



Court of Justice of the European Union

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Advocate General's Opinions in Joined Cases C-59/18 Italy v Council and C-182/18 Comune di Milano v Council, in Joined Cases C-106/19 Italy v Council and Parliament and C-232/19 Comune di Milano v Parliament and Council and in Case C-743/19 Parliament v Council

Press and Information

## **Advocate General Bobek: The Court has no jurisdiction over the decisions of the representatives of the Member States locating the new seats of the European Medicines Agency and of the European Labour Authority**

*However, secondary law acts that incorporate, following an EU legislative procedure, the content of those decisions are, in principle, subject to review by the Court*

In November 2017, the representatives of the governments of the Member States selected, the city of Amsterdam (Netherlands) to replace London as the new location for the seat of the European Medicines Agency ('the EMA'). In June 2019, they also decided that the newly founded European Labour Authority ('the ELA') would have its seat in Bratislava (Slovakia).

In Joined Cases C-59/18 and C-182/18, the Italian Republic and the Comune di Milano (Municipality of Milan, Italy) respectively challenge the decision of the representatives of the governments of the Member States to relocate the seat of the EMA to Amsterdam. In Case C-743/19, the European Parliament challenges the decision of the representatives of the Member States to locate the seat of the ELA in Bratislava. Subsequently to the decision of the representatives of the governments of the Member States, Regulation 2018/1718<sup>1</sup> provided that the new seat of the EMA is Amsterdam. That regulation was also challenged by two actions lodged by the Italian Republic (C-106/19) and the Comune di Milano (C-232/19), respectively.

In today's two Opinions, Advocate General Michal Bobek proposes, in the first place, that the Court rule that **in view of how the Treaties currently stand, the Court has no jurisdiction under Article 263 TFEU over decisions taken by the representatives of the Member States.**

The Advocate General reminds, first of all, that the European Union is a Union based on the rule of law that has established a complete system of legal remedies and procedures designed to enable the Court of Justice of the European Union to review the legality of acts of the EU institutions. In that context, actions for annulment under Article 263 TFEU must concern acts that have been adopted by EU institutions, bodies, offices or agencies.

Secondly, he reminds that, according to the Court, 'acts adopted by representatives of the Member States acting, not in their capacity as members of the Council, but as representatives of their governments, and thus collectively exercising the powers of the Member States, are not subject to judicial review by the EU Courts<sup>2</sup>. It is only in extraordinary circumstances, within which the power to make a given decision was undoubtedly one for the Union to make, and the ongoing procedures launched to that effect would have been circumvented, that a decision of the representatives of the Member States could be re-classified as being one of the Council and thus become subject of judicial review by the Court. Apart from such exceptional scenarios, a formal decision of the Member States should remain a true decision of the Member States that escapes the review of the Court.

<sup>1</sup> Regulation of the European Parliament and of the Council of 14 November 2018 amending Regulation (EC) No 726/2004 as regards the location of the seat of the European Medicines Agency (OJ 2018 L 291, p. 3).

<sup>2</sup> Judgment of 30 June 1993, *Parliament v Council and Commission* (C-181/91 and C-248/91, paragraph 12) ('*Parliament v Council*').

Advocate General Bobek proposes, in the second place, **Article 341 TFEU does not apply to the decisions on seat of the agencies.** The wording of Article 341 TFEU refers to the seat of the 'institutions' strictly speaking, that is those enumerated in Article 13 TEU. The Advocate General notes that this view finds further support at a more systemic level: the institutions of the Union are constitutionally different from bodies, offices and agencies of the Union. Their establishment and functions are provided directly by the Treaties themselves. By contrast, agencies are normally established by secondary legislation, following the ordinary legislative procedure. The decision on the seat of an agency is not an issue distinct from the creation of that agency. It thus follows that (legally binding) decisions on the seat of EU agencies are to be taken by the Parliament and the Council within the ordinary legislative procedure, triggered by the Commission.

Advocate General Bobek proposes, in the third place, that the Court rule that **decisions by the representatives of the Member States whose adoption is not foreseen by the Treaties are deprived of any binding legal effects within the EU legal order.** The contested decisions are officially those of the Member States. Since they are neither mandated, nor foreseen by EU law, they have therefore no binding legal effects thereunder. They can only produce binding legal effects in the EU legal order if they become EU law in one way or another, in particular if their content is eventually incorporated, following an EU legislative procedure, in binding secondary law acts. Such an 'incorporation' measure might then be subject to an action for annulment if the requirements under Article 263 TFEU are fulfilled.

Advocate General Bobek proposes, in the fourth place, that the Court rule that **the contested regulation is not unlawful, and reject the arguments put forward by the Comune di Milano (Municipality of Milan) and the Italian Government alleging violations of the prerogatives of the European Parliament as well as the unlawfulness of the contested regulation 'by association' with the decision of the representatives of the Member States.**

He notes that, unlike the decision of the representatives of the Member States, the contested regulation is an act of the EU institutions. It is therefore subject to review by the Court. In this context, the Advocate General considers that the Comune di Milano (Municipality of Milan) fulfils all the requirements to have standing to challenge the contested regulation.

On the merits, the mere fact that the Parliament was not involved in a procedure that led to the Member States' political – and, as a matter of EU law, non-binding – decision on the new seat of the EMA, cannot be seen as a breach or a circumvention of the Parliament's prerogatives as an equal co-legislator. At the time of the decision, no legislative procedure within EU law had in fact been launched. Thus, the fact that the Parliament was not part of this stage of the process cannot amount to a breach of its procedural rights. If the Parliament did not agree with the decision to move the seat of the EMA to Amsterdam, it was equipped with the possibility to prevent the political decision previously taken by the Member States from being enshrined in the content of a binding legislative act of EU law. Since the decision of the representatives of the Member States on the seat of an agency has no binding legal effects within the EU legal order, the institutions taking part in the ordinary legislative procedure on the designation of the seat of an agency can indeed disregard it. Moreover, any possible flaws of that non-binding act do not automatically affect the legality of the ordinary legislative procedure. The logic of 'unlawfulness by association' raised by the Italian Government and the Comune di Milano (Municipality of Milan) cannot succeed.

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**NOTE:** The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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*Unofficial document for media use, not binding on the Court of Justice.*

*The text of the Opinions in [Joined Cases C-59/18 & C-182/18 and Case C-743/19](#) and in [Joined Cases C-106/19 & C-232/19](#), is published on the CURIA website on the day of delivery.*

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*Pictures of the delivery of the judgment are available from "[Europe by Satellite](#)" ☎ (+32) 2 2964106.*