

JUDGMENT OF THE COURT  
28 June 1994 \*

In Case C-187/93,

**European Parliament**, represented by Kieran Bradley and José Luis Rufas Quintana, of the Legal Service, acting as Agents, with an address for service in Luxembourg at the Secretariat of the European Parliament, Kirchberg,

applicant,

v

**Council of the European Union**, represented by Arthur Alan Dashwood, a director in the Legal Service, and Jill Aussant, Legal Adviser, acting as Agents, with an address for service in Luxembourg at the office of Bruno Eynard, Manager of the Legal Directorate of the European Investment Bank, 100 Boulevard Konrad Adenauer, Kirchberg,

defendant,

supported by

**Kingdom of Spain**, represented by Alberto Navarro González, Director-General for Community Legal and Institutional Coordination, and Gloria Calvo Diaz and Antonio Hierro Hernández-Mora, Abogados del Estado, of the Legal Department for Community Affairs, acting as Agents, with an address for service in Luxembourg at the Spanish Embassy, 4-6 Boulevard Emmanuel Servais,

\* Language of the case: French.

intervener,

APPLICATION for the annulment of Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community (OJ 1993 L 30, p. 1),

THE COURT,

composed of: O. Due, President, M. Diez de Velasco, D. A. O. Edward (Presidents of Chambers), C. N. Kakouris, R. Joliet, F. A. Schockweiler (Rapporteur), G. C. Rodríguez Iglesias, P. J. G. Kapteyn and J. L. Murray, Judges,

Advocate General: F. G. Jacobs,  
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 18 May 1994,

gives the following

**Judgment**

- 1 By application lodged at the Court Registry on 21 April 1993, the European Parliament brought an action under the first paragraph of Article 173 of the EEC Treaty for the annulment of Council Regulation (EEC) No 259/93 of 1 February

1993 on the supervision and control of shipments of waste within, into and out of the European Community (OJ 1993 L 30, p. 1) ('the Regulation').

- 2 As is apparent from the first four recitals in the preamble to the Regulation, it was adopted with a view to the replacement by a regulation of Council Directive 84/631/EEC of 6 December 1984 on the supervision and control within the European Community of the transfrontier shipment of hazardous waste (OJ 1984 L 326, p. 31), having regard to the commitments entered into by the Community in the context of the Basle Convention of 22 March 1989 on the control of transboundary movements of hazardous wastes and their disposal, approved on behalf of the Community by Council Decision 93/98/EEC of 1 February 1993 (OJ 1993 L 39, p. 1), the Fourth ACP-EEC Convention of 15 December 1989, approved on behalf of the Community by the Decision of the Council and the Commission 91/400/ECSC, EEC of 25 February 1991 (OJ 1991 L 229, p. 1) and the Decision of the Council of the Organization for Economic Cooperation and Development (OECD) of 30 March 1992 on the control of transfrontier movements of wastes destined for recovery operations.
  
- 3 Pursuant to Article 1(1), the Regulation applies to shipments of waste within, into and out of the Community, subject to the exceptions listed in Article 1(2) and (3).
  
- 4 Title II of the Regulation concerns shipments of waste between Member States and draws a distinction between waste destined for disposal (Chapter A, Articles 3, 4 and 5) and waste destined for recovery (Chapter B, Articles 6 to 11). As is indicated in the ninth recital, that Title sets up a system whereby shipments of waste are subject to prior notification to the competent authorities enabling them to be duly informed in particular of the type, movement and disposal or recovery of the waste, so that they may take all necessary measures for the protection of human health and the environment, including the possibility of raising reasoned objections to the shipment.

- 5 In the case of waste destined for disposal, shipments may be effected only after the notifier has received authorization from the competent authority of destination (Article 5(1)). Furthermore, in order to implement the principles of proximity, priority for recovery and self-sufficiency at Community and national levels in accordance with Council Directive 75/442/EEC of 15 July 1975 on waste (OJ 1975 L 194, p. 39), as amended by Directive 91/156/EEC of 18 March 1991 (OJ 1991 L 78, p. 32), Member States may take measures in accordance with the Treaty to prohibit generally or partially or to object systematically to shipments of waste (tenth recital and Article 4(3)(a)(i) of the Regulation). In the case of waste destined for recovery, shipments may be effected if no objection has been lodged within a given time (Article 8(1)).
  
- 6 Title III (Article 13) of the Regulation concerns shipments of waste within Member States. In accordance with the fifth recital, the supervision and control of such shipments is the responsibility of the Member States themselves. The national systems established by them for that purpose should take account, however, of the need for coherence with the Community system established by the Regulation (Article 13(2)). Member States may also apply the system provided for by the regulation in relation to shipments between Member States (Article 13(4)).
  
- 7 Titles IV, V and VI of the Regulation lay down the rules applying respectively to exports of waste out of the Community, imports of waste into the Community and the transit of waste from outside and through the Community for disposal or recovery outside the Community.
  
- 8 Titles IV and V prohibit in principle all exports or imports of waste, whether destined for disposal or recovery, except for exports of waste for disposal to EFTA countries which are also parties to the Basle Convention, exports of waste for recovery to, and imports of waste from, countries which are parties to the Basle

Convention or with which the Community, or the Community and its Member States, or individual Member States, have concluded agreements or arrangements fulfilling certain conditions, and exports of waste for recovery to, and imports of such waste from, countries to which the OECD decision applies. As regards those exports or imports, a system is set up providing for notification to be given to the competent authorities of dispatch or destination, depending on whether the waste is destined for disposal or recovery.

- 9 It is apparent from the documents before the Court that the origins of the Regulation are to be found in a proposal for a Council Regulation (EEC) on the supervision and control of shipments of waste within, into and out of the Community, submitted by the Commission on 10 October 1990 (OJ 1990 C 289, p. 9). That proposal by the Commission resulted from the invitation extended to it by the Council in the resolution of 7 May 1990 on waste policy (OJ 1990 C 122, p. 2), in which that institution considered in particular that 'movements of waste should be reduced to the minimum necessary for environmentally safe disposal and should be subject to proper controls' (seventh recital in the preamble).
  
- 10 Following the opinion delivered on 12 March 1992 by the European Parliament (OJ 1992 C 94, p. 276), which had been initially consulted by the Council pursuant to Articles 100a and 113 of the Treaty, those provisions serving as the legal basis for the Commission's proposal, the Commission on 23 March 1992 submitted an amended proposal (OJ 1992 C 115, p. 4) which was also based on those two articles of the Treaty. The Council subsequently considered that the proposed regulation should be based on Article 130s of the Treaty, which provides that in environmental matters the Council is to act unanimously on a proposal from the Commission and after consulting the European Parliament and the Economic and Social Committee, and, by letter of 30 November 1992, it sought from the European Parliament its 'opinion on the alteration of the legal basis'. Although, in its opinion delivered on 20 January 1993 (OJ 1993 C 42, p. 82), the European Parliament contested the relevance of the legal basis accepted by the Council and pro-

posed the substitution of Articles 100a and 113 of the Treaty, on 1 February 1993 the Council adopted the Regulation on the basis of Article 130s of the Treaty. The European Parliament then brought the present action for annulment.

11 By order of 22 September 1993 the President of the Court gave the Kingdom of Spain leave to intervene in support of the form of order sought by the Council.

12 The European Parliament asserts in support of its application that the aim and purpose of Titles II and IV, V and VI of the Regulation is to regulate respectively movements of waste within the Community and foreign trade in waste between the Community and third countries, and that the Regulation should therefore be based on Articles 100a and 113 of the Treaty, even though it also meets requirements of environmental protection.

13 The Council, supported by the Kingdom of Spain, considers that the aim of the Regulation is to contribute, by regulating shipments of waste, to the protection of the environment, and that it therefore falls solely within the scope of Article 130s of the Treaty, even though it has secondary effects on the conditions governing competition within the Community and trade with non-member countries.

### Admissibility

14 First of all, it should be pointed out that, as the Court has consistently held (see, most recently, Case C-316/91 *Parliament v Council* [1994] ECR I-625, paragraph 12), an action for annulment brought by the Parliament against an act of the Council or the Commission is admissible provided that the action seeks only to safeguard its prerogatives and that it is founded only on submissions alleging their infringement.

- 15 In accordance with those criteria, the action must be declared inadmissible, inasmuch as it is founded on the exclusion from the legal basis of the Regulation of Article 113 of the Treaty. At the time when the Regulation was adopted, Article 113 did not provide for the European Parliament to be involved in any way in the drawing up of the acts envisaged in that article, so that its exclusion from the legal basis of the Regulation was not such as to prejudice the prerogatives of the Parliament.
- 16 However, in so far as it contests the fact that the Regulation is based not on Article 100a but on Article 130s of the Treaty, the application seeks to show that the prerogatives of the Parliament have been prejudiced by reason of the legal basis chosen and it is therefore admissible. At the time when the Regulation was adopted, Article 130s of the Treaty provided only that the European Parliament was to be consulted, whereas Article 100a of the Treaty required the implementation of the procedure for cooperation with that institution.

### Substance

- 17 The Court has consistently held that, in the context of the organization of the powers of the Community, 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, most recently, Case C-155/91 *Commission v Council* [1993] ECR I-939, paragraph 7).
- 18 As regards the aim, it is apparent in particular from the sixth and ninth recitals in the preamble to the Regulation that the system set up for the supervision and control of shipments of waste between Member States reflects the need to preserve,

protect and improve the quality of the environment and is designed to enable the competent authorities to take all necessary measures for the protection of human health and the environment.

19 It follows from the seventh and tenth recitals that the organization of the supervision and control of shipments of waste between Member States forms part of the package of measures taken by the Council in relation to waste management, as laid down in particular in Directive 91/156. Indeed, that directive itself states that movements of waste should be reduced and that Member States may take the necessary measures to that end in the waste management plans which they are obliged to draw up.

20 As the Court held in Case C-155/91 *Commission v Council*, cited above, paragraphs 10, 14 and 15, the objective of Directive 91/156, according to its aim and content, is to ensure the management of waste, whether of industrial or domestic origin, in accordance with environmental protection requirements, and cannot be regarded as seeking to implement the free movement of such waste within the Community, even though it allows Member States to prevent movements of waste destined for recovery or disposal which do not conform with their management plans.

21 As regards the content of the Regulation, it should be noted that it sets out the conditions governing shipments of waste between Member States and the procedures to be followed for their authorization.

22 Those conditions and procedures have all been adopted with a view to ensuring the protection of the environment, taking account of objectives falling within the



scope of environmental policy such as the principles of proximity, priority for recovery and self-sufficiency at Community and national levels. In particular, they enable the Member States, for the purposes of implementing those principles, to take measures to prohibit generally or partially or to object systematically to and oppose shipments of waste which are not in conformity with Directive 75/442, cited above, as amended by Directive 91/156.

- 23 In those circumstances, it must be concluded that the Regulation falls within the framework of the environmental policy pursued by the Community and that it cannot be regarded, any more than Directive 91/156, as seeking to implement the free movement of waste within the Community. The Council could therefore validly exclude Article 100a of the Treaty from the legal basis of the Regulation and base it on Article 130s of the Treaty.
- 24 That conclusion is not invalidated by the fact that, by harmonizing the conditions in which movements of waste take place, the Regulation affects such movements and thus has a bearing on the functioning of the internal market.
- 25 As the Court has consistently held (see in particular Case C-155/91 *Commission v Council*, cited above, paragraph 19), the mere fact that the establishment or functioning of the internal market is involved is not enough to render Article 100a of the Treaty applicable and recourse to that article is not justified where the act to be adopted has only the ancillary effect of harmonizing market conditions within the Community.
- 26 That is the position in the present case. As the Advocate General has pointed out in paragraphs 44 and 45 of his Opinion, the aim of the Regulation is not to define

those characteristics of waste which will enable it to circulate freely within the internal market, but to provide a harmonized set of procedures whereby movements of waste can be limited in order to secure protection of the environment.

27 Nor can it be objected to the foregoing that the Regulation is intended to replace and repeal the aforementioned Directive 84/631, which was, for its part, based on Article 100 of the Treaty, in conjunction with Article 235.

28 The fact that the Regulation replaces another act which was based on Article 100 of the Treaty, relating to the approximation of the laws of the Member States having a direct bearing on the establishment or functioning of the common market, does not necessarily mean that the Regulation must have recourse to Article 100 or Article 100a, which was introduced into the Treaty by the Single European Act and which provides for the adoption of measures for the approximation of the laws of the Member States which have as their object the establishment and functioning of the internal market (see, as regards Article 235 of the Treaty, Case 165/87 *Commission v Council* [1988] ECR 5545, paragraph 17). The legal basis for an act must be determined having regard to its own aim and content.

29 It follows from all the foregoing that the application must be dismissed in its entirety.

### Costs

30 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the European Parliament has been unsuccessful, it

must be ordered to pay the costs. In accordance with Article 69(4) of the Rules, the Kingdom of Spain, intervener, must be ordered to bear its own costs.

On those grounds,

THE COURT

hereby:

- 1. Dismisses the application;**
- 2. Orders the European Parliament to pay the costs and the Kingdom of Spain to bear its own costs.**

Due	Diez de Velasco	Edward
Kakouris	Joliet	Schockweiler
Rodríguez Iglesias	Kapteyn	Murray

Delivered in open court in Luxembourg on 28 June 1994.

R. Grass

O. Due

Registrar

President