

## Action brought on 14 July 2010 - European Parliament v Council of the European Union

(Case C-355/10)

*Language of the case: English*

### Parties

*Applicant:* European Parliament (represented by: M. Dean, A. Auersperger Matić, Agents )

*Defendant:* Council of the European Union

### The applicant claims that the Court should:

Annul Council Decision 2010/252/EU<sup>1</sup> of 26 April 2010 supplementing the Schengen Borders Code as regards the surveillance of the sea external borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union;

Order that the effects of the Council Decision be maintained until it is replaced;

order Council of the European Union to pay the costs.

### Pleas in law and main arguments

Parliament seeks the annulment of the contested Decision on the grounds that it exceeds the scope of the implementing power in Article 12(5) of the Schengen Borders Code<sup>2</sup> in that it introduces rules on "interception", "search and rescue" and "disembarkation" which cannot be considered to be within the scope of "surveillance" as defined by Article 12 of the Schengen Borders Code and which cannot be considered to be non-essential elements, and modifies the essential elements of the Schengen Borders Code which are reserved to the legislator. Moreover, the contested Decision modifies the obligations of the EU Member States relating to Frontex operations, which are laid down in the Frontex Regulation<sup>3</sup>.

Should the Court annul the contested Decision, Parliament nonetheless considers it would be desirable that the Court exercise its discretion to maintain the effects of the contested Decision, in accordance with Article 264 (2) TFEU, until such time as it is replaced.

---

<sup>1</sup> - Council Decision of 26 April 2010 supplementing the Schengen Borders Code as regards the surveillance of the sea external borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union OJ L 111, p. 20

<sup>2</sup> - Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) OJ L 105, p. 1

<sup>3</sup> - Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union OJ L 349, p. 1