JUDGMENT OF THE COURT (Grand Chamber)

8 September 2009 *

In Case C-411/06,

ACTION for annulment under Article 230 EC, brought on 2 October 2006,

Commission of the European Communities, represented by G. Valero Jordana, M. Huttunen and M. Konstantinidis, acting as Agents, with an address for service in Luxembourg,

applicant,

v

European Parliament, represented by I. Anagnostopoulou and U. Rösslein, acting as Agents, with an address for service in Luxembourg,

* Language of the case: English.

Council of the European Union, represented by M. Moore and K. Michoel, acting as Agents, with an address for service in Luxembourg,

defendants,

supported by:

French Republic, represented by G. de Bergues, A. Adam and G. Le Bras, acting as Agents,

Republic of Austria, represented by E. Riedl, acting as Agent, with an address for service in Luxembourg,

United Kingdom of Great Britain and Northern Ireland, represented by E. Jenkinson, E. O'Neil and S. Behzadi-Spencer, acting as Agents, assisted by A. Dashwood, Barrister,

interveners,

THE COURT (Grand Chamber),

composed of V. Skouris, President, P. Jann, C.W.A. Timmermans (Rapporteur), A. Rosas, K. Lenaerts, A. Ó Caoimh and J.-C. Bonichot, Presidents of Chambers, E. Juhász, G. Arestis, A. Borg Barthet, U. Lõhmus, L. Bay Larsen and P. Lindh, Judges,

Advocate General: M. Poiares Maduro,
Registrar: M.-A. Gaudissart, Head of Unit,

having regard to the written procedure and further to the hearing on 13 January 2009,

after hearing the Opinion of the Advocate General at the sitting on 26 March 2009,

gives the following

Judgment

1 By this action, the Commission of the European Communities asks the Court to annul Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste (OJ 2006 L 190, p. 1) ('the contested regulation' or 'the Regulation') in so far as it is based solely on Article 175(1) EC and not on Articles 175(1) and 133 EC.

Legal context

The Basel Convention

2 The Convention on the control of transboundary movements of hazardous wastes and their disposal, signed at Basel on 22 March 1989, approved on behalf of the Community by Council Decision 93/98/EEC of 1 February 1993 (OJ 1993 L 39, p. 1) ('the Basel Convention'), states the following in the 8th to 10th recitals in the preamble thereto:

'Convinced that hazardous wastes and other wastes should, as far as is compatible with environmentally sound and efficient management, be disposed of in the State where they were generated,

Aware also that transboundary movements of such wastes from the State of their generation to any other State should be permitted only when conducted under conditions which do not endanger human health and the environment, and under conditions in conformity with the provisions of this Convention,

Considering that enhanced control of transboundary movement of hazardous wastes and other wastes will act as an incentive for their environmentally sound management and for the reduction of the volume of such transboundary movement.'

3 Article 2(4) of that convention defines 'disposal' as 'any operation specified in Annex IV to this Convention'. That Annex IV contains a list of various types of disposal

operations, including, in Section B thereof, the category of '[o]perations which may lead to resource recovery, recycling, reclamation, direct reuse or alternative uses'.

The contested regulation

4 The contested regulation was adopted to replace and update the provisions 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). That latter regulation, based on Article 130s of the EEC Treaty (subsequently Article 130s of the EC Treaty, now, after amendment, Article 175 EC), was adopted, inter alia, to implement the obligations under the Basel Convention.

5 It is apparent from recital 5 in the preamble to the contested regulation that it is intended also to integrate the content of Decision C(2001)107 Final of the Council of the Organisation for Economic Cooperation and Development (OECD) concerning the revision of Decision C(92)39 Final on the control of transboundary movements of wastes destined for recovery operations ('the OECD Decision'), in order to harmonise waste lists with the Basel Convention and revise certain other requirements. It was also decided at that time, according to recital 2 in the preamble to the contested regulation, to incorporate, in the interests of clarity, a number of amendments to Regulation No 259/93 into a single text.

6 Recital 1 in the preamble to the contested regulation states that '[t]he main and predominant objective and component of this Regulation is the protection of the environment, its effects on international trade being only incidental'.

7 According to recital 33 in the preamble to the contested regulation, '[t]he necessary steps should be taken to ensure that … waste shipped within the Community and waste imported into the Community is managed, throughout the period of shipment and including recovery or disposal in the country of destination, without endangering human health and without using processes or methods which could harm the environment. As regards exports from the Community that are not prohibited, efforts should be made to ensure that the waste is managed in an environmentally sound manner throughout the period of shipment and including recovery or disposal in the third country of destination. …'

8 Recital 42 in the preamble to that regulation states, with regard to the compliance of that regulation with the principles of subsidiarity and proportionality, that '[s]ince the objective of this Regulation, namely to ensure protection of the environment when waste is subject to shipment, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects thereof, be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity …. In accordance with the principle of proportionality …, this Regulation does not go beyond what is necessary in order to achieve that objective'.

9 Article 1(1) of the contested regulation states that '[t]his Regulation establishes procedures and control regimes for the shipment of waste, depending on the origin, destination and route of the shipment, the type of waste shipped and the type of treatment to be applied to the waste at its destination'.

10 According to Article 1(2) of the contested regulation:

'This Regulation shall apply to shipments of waste:

(a) between Member States, within the Community or with transit through third countries;

(b) imported into the Community from third countries;

(c) exported from the Community to third countries;

(d) in transit through the Community, on the way from and to third countries.'

11 Article 2 of the contested regulation contains definitions, including the following:

'(30) "import" means any entry of waste into the Community but excluding transit through the Community;

(31) "export" means the action of waste leaving the Community but excluding transit through the Community;

(32) "transit" means a shipment of waste or a planned shipment of waste through one or more countries other than the country of dispatch or destination;

(33) "transport" means the carriage of waste by road, rail, air, sea or inland waterways;

(34) "shipment" means the transport of waste destined for recovery or disposal which is planned or takes place:

(a) between a country and another country; or

(b) between a country and overseas countries and territories or other areas, under that country's protection; or

(c) between a country and any land area which is not part of any country under international law; or

(d) between a country and the Antarctic; or

(e) from one country through any of the areas referred to above; or

(f) within a country through any of the areas referred to above and which originates in and ends in the same country; or

(g) from a geographic area not under the jurisdiction of any country, to a country.'

12 Title II of the contested regulation, which comprises Articles 3 to 32 thereof, concerns shipments of waste within the Community with or without transit through third countries. That title provides for the basic scheme under that regulation establishing detailed rules relating to notification, procedural and monitoring obligations in respect of waste shipments. Under Article 3(1) of that regulation, shipments of all wastes destined for disposal, as well as, inter alia, shipments of wastes destined for recovery listed in Annex IV to the contested regulation ('orange list'), are to be subject to the procedure of prior written notification and consent as laid down in the provisions of Title II. Annex IV also includes wastes listed in Annexes II and VIII to the Basel Convention.

13 Under the prior written notification and consent procedure, the notifier must supply, inter alia, on the one hand, under Articles 4(4) and 5 of the contested regulation, evidence of a contract concluded between the notifier and the consignee with respect to the recovery or disposal of the notified waste and, on the other hand, pursuant to Articles 4(5) and 6 of that regulation, evidence of establishment of a financial guarantee or equivalent insurance covering the costs of shipment, recovery or disposal operations and storage of the waste in question. In the event of notification of a planned shipment of waste, the competent authorities may, on grounds based essentially on environmental protection, listed in Articles 11 and 12 of that regulation, lay down conditions in connection with their consent to that shipment or raise reasoned objections to such a shipment.

14 Articles 22 to 25 of the contested regulation impose an obligation to take back waste when a shipment cannot be completed or when a shipment is illegal and provide for rules governing the costs of take-back. Specific rules relating to shipments within the Community with transit via third countries are laid down in Articles 31 and 32 of that regulation.

15 The prior written notification and consent procedure does not apply to shipments of non-hazardous waste, listed inter alia in Annex III to the contested regulation ('green list') and destined for recovery. Under Articles 3(2) and 18(1), such shipments are subject only to a general information requirement. Nevertheless, under Article 18(2) of that regulation, a contract between the person who arranges the shipment and the consignee for recovery of the waste is to be effective when the shipment starts and evidence of such a contract must be available.

16 Title III of the contested regulation concerns shipments of waste exclusively within Member States. Under Article 33(1) of that regulation,'Member States shall establish an appropriate system for the supervision and control of shipments of waste exclusively within their jurisdiction. This system shall take account of the need for coherence with the Community system established by Titles II and VII'.

17 Title IV of the contested regulation concerns the scheme for exports from the Community to third countries. Article 34(1) and (2) of that regulation prohibits all exports of waste from the Community destined for disposal, except for exports of waste destined for disposal in countries of the European Free Trade Association (EFTA) which are also parties to the Basel Convention. In that case, under Article 35 of the Regulation, the provisions of Title II of the Regulation relating to the prior written notification and consent procedure are to apply *mutatis mutandis*, with adaptations and additions. Exports from the Community of wastes in the categories listed in Article 36(1) of the contested regulation, including exports from the Community of hazardous wastes destined for recovery in countries to which the OECD Decision does not apply, are also prohibited. As regards exports of non-hazardous waste ('green list') destined for recovery in the latter countries, Article 37 of the Regulation provides that the Commission must obtain information on the applicable procedures. As regards exports of hazardous and non-hazardous waste destined for recovery in countries to which the OECD Decision applies, under Article 38 of the Regulation, the provisions of Title II of the Regulation are also to apply *mutatis mutandis*, with adaptations and additions.

18 Title V of the contested regulation governs imports of waste into the Community from third countries. Under Article 41 of that regulation, imports into the Community of waste for disposal are prohibited except those from countries which are parties to the Basel Convention or other countries with which the Community, or the Community and its Member States, have concluded bilateral or multilateral agreements compatible with Community legislation and in accordance with Article 11 of that convention. In those cases, pursuant to Articles 41(3) and 42 of the Regulation, the provisions of Title II of that regulation are to apply *mutatis mutandis*, with adaptations and additions. Under Article 43(1) of the contested regulation, all imports into the Community of waste destined for recovery are to be prohibited except those from countries to which the OECD Decision applies, other countries which are parties to the Basel Convention or other countries with which the Community, or the Community and its Member States, have concluded bilateral or multilateral agreements compatible with Community legislation and in accordance with Article 11 of the Basel Convention. In those cases, pursuant to Articles 43(3), 44(1) and 45 of the contested regulation, read in conjunction with Article 42 thereof, Title II is to apply *mutatis mutandis*, with adaptations and additions.

19 Title VI of the contested regulation lays down the rules applicable to the transit of waste through the Community from and to third countries, which, in accordance with Articles 47 and 48 thereof, read in conjunction with Articles 42 and 44 thereof, are also derived from Title II of the Regulation.

20 Title VII of the contested regulation contains additional provisions concerning the application of the Regulation with respect, inter alia, to penalties, the designation of competent authorities and reports by the Member States. Among those provisions, Article 49 lays down general obligations concerning environmental protection in the following terms:

‘1. The producer, the notifier and other undertakings involved in a shipment of waste and/or its recovery or disposal shall take the necessary steps to ensure that any waste they ship is managed without endangering human health and in an environmentally sound manner throughout the period of shipment and during its recovery and disposal.

…

2. In the case of exports from the Community, the competent authority of dispatch in the Community shall:

(a) require and endeavour to secure that any waste exported is managed in an environmentally sound manner throughout the period of shipment, including recovery as referred to in Articles 36 and 38 or disposal as referred to in Article 34, in the third country of destination;

(b) prohibit an export of waste to third countries if it has reason to believe that the waste will not be managed in accordance with the requirements of point (a).

…

3. In the case of imports into the Community, the competent authority of destination in the Community shall:

(a) require and take the necessary steps to ensure that any waste shipped into its area of jurisdiction is managed without endangering human health and without using processes or methods which could harm the environment, and in accordance with Article 4 of Directive 2006/12/EC and other Community legislation on waste throughout the period of shipment, including recovery or disposal in the country of destination;

(b) prohibit an import of waste from third countries if it has reason to believe that the waste will not be managed in accordance with the requirements of point (a).'

Forms of order sought and procedure

21 The Commission claims that the Court should:

— annul the contested regulation;

— declare that the effects of the annulled regulation are definitive pending the replacement of that regulation within a reasonable period of time by an act adopted by the European Parliament and the Council of the European Union on the correct legal basis of Articles 175(1) and 133 EC and justified accordingly in the recitals, and

— order the Parliament and the Council to pay the costs.

22 The Parliament contends that the Court should:

— dismiss the action in its entirety as unfounded, and

— order the Commission to pay the costs.

23 The Council contends that, in the event that the action is held to be admissible, the Court should:

— dismiss the action in its entirety, and

— order the Commission to pay the costs.

24 By order of the President of the Court of 27 February 2007, the French Republic, the Republic of Austria and the United Kingdom of Great Britain and Northern Ireland were granted leave to intervene in support of the forms of order sought by the Parliament and the Council.

25 Following a request by the Parliament and the Council, made pursuant to the second subparagraph of Article 44(3) of the Rules of Procedure of the Court of Justice, the case was assigned to the Grand Chamber.

The action

Admissibility

26 The Council raises an objection of inadmissibility on the ground that the Commission, contrary to the requirements of Article 38(1)(c) of the Rules of Procedure, fails to state in its application which provisions of the contested regulation should, in its view, be based on Article 133 EC, which should be based on Article 175(1) EC and, as the case may be, which provisions should be based on both articles.

27 Under Article 38(1)(c) of the Rules of Procedure, an application must state the subject-matter of the proceedings and a summary of the pleas in law on which the application is based. That statement must be sufficiently clear and precise to enable the defendant to prepare his defence and the Court to rule on the application. It is therefore necessary for the essential points of law and of fact on which a case is based to be indicated coherently and intelligibly in the application itself (Case C-195/04 *Commission* v *Finland* [2007] ECR I-3351, paragraph 22, Case C-412/04 *Commission* v *Italy* [2008] ECR I-619, paragraph 103).

28 The Court finds that, by stating in its application that the contested regulation ought to have been based on Articles 133 EC and 175(1) EC and by explaining why it takes the view that the conditions for using a dual legal basis are fulfilled, the Commission has satisfied the requirements under Article 38(1)(c) of the Rules of Procedure. The application evidently did enable the defendants and the Member States to present their positions on a well-informed basis. Contrary to the Council's contentions, it is not necessary that an action challenging the legal basis of a Community act on the ground that it should have been based on a dual legal basis should specify which parts or provisions of the contested measure properly come within one or other of the legal bases cited, or both.

29 Accordingly, the Commission's action is admissible.

Substance

Arguments of the parties

30 The Commission puts forward a single plea in law, alleging infringement of the EC Treaty resulting from the choice by the Parliament and the Council to base the contested regulation solely on Article 175(1) EC and not on Articles 133 EC and 175(1) EC, as it had proposed. A dual legal basis is called for because both the purpose and the content of the Regulation comprise two indissociable components, one relating to the common commercial policy and the other to protection of the environment, neither of which can be regarded as secondary or indirect as compared with the other.

31 The Commission observes that, according to settled case-law, the scope of application of the common commercial policy is to be given a wide interpretation and a measure regulating trade with third countries does not cease to be a commercial policy measure only because it also serves objectives in fields other than trade, such as protection of the environment. In that context, it refers to Article 6 EC, under which environmental protection requirements are to be integrated into the definition and implementation of Community policies and activities referred to in Article 3 EC.

32 As regards the link between the contested regulation and the common commercial policy, the Commission argues that the wording of Article 1(2) of the Regulation shows that it is not intended only to regulate shipments of waste in the Community for purely environmental purposes, but that it also extends to imports into the Community of waste from third countries, exports of waste from the Community to third countries

and to waste in transit through the Community on the way from and to third countries. It adds that, since waste is to be regarded as 'goods' for the purposes of the free movement of goods within the Community, there can hardly be any doubt that the import, export and transit of such goods, regulated in particular by Titles IV to VI of the Regulation, fall within the scope of the common commercial policy.

33 In so far as the environmental nature of the contested regulation follows from the environmental protection objectives pursued by the Basel Convention, the Commission, whilst noting that that convention has an important commercial policy element, as evidenced by the fact that it was considered by the World Trade Organisation (WTO), observes that the Regulation has a much broader scope than that convention. The latter applies only to movements of hazardous waste destined for disposal, whereas the contested regulation covers all waste, regardless of whether or not it is hazardous and whether it is destined for disposal or recovery.

34 As to the possibility of founding a regulation on a dual legal basis comprising Articles 133 EC and 175(1) EC, the Commission observes that the Court, in Case C-178/03 *Commission* v *Parliament and Council* [2006] ECR I-107, concerning the legal basis for Regulation (EC) No 304/2003 of the European Parliament and of the Council of 28 January 2003 concerning the export and import of dangerous chemicals (OJ 2003 L 63, p. 1), accepted that, both the purposes and the terms of that regulation contained commercial and environmental components which were linked so indissociably that recourse to that dual legal basis was required.

35 In that context, the Commission refers to various Community acts which were adopted on a dual legal basis comprising Articles 113 of the EEC Treaty (subsequently Article 113 of the EC Treaty, now, after amendment, Article 133 EC) and 130s of the EEC Treaty, namely, inter alia, Council Regulation (EEC) No 3254/91 of 4 November 1991 prohibiting the use of leghold traps in the Community and the introduction into

the Community of pelts and manufactured goods of certain wild animal species originating in countries which catch them by means of leghold traps or trapping methods which do not meet international humane trapping standards (OJ 1991 L 308, p. 1), Council Decision 98/392/EC of 23 March 1998 concerning the conclusion by the European Community of the United Nations Convention of 10 December 1982 on the Law of the Sea and the Agreement of 28 July 1994 relating to the implementation of Part XI thereof (OJ 1998 L 179, p. 1), and Council Regulation (EC) No 1420/1999 of 29 April 1999 establishing common rules and procedures to apply to shipments to certain non-OECD countries of certain types of waste (OJ 1999 L 166, p. 6). Thus, the Council has accepted in the past that acts may be adopted using the dual legal basis in question. In so far as the contested regulation provides for similar rules to those laid down in Regulation No 1420/1999, the Commission considers that, if the Council does not accept that the whole regime of shipments to non-OECD countries of waste destined for recovery has to be based on the dual legal basis proposed, it will be in contradiction with what it accepted by adopting Regulation No 1420/1999.

36 According to the Commission, Article 176 EC does not preclude a combined application of Articles 133 EC and 175 EC as a legal basis for a Community act. If that act was to regulate a certain matter in great detail, the possibility for the Member States of maintaining or introducing more stringent protection measures would necessarily be limited. It is, moreover, clear from the second sentence of Article 176 EC that such measures would have to be compatible with the other provisions of the Treaty, including Article 133 EC.

37 The Commission points out that the question of the legal basis cannot be regarded as purely formal in nature, since the choice between Articles 133 EC and 175 EC has important implications for the division of competence between the Community and its Member States, the former conferring an exclusive competence on the Community, the latter conferring shared competences. The choice of Article 175(1) EC as the sole legal basis for the contested regulation implies that the Member States have competence to regulate exports and imports of waste, which would be bound to distort competition between undertakings of the Member States in external markets and to create disturbances in the internal market of the Community.

38 The Parliament and the Council submit that detailed analysis of the structure and content of the contested regulation clearly show that it has one main purpose, which is the protection of the environment. Whilst recitals 1 and 42 in the preamble to the Regulation make express mention of that purpose, the remaining recitals make no mention of the pursuit of the objectives of the common commercial policy. The Parliament and the Council state that the Regulation pursues the same main objective and follows the same basic structure as Regulation No 259/93, which was based on Article 130s of the EEC Treaty alone. The environmental purpose of the contested regulation is also apparent from the fact that, just like its predecessor, Regulation No 259/93 is designed to implement the obligations under the Basel Convention, which is categorised as a multilateral agreement on environmental protection for the purposes of the WTO and was concluded on behalf of the Community by Decision 93/98, adopted on the basis of Article 130s of the EEC Treaty.

39 As regards the content of the contested regulation, the Parliament and the Council state that the rules laid down in Title II of that regulation, which contains the core provisions governing shipments of waste, apply *mutatis mutandis* to Titles IV to VI thereof, on extra-Community shipments of waste. Those institutions' possible objections to shipments of waste can be based only on environmental grounds. They also emphasise the importance of the general obligation imposed in Article 49 of the contested regulation concerning the protection of the environment which applies to both imports and exports. Thus that regulation establishes one coherent set of rules serving the protection of the environment, which do not actually facilitate but rather impede trade.

40 In so far as, according to the Commission, the correct legal basis for intra-Community waste shipments governed by Title II of the contested regulation is Article 175 EC, whereas, as regards shipments of waste between the Community and third countries governed by Titles IV to VI of that regulation, the correct basis is Article 133 EC, such a position is not in line with the choice to apply the same system, contained in Title II of the contested regulation, both to intra-Community and extra-Community shipments of waste. That position would also deprive the Community's environmental policy of any possibility of external action whenever goods might be affected.

41 As regards the Commission's reliance on Case C-178/03 *Commission* v *Parliament and Council*, the Parliament notes that the Commission has not shown to what extent the contested regulation is comparable to Regulation No 304/2003 at issue in the case which gave rise to that judgment, or that the aims and content of those regulations present the same characteristics, allowing an analogous conclusion to be drawn regarding their legal bases.

42 The Council, for its part, considers that that judgment implies logically that the parts of the contested regulation concerning shipments of waste between the Community and third countries must have a dual legal basis consisting of Articles 133 EC and 175 EC, whilst the other parts of that regulation must, by contrast, be based on Article 175 EC alone. Nevertheless such a result would be difficult to reconcile with the Court's case-law regarding the predominant purpose test, given that it appears to be accepted by the Commission that the other parts of the contested regulation were validly adopted on the basis of Article 175 EC. Even if those parts of that regulation concerned with the shipment of waste between the Community and third countries did pursue an objective linked to the common commercial policy, clearly that objective would be merely secondary, in the light of the aim and content of that regulation 'as a whole', to the primary objective of the Regulation.

43 The Parliament and the Council express serious doubts as to the possibility of using both Article 133 EC and Article 175 EC in combination as a legal basis for a Community act, since the Community's competence in the field of commercial policy is exclusive in nature, whereas it is shared with the Member States in the field of environmental policy. Accordingly, they have difficulty seeing how Article 176 EC could be applied in the context of a legal act based on Article 133 EC and Article 175 EC. In that situation, the manifest intention of the drafters of the Treaty would be thwarted.

44 The intervening Member States put forward, in essence, a similar line of argument to that of the Parliament and the Council.

Findings of the Court

45 It should be remembered, as a preliminary point, that, according to the Court's settled case-law, the choice of legal basis for a Community measure must rest on objective factors which are amenable to judicial review, including in particular the aim and the content of the measure (see Case C-178/03 *Commission* v *Parliament and Council*, paragraph 41, and Case C-155/07 *Parliament* v *Council* [2008] ECR I-8103, paragraph 34).

46 If examination of a Community measure reveals that it pursues a twofold purpose or that it has a twofold component and if one of those is identifiable as the main or predominant purpose or component, whereas the other is merely incidental, the act must be based on a single legal basis, namely that required by the main or predominant purpose or component (see Case C-178/03 *Commission* v *Parliament and Council*, paragraph 42, and Case C-155/07 *Parliament* v *Council*, paragraph 35).

47 Exceptionally, if on the other hand it is established that the act simultaneously pursues a number of objectives or has several components that are indissociably linked, without one being secondary and indirect in relation to the other, such an act will have to be founded on the various corresponding legal bases (see Case C-211/01 *Commission* v *Council* [2003] ECR I-8913, paragraph 40, and Case C-178/03 *Commission* v *Parliament and Council*, paragraph 43).

48 In the present case, it is not disputed that the contested regulation pursues the objective of protection of the environment and that, consequently, it was, at least in part, validly founded on Article 175(1) EC. The dispute relates solely to the question whether that regulation also pursues a common commercial policy objective and has components falling within that policy which are indissociably linked to environmental protection-related components of such importance that the act ought to have had a dual legal basis, namely Articles 133 EC and 175(1) EC.

49 In those circumstances, it is necessary to examine whether the objective and components of the contested regulation relating to the protection of the environment must be regarded as being the main or predominant objective and component.

50 That is indeed the case.

51 First, as regards the objective of the contested regulation, recital 1 in the preamble thereto states that '[t]he main and predominant objective and component of this Regulation is the protection of the environment'. Although disputed by the Commission, that statement is reiterated in recital 42 in the preamble to that regulation, which was contained in the Commission's proposal for that same regulation and which states that the objective of the contested regulation is 'to ensure protection of the environment when waste is subject to shipment'.

52 The other recitals in the preamble to the contested regulation confirm the environmental purpose thereof. As stated by the Advocate General in point 18 of his Opinion, apart from recitals 16 and 19, which refer to the proper functioning of the internal market, all of the recitals, albeit some more directly than others, bespeak environmental concerns.

53 By way of example, recital 33 in the preamble to the contested regulation states that necessary steps should be taken to ensure that waste shipped within the Community and waste imported into the Community is managed, throughout the period of shipment and including recovery or disposal in the country of destination, 'without endangering human health and without using processes or methods which could harm the environment' and that, as regards exports from the Community, 'efforts should be made to ensure that the waste is managed in an environmentally sound manner throughout the period of shipment and including recovery or disposal in the third country of destination'.

54 By contrast, and as observed by the Parliament and the Council, the preamble to the contested regulation does not make any reference to the pursuit of objectives falling within the common commercial policy.

55 As regards, secondly, the content of the contested regulation, Article 1 thereof states that that regulation 'establishes procedures and control regimes for the shipment of waste, depending on the origin, destination and route of the shipment, the type of waste shipped and the type of treatment to be applied to the waste at its destination'. As is clear from the summary of the content of the Regulation given in paragraphs 12 to 19 of this judgment, the principal instrument established by it is the prior written notification and consent procedure, the details of which are set out at length in Title II of the Regulation, relating to shipments of waste within the Community. That procedure is applicable, pursuant to Article 3(1) of the contested regulation, to shipments within the Community of all wastes destined for disposal, and also to shipments of specific categories of wastes destined for recovery.

56 The prior written notification and consent procedure is characterised by a number of elements aimed at ensuring that shipments of waste are carried out in a manner which respects the need to protect the environment. Thus, in the context of that procedure, under Articles 4(4), 5 and 22 to 24 of the contested regulation, the notifier of a shipment of waste must supply evidence of a contract concluded between him and the recipient, laying down obligations with respect to the recovery or disposal of the notified waste, as well as the obligation for the notifier to take back waste when a shipment cannot be completed or when a shipment is illegal.

57 Moreover, under Articles 4(5) and (6) of the contested regulation, the notifier must establish a financial guarantee or equivalent insurance covering the costs of shipment, recovery or disposal operations and storage of the waste in question.

58 When a shipment of notified waste is to be carried out, the competent authorities, when they opt to impose conditions for their consent to a notified shipment or to raise reasoned objections to such a shipment, as provided for in Articles 9 to 12 of the contested regulation, must base them primarily on grounds relating to compliance with environmental protection legislation.

59 It follows that, like the prior informed consent procedure established by the Cartagena Protocol on Biosafety, the prior written notification and consent procedure provided for by the contested regulation may be described as a typical instrument of environmental policy (see, to that effect, Opinion 2/00 [2001] ECR I-9713, paragraph 33).

60 As pointed out in paragraphs 17 and 18 of this judgment, the prior written notification and consent procedure provided for in Title II of the contested regulation and applicable to shipments of waste within the Community is also to apply *mutatis mutandis*, with adaptations and additions provided for by the relevant provisions of that regulation, to shipments of waste between the Community and third countries in cases where exports from the Community or imports into the Community are not prohibited under the provisions of Titles IV and V of that regulation. This is the case, pursuant to Articles 35 and 42 of the Regulation, of exports of waste destined for disposal from the Community to EFTA countries which are parties to the Basel Convention, and also imports into the Community of such waste originating from countries which are parties to that convention. The same is true, under Articles 38 and 44 of the contested regulation, of exports and imports of waste destined for recovery between the Community and the countries to which the OECD Decision applies. The same regime applies, under Articles 47 and 48 of the Regulation, in conjunction with Articles 42 and 44 thereof, in Title VI thereof, to shipments of waste through the Community from and to third countries.

61 It is also important to bear in mind the obligation imposed by Article 49 of the contested regulation on the producer, the notifier and other undertakings involved in a shipment of waste and/or its recovery or disposal to take 'the necessary steps to ensure that any waste they ship is managed without endangering human health and in an environmentally sound manner throughout the period of shipment and during its

recovery and disposal'. That obligation, which is general in nature, applies to all shipments of waste, both within the Community and, *mutatis mutandis* pursuant to Article 49(2) and (3), between the Community and third countries.

62 Consequently, it is evident from the above analysis of the contested regulation that, both by its objective and content, it is aimed primarily at protecting human health and the environment against the potentially adverse effects of cross-border shipments of waste.

63 More specifically, in so far as the prior written notification and consent procedure clearly pursues an environmental protection purpose in the field of shipments of waste between the Member States and, consequently, was correctly based on Article 175(1) EC, it would not be coherent to consider that that same procedure, when it applies to shipments of waste between Member States and third countries with the same environmental protection objective, as confirmed by recital 33 in the preamble to the contested regulation, is in the nature of an instrument of common commercial policy and must, on that ground, be based on Article 133 EC.

64 That conclusion is corroborated by an analysis of the legislative context of the contested regulation.

65 First, that regulation replaces Regulation No 259/93, which, whilst providing inter alia in Titles IV to VI for a scheme similar to that provided for in Titles IV to VI of the contested regulation for imports and exports of waste between the Community and third countries, and also for transit through the Community of waste originating from

third countries, was adopted on the basis of Article 130s of the EEC Treaty. The choice of that legal basis was endorsed by the Court in Case C-187/93 *Parliament* v *Council* [1994] ECR I-2857, as opposed to Article 100a of the EEC Treaty (subsequently 100a of the EC Treaty, now, after amendment, Article 95 EC). The Court has also found that the supervision and control established by Regulation No 259/93 are intended to protect the environment, not only within the Community but also in third countries to which waste is exported from the Community (see Case C-259/05 *Omni Metal Service* [2007] ECR I-4945, paragraph 30).

66 Secondly, like its predecessor Regulation No 259/93, the contested regulation, as evidenced by recital 3 in the preamble thereto, aims to implement the obligations under the Basel Convention. The environmental purpose of that convention is clear from the preamble thereto, which states that 'transboundary movements of [hazardous wastes and other wastes] from the State of their generation to any other State should be permitted only when conducted under conditions which do not endanger human health and the environment' and emphasises the need for 'their environmentally sound management'. In keeping with those objectives, that convention which, as observed by the Parliament and the Council, was characterised as a multilateral environmental agreement by the WTO, was approved on behalf of the Community by Decision 93/98, adopted on the sole basis of Article 130s of the EEC Treaty.

67 As regards the Commission's argument that the contested regulation is broader in scope than the Basel Convention, since it applies to all waste destined for disposal and recovery, whereas the Convention covers only hazardous waste for disposal, and that that difference denotes a commercial policy dimension to the Regulation, it must be pointed out that it is clear from Article 2(4) of that convention, read in conjunction with Section B of Annex IV thereto, that the term 'disposal' used in that convention covers '[o]perations which may lead to resource recovery, recycling, reclamation, direct reuse or alternative uses'. As observed by the Advocate General in point 33 of his Opinion, the fact that the contested regulation also applies to non-hazardous waste and to waste intended for recovery does not make it commercial or weaken its environmental dimension since waste, of whatever type it may be, is inherently harmful to the environment (see, to that effect, Case C-9/00 *Palin Granit and Vehmassalon kansanterveystyön kuntayhtymän hallitus* [2002] ECR I-3533, paragraphs 36 and 45 to 51).

68 The foregoing analysis is not invalidated by the Commission's line of argument that Titles IV to VI of the contested regulation, concerning exports, imports and transit of waste, must be based on Article 133 EC because waste constitutes goods which may be the object of commercial transactions and that the notion of common commercial policy should be interpreted broadly, since it encompasses commercial measures which also pursue objectives in other areas, including environmental protection. Nor can it be affected by the fact that, according to the terminology used in Article 1(2) of that regulation, shipments of waste between the Community and third countries are categorised as 'imports' and 'exports'.

69 It should be borne in mind in that regard that the prior written notification and consent procedure applies to all shipments of waste, irrespective of any commercial context in which they might take place. The term 'shipment' is defined in Article 2(34) of the contested regulation in a neutral manner as 'the transport of waste destined for recovery or disposal …'. The term 'transport', in turn, is defined in Article 2(33) of that regulation as 'the carriage of waste by road, rail, air, sea or inland waterways'. 'Import' and 'export' are also defined, in Article 2(30) and (31) of the Regulation, in neutral terms, as 'any entry of waste into the Community …' and 'the action of waste leaving the Community …' respectively. The contested regulation thus emphasises the carriage of waste with a view to its treatment rather than carriage thereof for commercial purposes. Even if waste is shipped in the context of commercial trade, the fact remains that the prior written notification and consent procedure is aimed solely at protecting against risks to human health and the environment arising from such shipments and not to promote, facilitate or govern commercial trade (see, by analogy, Opinion 2/00, paragraphs 37 and 38).

70 Moreover, a broad interpretation of the concept of common commercial policy is not such as to call into question the finding that the contested regulation is an instrument falling principally under environmental protection policy. As the Court has held, a Community act may fall within that area, even when the measures provided for by that act are liable to affect trade (see, to that effect, Opinion 2/00, paragraph 40).

71 A Community act falls within the exclusive competence in the field of the common commercial policy provided for in Article 133 EC only if it relates specifically to international trade in that it is essentially intended to promote, facilitate or govern trade and has direct and immediate effects on trade in the products concerned (see Case C-347/03 *Regione autonoma Friuli-Venezia Giulia and ERSA* [2005] ECR I-3785, paragraph 75 and case-law cited).

72 That is clearly not the situation in the present case. As with its predecessor, the aim of the contested regulation is not to define those characteristics of waste which will enable it to circulate freely within the internal market or as part of commercial trade with third countries, but to provide a harmonised set of procedures whereby movements of waste can be limited in order to secure protection of the environment (see, to that effect, Case C-187/93 *Parliament* v *Council*, paragraph 26).

73 As to the Commission's argument that the Court should, in the present case, take the same approach as in Case C-178/03 *Commission* v *Parliament and Council*, suffice it to note that Regulation No 304/2003 concerning the export and import of dangerous chemicals, which was at issue in that case, is not comparable to the contested regulation.

74 The principal objective of Regulation No 304/2003 is to implement the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, approved, on behalf of the European Community, by Council Decision 2003/106/EC of 19 December 2002 (OJ 2003 L 63, p. 27) ('the Rotterdam Convention'). Given the clear convergence between the provisions of that convention and those of the Regulation, which implements the latter at Community level, the Court found that use of the same legal bases both for the decision approving that convention and for that regulation was necessary (see Case C-178/03 *Commission* v *Parliament and Council*, paragraphs 45 and 47).

75 In that regard, in Case C-94/03 *Commission* v *Council* [2006] ECR I-1, paragraph 43, the Court inferred from a detailed analysis of the Rotterdam Convention that it also aimed to promote shared responsibility and cooperative efforts in the international trade of certain hazardous chemicals and that it was through the adoption of measures of a commercial nature, relating to trade in certain hazardous chemicals or pesticides, that the parties to that convention sought to attain the objective of protecting human health and the environment. The Court concluded that the commercial components of that convention could not be regarded as merely incidental to the objective of environmental protection pursued thereby (see, to that effect, Case C-94/03 *Commission* v *Council*, paragraphs 37 and 42), and that the two components falling within the scope of the common commercial policy and protection of human health and the environment are indissociably linked and neither of them can be regarded as secondary or indirect as compared with the other. The decision approving that convention on behalf of the Community thus ought to have been based on Articles 133 EC and 175(1) EC, in conjunction with the relevant provisions of Article 300 EC (see Case C-94/03 *Commission* v *Council*, paragraph 51). Similarly, the Court has held that Regulation No 304/2003 implementing the Rotterdam Convention ought to have been founded on Articles 133 EC and 175(1) EC (Case C-178/03 *Commission* v *Parliament and Council*).

76 As shown by the analysis in paragraphs 51 to 67 of this judgment, the contested regulation does not contain such components of common commercial policy as to justify recourse to a dual legal basis. Accordingly, the Commission may not rely on Case C-178/03 *Commission* v *Parliament and Council* in order to justify a finding to the contrary.

77 Moreover, the Commission's line of argument intended to demonstrate, by reference to the Community acts referred to in paragraph 35 of this judgment, the existence of a practice of adopting acts using a dual legal basis consisting of Articles 133 EC and 175(1) EC cannot be accepted. The legal basis for an act must be determined having regard to its own aim and content and not to the legal basis used for the adoption of other Community acts which might, in certain cases, display similar characteristics (see Case C-178/03 *Commission* v *Parliament and Council*, paragraph 55 and case-law cited).

78 In the light of all the above considerations, the Commission's action must be dismissed.

Costs

79 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 parties' pleadings. Since the Parliament and the Council have asked that the Commission be ordered to pay the costs and the Commission has been unsuccessful, the Commission must be ordered to pay the costs. Pursuant to the first subparagraph of Article 69(4), the interveners in this case must bear their own costs.

On those grounds, the Court (Grand Chamber) hereby:

1. **Dismisses the action;**

2. **Orders the Commission of the European Communities to pay the costs;**

3. **Orders the French Republic, the Republic of Austria and the United Kingdom of Great Britain and Northern Ireland to bear their own costs.**

[Signatures]