to a joint agreement.

- 52 The Council and the Commission consider that the provisions of the Agreement relating to the fields of energy, tourism and culture are ancillary to the principal objectives of the Agreement. Those provisions are not therefore concerned with objectives separable from that of development cooperation and are, moreover, merely declaratory in nature. The Council adds that Article 7 of the Agreement does not provide for a high degree of cooperation in the field of non-conventional energy, but merely mentions that area as one of those in which cooperation may take place.
- 53 In the light of those considerations, it should be noted first of all that the Portuguese Government does not deny that the provisions of the Agreement relating to the fields of energy, tourism and culture pursue the objectives referred to in [Articles 208 TFEU and 21(2)(b), (d) and (e) TEU].
- 54 In determining the scope of Articles 7, 13 and 15 of the Agreement, the examination carried out in paragraphs 45 to 47 of this judgment of the general scheme of the provisions of the Agreement concerning specific matters must be taken into account. Analysis of the wording of Articles 7, 13 and 15 bears out the conclusion that those provisions establish the framework of cooperation in regard to the matters to which those articles refer. The obligations laid down in the provisions in question in the spheres of energy, tourism and culture are obligations to take action which do not constitute objectives distinct from those of development cooperation.
- 55 From the point of view of the incorporation into the Agreement of Articles 7, 13 and 15, their scope having thus been defined, it must be concluded that it was possible for the contested decision to be validly adopted on the basis of [Articles 209(2) and 211 TFEU].

*Drug abuse control*

- 56 The Portuguese Government considers that Article 19 of the Agreement contains a specific reciprocal commitment in the matter of drug abuse control. However, that matter belongs to the sphere of cooperation in the fields of justice and home affairs (see [ex-]Article K.1(4) and (9) of the [Maastricht version] Treaty on European Union). In its view, the Treaty on European Union merely confirms the previous [Union] practice under which competence was vested in the Member States themselves.
- 57 According to the applicant, [Article 168 TFEU], which provides that in the sphere of public health the [Union] may take action towards the prevention of drug dependence, does not constitute a legal basis enabling the [Union] to assume powers of decision; [Union] action must be limited to measures of encouragement or to adopting recommendations.
- 58 The Council, for its part, refers to the existence of several [Union] acts which are concerned directly or indirectly with drug abuse control and which were adopted without any challenge as to their legal basis. Since those acts govern various aspects of drug abuse control, the [Union] possesses, by virtue of the principle of parallel competences, the same competence in external matters.
- 59 The Commission considers that [Union] actions in the field of drug abuse control are also intended to contribute to India's economic and social development and maintains that drug abuse control is an integral part of [Union] development aid. In that connection, it mentions Council Regulation (EEC) No 443/92 of 25 February 1992 on financial and technical assistance to, and economic cooperation with, the developing countries in Asia and Latin America (OJ 1992 L 52, p. 1), which contains a provision stating that the fight against drugs falls within the scope of development cooperation with those countries.

- 60 It must be held, in the first place, that drug abuse control cannot, as such, be excluded from the measures necessary for the pursuit of the objectives referred to in [Articles 208 TFEU and 21(2)(b), (d) and (e) TEU], since production of narcotics, drug abuse and related activities can constitute serious impediments to economic and social development.
- 61 It must then be considered whether Article 19 of the Agreement remains within limits which do not necessitate recourse to a competence and to a legal basis specific to the sphere of drug abuse control.
- 62 In that regard, it should be noted that the text of Article 19(1) contains nothing more than a declaration of intent to cooperate in drug abuse control. In addition, it states that the contracting parties are to act in conformity with their respective competences.
- 63 Article 19(2) of the Agreement defines the substance of that cooperation by mentioning the actions which it comprises. It is apparent from an examination of those actions that they can constitute measures falling within the sphere of the development cooperation objectives. Training, education, treatment and rehabilitation of addicts, as well as actions intended to encourage the creation of alternative economic opportunities, mentioned in subparagraphs (a) and (b), can be linked to the social and economic objectives pursued by development cooperation. The technical, financial and administrative assistance in the prevention, treatment and reduction of drug abuse provided for in subparagraph (c) can be assimilated to those actions.
- 64 Assistance in the monitoring of precursors' trade, provided for in Article 19(2)(c), may, as the Advocate General pointed out in paragraph 61 of his Opinion, form part of the objectives defined in [Articles 208 TFEU and 21(2)(b), (d) and (e) TEU], in so far as this represents the [Union]'s contribution to the efforts of the other contracting party to combat drug trafficking.

- 65 As regards Article 19(2)(d), the Council's representative stated at the hearing that that provision did not concern individual items of information such as those relating to specific persons, bank accounts or transactions, but only general information relating to the problems of money laundering.
- 66 It is in fact only in so far as that exchange of information makes a contribution that is intimately linked to the other measures provided for by Article 19 that subparagraph (d) can be included amongst the actions falling within the field of development cooperation. That restrictive interpretation is confirmed by the actual wording of the provision, which limits its scope to 'relevant' information. In that connection, Article 19(1) expressly refers to the respective competences of the contracting parties, namely, as regards the [Union], the competence it possesses in the sphere of drug abuse control.
- 67 Finally, it must be held, as has already been pointed out in paragraphs 45 to 47 of this judgment, with respect to the general scheme of the provisions relating to specific matters, that even the provisions concerning the actions specified in Article 19(2) of the Agreement can not, having regard to their wording and context, constitute general enabling powers for their implementation.
- 68 In the light of that definition of the scope of Article 19 of the Agreement, it must be concluded that that provision did not require the participation of the Member States in the conclusion of the Agreement.

#### *Intellectual property*

- 69 As regards Article 10 of the Agreement, the Portuguese Government maintains that it is clear from Opinion 1/94 of 15 November 1994 ([1994] ECR I-5267) that protection of intellectual property is an area in which the [Union] does not possess exclusive competence.

- 70 The Portuguese Government concludes that, in accordance with the principle of parallel competences, [Article 207 TFEU] and [Articles 209(2) and 211 TFEU] are insufficient to confer on the [Union] the powers necessary to perform the contractual obligation assumed by the [Union] in Article 10 of the Agreement.
- 71 The Council maintains that the fact that the [Union]'s competence is not exclusive does not mean that the [Union] may not in any circumstances conclude on its own agreements which contain provisions affecting this sphere. It considers that the [Union] had the power to conclude the Agreement without the participation of the Member States since the clause in the Agreement concerning intellectual property has only limited scope and involves substantial obligations only on the part of India.
- 72 It should therefore be considered whether Article 10 of the Agreement can be founded on the legal basis referred to in the contested decision, namely [Article 207 TFEU] and [Articles 209(2) and 211 TFEU].
- 73 It must first be observed that the improvement in protection of intellectual property rights sought by Article 10 is such as to contribute to the objective laid down in [the first paragraph of Article 208(1) TFEU and Article 21(2)(d) and (e) TEU] of smoothly and gradually integrating the developing countries into the world economy.
- 74 Secondly, the first sentence of Article 10 merely provides that the contracting parties undertake to ensure as far as their laws, regulations and policies allow that suitable and effective protection is provided for intellectual property rights, reinforcing this protection where necessary.
- 75 The last sentence of Article 10 provides that the contracting parties 'also undertake, wherever possible, to facilitate access to the data bases of intellectual property organizations'. The obligation created by that provision

has only a very limited scope and is ancillary in nature, even in relation to the substance of intellectual property protection.

- 76 In those circumstances, it must be concluded that the scope of the obligations arising from Article 10 of the Agreement is not such that those obligations constitute objectives distinct from those of development cooperation. Consequently, [Articles 209(2) and 211 TFEU] is a sufficient basis for the incorporation of Article 10 in the Agreement.
- 77 Furthermore, with regard to the linking of Article 10 of the Agreement to commercial policy, it is sufficient to point out that the [Union] is entitled to include in external agreements otherwise falling within the ambit of [Article 207 TFEU] ancillary provisions for the organization of purely consultative procedures or clauses calling on the other party to raise the level of protection of intellectual property (see, to that effect, Opinion 1/94, cited above, paragraph 68).

#### *Commercial policy*

- 78 The Portuguese Government claims that [Article 207 TFEU] is redundant as a legal basis for the conclusion of the Agreement. In support of that contention, it maintains that [Articles 209(2) and 211 TFEU] constitutes a sufficient basis for the provisions in the Agreement concerning commercial policy, since the principal objective of the Agreement is development cooperation and the [Union] possesses specific powers of action in the sphere of the common commercial policy.
- 79 In that regard, it is sufficient to note that, even if the argument of the Portuguese Government were well founded, the conclusion of the Agreement would in any event require the Council to act by a qualified majority and the Parliament to be consulted in accordance with [Article 218(8) TFEU] and [indent (b) of the second paragraph of Article 218(6) TFEU]. The submission put forward by the Portuguese Government is

therefore purely formal in purport, since even if [Article 207 TFEU] is redundant as a legal basis for the conclusion of the Agreement that fact cannot affect the determination of the content of the contested Agreement (see, to that effect, Case 45/86 *Commission v Council*, cited above, paragraph 12, and Case 131/86 *United Kingdom v Council* [1988] ECR 905, paragraph 11).

- 80 It follows from all the foregoing considerations that the application must be dismissed.

### **Costs**

- 81 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 for the Portuguese Republic to be ordered to pay the costs. Since the applicant has been unsuccessful, it must be ordered to pay the costs. Pursuant to the first subparagraph of Article 69(4) of the Rules of Procedure, the Kingdom of Denmark, the Hellenic Republic, the United Kingdom of Great Britain and Northern Ireland, and the Commission of the European [Union], which have intervened in the proceedings, are ordered to bear their own costs.

On those grounds,

THE COURT

hereby:

**1. Dismisses the application;**

2. Orders the Portuguese Republic to pay the costs;

3. Orders the Kingdom of Denmark, the Hellenic Republic, the United Kingdom of Great Britain and Northern Ireland, and the Commission of the European [Union] to bear their own costs.

Rodriguez Iglesias

Almeida Murray

Gulmann

Hirsch

Sevon

Mancini

Kapteyn

Edward

Jann

Moitinho de

Kakouris

Puissochet

Wathclet

Delivered in open court in Luxembourg on 3 December 1996.

R. Grass

Registrar

G. C. Rodriguez Iglesias

President