

EUROPEAN PARLIAMENT

2004



2009

*Committee on Legal Affairs
The Chairman*

Mr Elmar Brok
Chairman
Committee on Foreign Affairs
BRUSSELS

Subject: Legal basis of the proposal for a Council regulation establishing an Instrument for Stability (COM(2004)0630 – C6-0251/2004 – 2004/0223(COD))¹

Dear Mr Chairman,

By letter of 2 June 2005 you asked the Committee on Legal Affairs pursuant to Rule 35(2) to consider whether the legal basis of the above Commission proposal was valid and appropriate.

The Committee considered the above question at its meeting of 13 July 2005.

The proposal is based on Article 308 of the EC Treaty in conjunction with Article 203 of the Euratom Treaty. The Euratom legal basis is said to be necessary in order to cover the nuclear safety aspects of the proposal.

In this instance, consultation of Parliament is required.

The case law of the Court of Justice of the European Communities clearly indicates that the choice of legal basis is not at the discretion of the Community legislator but must be determined by objective facts which can be subject to judicial control. These facts include, in particular, the objective and substance of the legislative instrument².

The objective of the regulation is stated precisely in Article 1: 'The Community shall finance measures to promote peace and stability and assure the safety and security of the civilian

¹ Not yet published in the OJ.

² Cf. in particular the judgment of the Court of Justice of 23 February 1999 in Case C-42/97, Parliament v. Council, ECR 1999, p. I-869, point 36.

population in third countries and territories in line with the provisions of this Regulation.'

The substance of the proposal is clearly concerned with providing financial, economic and technical assistance complementary to any assistance that is normally provided for under the Humanitarian Aid instrument, the Integrated Pre-accession instrument, the European Neighbourhood and Partnership instrument and the Development Cooperation and Economic Cooperation instrument (Article 2).

Article 308 of the EC Treaty permits the Community to adjust its powers in the light of the powers and with a view to attaining the objectives of the Treaty.

In order to take the aforementioned article as a legal basis for a legislative instrument, the Court of Justice has consistently held that the following conditions must be met:

- the action envisaged must have the aim of attaining one of the objectives of the Community;
- the action must be necessary for the attainment of that objective;
- the Treaty must not otherwise confer powers to act for this purpose.

From a consideration of the subject and substance of the proposal it may be concluded that the civil aspects of tackling crises fall rather under Articles 179 and 181a of the EC Treaty, which does not justify the choice of Article 308 of the EC Treaty as a legal basis.

The Committee on Foreign Affairs has accordingly concluded that Articles 179 and 181a of the EC Treaty are the appropriate legal basis and that, in view of the incompatibility between those articles and Article 203 of the Euratom Treaty, it is necessary to submit a separate proposal concerning the aspects relating to nuclear safety measures.

The codecision procedure would therefore apply.

At its meeting of 13 July 2005 the Committee on Legal Affairs accordingly decided, unanimously¹, on the basis of the above considerations and at the proposal of the rapporteur for legal bases, Mr Antonio López-Istúriz White, that:

- the legal basis for the above proposal for a regulation should be Articles 179 and 181a of the EC Treaty, not Article 308 of the EC Treaty;
- in view of the incompatibility between those articles and Article 203 of the Euratom Treaty, the Commission should submit a separate proposal concerning the aspects involving nuclear safety measures.

¹ The following were present for the vote: Giuseppe Gargani (chairman), Katalin Lévai (vice-chairwoman), Antonio López-Istúriz White (draftsman), Maria Berger, Monica Frassoni, Piia-Noora Kauppi, Kurt Lechner, Klaus-Heiner Lehne, Antonio Masip Hidalgo, Hans-Peter Mayer, Manuel Medina Ortega (for Nicola Zingaretti), Viktória Mohácsi, Aloyzas Sakalas and Tadeusz Zwiefka.

Yours sincerely,

Giuseppe Gargani