

JUDGMENT OF THE COURT (Second Chamber)

10 January 2006<sup>\*</sup>

In Case C-178/03,

ACTION for annulment under Article 230 EC, brought on 24 April 2003,

**Commission of the European Communities**, represented by G. zur Hausen, L. Ström van Lier and E. Righini, acting as Agents, with an address for service in Luxembourg,

applicant,

v

**European Parliament**, represented initially by C. Pennera and M. Moore, and subsequently by the latter and K. Bradley, acting as Agents, with an address for service in Luxembourg,

\* Language of the case: English.

and

**Council of the European Union**, represented initially by B. Hoff-Nielsen and M. Sims-Robertson, and subsequently by the latter and K. Michoel, acting as Agents,

defendants,

supported by:

**French Republic**, represented by G. de Bergues, F. Alabrune and E. Puisais, acting as Agents, with an address for service in Luxembourg,

**Republic of Finland**, represented by T. Pynnä, acting as Agent, with an address for service in Luxembourg,

**United Kingdom of Great Britain and Northern Ireland**, represented by R. Caudwell, acting as Agent, and A. Dashwood, Barrister, with an address for service in Luxembourg,

interveners,

THE COURT (Second Chamber),

composed of C.W.A. Timmermans (Rapporteur), President of the Chamber,  
J. Makarczyk, C. Gulmann, P. Kūris and J. Klučka, Judges,

Advocate General: J. Kokott,  
Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 7 April 2005,

after hearing the Opinion of the Advocate General at the sitting on 26 May 2005,

gives the following

### **Judgment**

1 By its application, the Commission of the European Communities seeks the annulment of 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, 'the contested regulation') in so far as it is based on Article 175(1) EC and not on Article 133 EC.

- 2 It is common ground that Article 133 EC was used by the Commission in the Proposal for a Council regulation submitted by it on 24 January 2002 concerning the export and import of dangerous chemicals (OJ 2002 C 126 E, p. 291). After the Parliament had been consulted on an optional basis pursuant to Article 133 EC, the Council of the European Union unanimously decided not to accept that proposal and to replace Article 133 EC by Article 175(1) EC, which is the sole legal basis of the contested regulation, as adopted jointly by the Parliament and the Council under the Article 251 EC procedure.

## **Legal background**

- 3 As is clear from, in particular, the first four recitals in its preamble, the contested regulation has two objectives. It aims, first, to implement the rules of the Rotterdam Convention on the prior informed consent procedure for certain hazardous chemicals and pesticides in international trade ('the Convention'), signed by the European Community on 11 September 1998 and approved on the latter's behalf by Council Decision 2003/106/EC of 19 December 2002 (OJ 2003 L 63, p. 27), without thereby weakening the level of protection afforded to the environment and the general public of importing countries by Council Regulation (EEC) No 2455/92 of 23 July 1992 concerning the export and import of certain dangerous chemicals (OJ 1992 L 251, p. 13), which it repeals and replaces. Secondly, it aims to go further than the provisions of the Convention in certain respects: the fourth recital in the preamble to the contested regulation explicitly mentions in that context Article 15 (4) of the Convention, which enables the parties to it in certain circumstances to take action that is more stringently protective of human health and the environment than that called for in the Convention.

4 To that end, Article 1(1) of the contested regulation provides:

'The objectives of this regulation are:

- (a) to implement the Rotterdam Convention ...
- (b) to promote shared responsibility and cooperative efforts in the international movement of hazardous chemicals in order to protect human health and the environment from potential harm; and
- (c) to contribute to their environmentally sound use.

They shall be achieved by facilitating information exchange about the characteristics of such chemicals, by providing for a decision-making process within the Community on their import and export and by disseminating decisions to Parties and other countries as appropriate.'

5 Article 1(2) of the contested regulation states that it also aims 'to ensure that the provisions of Council Directive 67/548/EEC of 27 June 1967 on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances [as amended] and of Directive 1999/45/EC of the European Parliament and of the Council of 31 May 1999 concerning the approximation of the laws, regulations and administrative provisions of the Member States relating to the classification, packaging and labelling of

dangerous preparations [as amended], regarding the classification, packaging and labelling of chemicals dangerous to man or to the environment when they are placed on the market in the European Community shall also apply to all such chemicals when they are exported from the Member States to other Parties or other countries, unless these provisions would conflict with any specific requirements of those Parties or other countries’.

6 Article 2(1) of the contested regulation defines its scope and states that it applies to:

‘(a) certain hazardous chemicals that are subject to the prior informed consent (PIC) procedure under the Rotterdam Convention;

(b) certain hazardous chemicals that are banned or severely restricted within the Community or a Member State; and

(c) all chemicals when exported in so far as their classification, packaging and labelling are concerned.’

7 The precise meaning of those terms is given in Article 3 of the contested regulation, which to a very large extent repeats the definitions given in Article 2 of the Convention. That applies in particular to the definition of the terms ‘banned chemical’ and ‘severely restricted chemical’, which mean, respectively, chemicals ‘all

uses of which' or 'virtually all uses of which' have been prohibited by final regulatory action by the Community or by a Member State in order to protect human health or the environment. It also applies to the definition of the term 'severely hazardous pesticide formulation', which means 'a chemical formulated for pesticidal use that produces severe health or environmental effects observable within a short period of time after single or multiple exposure, under conditions of use' (Article 3(9), (10), (11) and (15)). Article 3(14) defines the PIC procedure as 'the Prior Informed Consent procedure established by the Convention'.

8 Article 5 of the contested regulation lays down the arrangements for the participation of the Community in the Convention, the first paragraph in particular stating that its participation 'shall be a joint responsibility of the Commission and the Member States in particular for technical assistance, information exchange and matters relating to dispute settlement, participation in subsidiary bodies and voting'. Regarding the administrative functions of the Convention connected with the PIC procedure and export notification, the second paragraph of Article 5 provides that those functions are to be carried out by the Commission acting as a common designated authority on behalf of all the national authorities designated by the Member States in close cooperation with them. Accordingly, the Commission is authorised in particular to transmit Community export notifications to the parties to the Convention and to other countries under Article 7 of the contested regulation and to transmit or receive information and notifications concerning final regulatory action provided for by the Convention. Under the last sentence of the third paragraph of Article 5 of the contested regulation, it is also the Commission which is to provide the Secretariat with 'Community import responses for chemicals subject to the PIC procedure pursuant to Article 12'.

9 Under Article 6(1) and (2) of the contested regulation, chemicals falling within the substantive scope of the regulation are listed in Annex I thereto and are subject to different rules depending on the part of that annex to which they belong, although some chemicals may be classified in several parts of the annex simultaneously and therefore be subject to several regimes. Article 6(2) provides that the chemicals

listed in Part 1 of Annex I are subject to export notification comprising certain information set out in Annex III to the contested regulation, relating in particular to the substances or preparations to be exported, their identity, their physical and chemical, toxicological and ecotoxicological properties, and the precautions to be taken when they are used. The chemicals listed in Part 2 of Annex I to the contested regulation, which present particular risks to human health or the environment, are not only subject to the export notification procedure laid down in Article 7 of the Regulation but also qualify for the PIC notification procedure laid down in Article 10. As for the chemicals listed in Part 3 of Annex I, they are generally the same as the chemicals listed in Annex III to the Convention and are therefore subject to the PIC procedure. The particular obligations concerning imports and exports of the last-mentioned chemicals are described in more detail in Articles 12 and 13 of the contested regulation.

- 10 Therefore, as indicated in the foregoing paragraph of this judgment with regard to the export notification procedure, Article 7 of the contested regulation provides, in essence, that when an exporter wishes to export a chemical listed in Part 1 of Annex I thereto from the Community to a Party or other country, he must notify the designated national authority of the Member State in which he is established. After verifying that that information complies with the requirements set out in Annex III to the contested regulation, that authority then forwards the notification received to the Commission which, first, takes all the necessary measures to ensure that the appropriate authorities of the importing Party or other country receive the notification in question before the actual export operation takes place and, second, registers the notification in a database which is accessible to the public.
  
- 11 Article 7(3) of the contested regulation provides that a new export notification is to be given by the exporter whenever exports take place after changes have been made to Community legislation concerning the marketing, use or labelling of the substances in question or whenever the composition of a preparation is changed so that the labelling of such preparation is altered. However, under Article 7(4), [w]here



the export of a chemical relates to an emergency situation in which any delay may endanger public health or the environment in the importing Party or other country', the provisions relating to the notification procedure described above may be waived.

- 12 Under Article 7(5) of the contested regulation, the obligations relating to the export notification procedure cease when the chemical concerned becomes subject to the PIC procedure and the importing country, being a Party to the Convention, has given a response to the Secretariat, in accordance with Article 10(2) of the Convention, stating whether or not it consents to the importation of the product in question, the Secretariat has forwarded that information to the Commission, and the latter has sent it to the Member States. However, the second subparagraph of Article 7(5) states that that rule is not to apply 'where the importing country, being Party to the Convention, explicitly requires continued export notification by exporting Parties'.
- 13 Obligations similar to those set out in Article 7 of the contested regulation are laid down in Article 8 in relation to imports into the Community of chemicals which have been made subject to a prohibition or severe restriction by another Party to the Convention or another country, while Article 9 requires importers and exporters of chemicals listed in Annex I to the contested regulation each year to inform the designated national authorities of the Member State where they are established of the quantities of chemicals imported or exported during the preceding year. On the basis of the data thus obtained, the Member States must then provide the Commission with aggregated information, and then, after summarising that information at Community level, the Commission makes the non-confidential information publicly available.
- 14 Article 10(1) and (2) of the contested regulation provide that the Commission is to notify the Secretariat of the chemicals which qualify for the PIC notification procedure and to inform the Secretariat as and when further chemicals qualify for

the procedure and are added to Part 2 of Annex I to that regulation. The notification must be sent as soon as possible after adoption of the Community final regulatory action banning or severely restricting the chemical in question and must include all the information required in Annex II to the contested regulation concerning, in particular, the physical and chemical, toxicological and ecotoxicological properties of the chemical, and the hazards and risks it presents to human health and the environment.

- 15 Article 10(6) of the contested regulation also requires the Commission to forward immediately to the Member States information that it receives from the Secretariat regarding chemicals notified as banned or severely restricted by other Parties, and to evaluate, ‘in close cooperation with the Member States, the need to propose measures at Community level in order to prevent any unacceptable risks for human health and the environment within the Community’.
- 16 As indicated in paragraph 9 of this judgment, Articles 12 and 13 of the contested regulation are concerned, more specifically, with products subject to the PIC procedure, listed in part 3 of Annex I to that regulation. Corresponding to Articles 10 and 11 of the Convention, those articles set out the obligations other than notification concerning imports and exports, respectively, of chemical products.
- 17 With regard to imports of banned or severely restricted chemicals, Article 12(1) of the contested regulation provides that when the Commission receives from the Secretariat a decision guidance document concerning the listing of a new chemical in Annex III to the Convention, it is to forward the document immediately to the Member States. The Commission then takes a final or interim decision on behalf of the Community concerning the future import into the Community of the chemical

concerned 'in accordance with existing Community legislation'. Pursuant to Article 12(1) and (4), that decision, which takes the form of an authorisation or a ban on importation, the authorisation, which may be subject to conditions, is then communicated to the Secretariat, together with a description of the legislative or administrative measure upon which it is based.

18 In the case of a chemical that is banned or severely restricted by legislation in one or more Member States, Article 12(2) of the contested regulation imposes on the Commission the obligation to take account of that information in its decision concerning imports of the product if the Member State or States concerned so request in writing, whilst, in parallel with Article 10(6) of the same regulation, Article 12(6) also calls on the Commission to evaluate, 'in close cooperation with the Member States, the need to propose measures at Community level in order to prevent any unacceptable risks for human health and the environment within the Community, taking into account the information contained in the decision guidance document'.

19 Article 13 of the contested regulation, relating to exports of banned and severely restricted chemicals, contains various rules for ensuring compliance with decisions taken by other Parties to the Convention and other countries concerning the importation of such chemicals into their territory. Thus the Commission is required to forward immediately to the Member States and European industry associations information which it receives, whether in the form of circulars or otherwise, from the Secretariat regarding chemicals subject to the PIC procedure, and also the decisions of importing Parties regarding import conditions for those chemicals (Article 13(1)) and the Member States are required to communicate the responses forwarded by the Commission to all persons concerned within their jurisdiction (Article 13(3)). Article 13(4) adds that exporters must comply with the decisions in each response 'no later than six months after the Secretariat has first informed the Commission of such response ...'.

20 Under Article 13(6):

‘No chemicals listed in Parts 2 or 3 of Annex I shall be exported unless:

- (a) explicit consent to the import has been sought and received by the exporter through his designated national authority and the designated national authority of the importing Party or an appropriate authority in an importing other country; or
  
- (b) in the case of chemicals listed in Part 3 of Annex I, the latest circular issued by the Secretariat pursuant to paragraph 1 indicates that the importing Party has given consent to import.’

21 Likewise Article 13(7) of the contested regulation provides:

‘No chemical shall be exported later than six months before the expiry date, when such a date exists or can be inferred from the production date, unless the intrinsic properties of the chemical render this impracticable. In particular, in the case of pesticides exporters shall ensure that the size and packaging of pesticide containers is optimised so as to minimise the risks of creating obsolete stocks.’

22 Finally, pursuant to Article 13(8),

‘When exporting pesticides, exporters shall ensure that the label contains specific information about storage conditions and storage stability under the climatic conditions of the importing Party or other country. In addition, they shall ensure that the exported pesticides comply with the purity specification established by Community legislation.’

23 Article 14 of the contested regulation deals with the particular situation of articles containing chemicals listed in Parts 2 or 3 of Annex I — which are made subject to the export notification procedure laid down in Article 7 by virtue of Article 14(1) — and the situation of chemicals giving rise to particular concern with regard to human health or the environment — which are made subject to a total ban on export under Article 14(2). Articles 15 and 16 of the contested regulation lay down, respectively, the rules for information on transit movements and information to accompany exported chemicals. Such chemicals are made subject to the measures on packaging and labelling established by the relevant Community provisions, and the obligation in some circumstances to indicate on the label the production date and the expiry date of hazardous chemicals (Article 16(1) and (2)). In addition, Article 16(3) requires the exporter to send each importer of chemicals referred to in Article 16(1) a safety data sheet in accordance with Commission Directive 91/155/EEC of 5 March 1991 defining and laying down detailed arrangements for the system of specific information relating to dangerous preparations (OJ 1991 L 76, p. 35).

24 The final articles of the contested regulation relate to the obligations of the national authorities responsible for controlling import and export operations (Article 17), the introduction by the Member States of rules imposing ‘effective, proportional and dissuasive’ penalties (Article 18), the regular forwarding to the Commission of information on the operation of the procedures provided for by the contested

regulation and the preparation by the Commission of a synthesis report (Article 21), the updating of the annexes to the contested regulation ‘on the basis of developments under Community legislation and under the Convention’ (Article 22) and the drawing up by the Commission of technical notes for guidance to facilitate the day-to-day application of the regulation (Article 23). Articles 19 and 20 of the contested regulation deal with the need for the exchange of information and technical assistance, in particular for developing countries and countries with economies in transition, in terms very close to those used in Articles 14 and 16 of the Convention.

### **Forms of order sought**

25 The Commission claims that the Court should:

- annul the contested regulation;
  
- declare that the effects of the regulation must be maintained until the Council adopts a new regulation; and
  
- order the Parliament and the Council to pay the costs.

26 The Parliament and the Council contend that the Court should dismiss the action as unfounded and order the applicant to pay the costs.

- 27 By order of the President of the Court of 15 September 2003, the French Republic, the Republic of Finland and the United Kingdom of Great Britain and Northern Ireland were granted leave to intervene in this case in support of the form of order sought by the Parliament and the Council.

## **The action**

### *Arguments of the parties*

- 28 The Commission bases its application on a single plea, alleging infringement of the EC Treaty in that the wrong legal basis was chosen. In so far as the contested regulation is an instrument whose essential purpose is to regulate international trade in certain hazardous chemicals, it falls within the scope of the common commercial policy and not the Community environmental policy. Therefore it ought to have been adopted in the form of a Council regulation based on Article 133 EC, and not in the form of a regulation of the European Parliament and of the Council based on Article 175(1) EC. According to the Commission, that conclusion follows both from a reading of the preamble to the contested regulation, which sets out the objectives pursued by the legislature, and from an analysis of the content of the regulation.
- 29 With regard, first, to the objectives of the contested regulation, the Commission submits that they may be inferred immediately from its title because it refers to 'exports' and 'imports' of dangerous chemicals. The use of those words, and the intention, mentioned in the third recital of the preamble, to implement the Convention without weakening the effects of existing Community rules on exports

and imports of dangerous chemicals, clearly show the predominant commercial aim of the regulation, which is to regulate trade in such products between the Community and third countries.

30 Article 1 of the contested regulation, which sets out the objectives pursued by its authors, also directly echoes those concerns because, according to Article 1(1)(a), the objective of the contested regulation is ‘to implement the Rotterdam Convention’. According to the Commission, that convention falls precisely within the ambit of the common commercial policy because it concerns the prior informed consent procedure applicable to hazardous chemicals and pesticides in international trade. The objectives set out in Article 1(1)(b) and (c) of the contested regulation merely repeat those stated in Article 1 of the Convention.

31 As for Article 1(2) of the contested regulation, it is in keeping with the same commercial viewpoint because it calls on the Community to ensure that the Community rules on the classification, packaging and labelling of dangerous substances that apply when they are marketed in the Community are also applicable to them when they are exported to other parties to the Convention or other countries. Therefore trade in such substances with non-member countries is a central concern of the contested regulation.

32 An analysis of the actual terms of the contested regulation also bears out the view, according to the Commission, that it is an instrument with an essentially commercial purpose. In that connection, the Commission refers in particular to Articles 6 to 16 of the contested regulation, which set out the rules applying to exports and imports of dangerous chemicals and, in the Commission’s view, are the core provisions of the contested regulation, and to Article 3 of the contested



regulation which, in paragraphs 16 and 17, defines the terms 'export' and 'import' by reference to customs procedures applicable within the Community. According to the Commission, that reference necessarily means that the movement of the goods in question in the present case is treated as trade in those products and, as such, is subject to the same rules as trade.

- 33 In that context the Commission observes that the classification, labelling, use and marketing of the chemicals covered by the contested regulation are governed, in Community law, by a number of directives which, with one exception, are all based on Article 95 EC or on Article 100 of the EEC Treaty (subsequently, after amendment, Article 100 of the EC Treaty, and now Article 94 EC) or Article 100a of the EC Treaty (now, after amendment, Article 95 EC). Member States wishing to ban or restrict the use of a chemical that is not subject to a Community harmonisation measure must therefore rely on Article 30 EC to justify such a ban or restriction or request a derogation under Article 95(4) or (5) EC. Since the Member States cannot apply different national rules in the Community without first obtaining such a derogation, there can be no question of authorising those States to apply different national rules in relation to imports and exports of dangerous chemicals. Trade in such chemicals with non-member countries must be regulated uniformly so as to avoid any distortion of intra-Community trade. Article 133 EC is therefore the appropriate legal basis for the contested regulation.

- 34 Referring, finally, to the settled case-law of the Court to the effect that, by its nature, the common commercial policy must be given a wide interpretation, the Commission deplores the enlargement of the substantive scope of the contested regulation so as to cover products not included in its initial proposal, namely chemicals which are banned or severely restricted in one or more Member States only. That modification, and the terms of the first paragraph of Article 5 of the contested regulation, according to which the participation of the Community in the Convention is, for certain matters referred to in that article, to be 'a joint

responsibility of the Commission and the Member States', clearly run counter to the harmonisation sought at Community level because they seem to take the existence of such national bans and restrictions for granted, and only Article 10(7) contains a reference to the need to comply with Community legislation.

35 For the defendants, on the other hand, the sole purpose of the terms included in the first paragraph of Article 5 of the contested regulation is to reflect more adequately the mixed nature of the participation of the Community and the Member States in the Convention. As regards the widening of the substantive scope of the regulation to include products that are banned or severely restricted in only some Member States, it is, according to the defendants, additional evidence of the importance they attach to the protection of human health and the environment since, by comparison with the proposal submitted by the Commission, additional products were included within the potential scope of the contested regulation. The Council and the Parliament refer, in that context, to Article 15(4) of the Convention, which authorises the parties to take, under certain conditions, action that is more stringently 'protective of human health and the environment' than that called for in the Convention, and to the 4th and 17th recitals in the preamble to the contested regulation, which refer respectively to the need 'to go further than the provisions of the Convention in certain respects' and to ensure in all circumstances 'sound management of chemicals'.

36 As regards the actual terms of the regulation, the defendants and the interveners essentially agree with the Commission's assessment as to the central importance of the mechanisms provided for in Articles 6 to 16 of the contested regulation but, in their view, those mechanisms are evidence of the Community legislature's wish to protect human health and the environment against the harmful effects of uncontrolled handling of hazardous chemicals rather than a concern to regulate or promote their marketing. In that connection, those parties refer in particular to Article 1(2) of the contested regulation, which expressly refers to the relevant

Community provisions concerning the classification, packaging and labelling of chemicals which are hazardous to humans and the environment, and to Articles 10 (6) and 12(6) of the same regulation, which both refer to the possibility for the Commission to evaluate, in close cooperation with the Member States, the need to propose that measures be adopted at Community level in order to prevent any unacceptable risks for human health and the environment within the Community.

37 According to the Finnish Government, Articles 17 to 21 of the contested regulation are inspired by the same health and environmental concerns because they impose specific requirements relating both to monitoring of and compliance with the obligations laid down by the Convention and by that regulation and to the establishment of a system of effective penalties for infringements of their provisions.

38 As regards, next, the Commission's argument that operations involving hazardous chemicals must necessarily be regulated under the common commercial policy in order to preclude any distortions in Community trade, the defendants argue that no major distortion has been noted in the past even though the rules at issue were adopted on an environmental basis and that, moreover, where rules are laid down at Community level to govern trade in dangerous products, those rules are binding on the Member States and economic operators in all circumstances, regardless of the legal basis on which they are adopted. The Member States could not therefore adopt national measures otherwise than in conformity with those common rules and the relevant Community legislation, as, moreover, is clear from Article 10(7) of the contested regulation.

39 As they did in their written submissions in the proceedings brought by the Commission against Decision 2003/106 approving the Convention on behalf of the European Community (see, in that regard, the judgment of today's date in Case C-94/03 *Commission v Council* [2006] ECR I-1), the Council and the Parliament refer, finally, to a number of Community measures which also contain provisions of a commercial nature but are nevertheless, because of their predominantly environmental aim, based on Article 175(1) EC, Article 130s of the EC Treaty (now, after amendment, Article 175 EC) or on Article 130s of the EEC Treaty (which became, after amendment, Article 130s of the EC Treaty). Particular cases are 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) and Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein (OJ 1997 L 61, p. 1), as well as Regulation No 2455/92 which the contested regulation expressly repealed and supersedes. That continuity between Regulation No 2455/92 and the contested regulation provides further evidence of the need to base the latter regulation on Article 175(1) EC.

### *Findings of the Court*

40 It must be noted, at the outset, that the applicant and the defendants do not deny that the contested regulation contains elements both of a commercial nature and of an environmental nature. However, they differ as to the centre of gravity of the regulation. Whilst the Commission maintains that, although the contested regulation does have beneficial effects on human health and the environment, its main objective is to govern trade in hazardous chemicals, the Parliament and the Council, and all the interveners, contend, on the other hand, that the latter aspect is incidental, the primary aim of the contested regulation being to lay down rules and procedures conducive to ensuring a high level of protection of human health and the environment.

- 41 In that connection, it must be borne in mind that, according to settled case-law, the choice of the legal basis for a Community measure must be based on objective factors which are amenable to judicial review and include in particular the aim and content of the measure (see Case 45/86 *Commission v Council* [1987] ECR 1493, paragraph 11; Case C-300/89 *Commission v Council (Titanium Dioxide)* [1991] ECR I-2867, paragraph 10; Case C-268/94 *Portugal v Council* [1996] ECR I-6177, paragraph 22; and Case C-176/03 *Commission v Council* [2005] ECR I-7879, paragraph 45).
- 42 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-36/98 *Spain v Council* [2001] ECR I-779, paragraph 59; Case C-211/01 *Commission v Council* [2003] ECR I-8913, paragraph 39; and Case C-338/01 *Commission v Council* [2004] ECR I-4829, paragraph 55).
- 43 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, to that effect, Case C-336/00 *Huber* [2002] ECR I-7699, paragraph 31; Case C-281/01 *Commission v Council* [2002] ECR I-12049, paragraph 35; and Case C-211/01 *Commission v Council*, cited above, paragraph 40).
- 44 That is precisely the case here. Both the purposes and the terms of the contested regulation contain commercial and environmental components which are so indissociably linked that recourse to both Article 133 EC and Article 175(1) EC was required for the adoption of that measure.

- 45 In that connection, it must be borne in mind, first, that, as moreover is clear from both the preamble and Article 1(1)(a) of the contested regulation, its primary objective is to implement the Convention. As the Court has held in paragraph 51 of its judgment of today's date in Case C-94/03 *Commission v Council*, that Convention specifically includes two components regulating trade and protecting human health and the environment, which are linked so closely that the decision approving that Convention on behalf of the Community should have been based on Articles 133 EC and Article 175(1) EC.
- 46 It is true that the fact that one or more provisions of the Treaty have been chosen as legal bases for the approval of an international agreement is not sufficient to show that those same provisions must also be used as legal bases for the adoption of measures intended to implement that agreement at Community level.
- 47 In this case, however, use of the same legal bases both for the decision approving the Convention on behalf of the Community and for the contested regulation, which implements the Convention at Community level, is necessary in any event, in view of the clear convergence of the provisions of those two measures, reflecting both the concern to regulate trade in hazardous chemicals and the concern to ensure sound management of those products and/or to protect human health and the environment against the harmful effects of trade in such products.
- 48 That applies, in particular, to Articles 1(1) and 2 of the contested regulation, which lay down the objectives pursued by its authors and the substantive scope of the regulation in terms very close to those used in Articles 1 and 3, respectively, of the

Convention and, moreover, the definitions contained in Article 2 of the Convention correspond to a considerable extent to those appearing in Article 3 of the contested regulation.

49 That applies also, and above all, to Articles 6 to 13 of the contested regulation, which lay down rules and procedures applicable to trade in hazardous chemicals in terms which in numerous respects reflect the rules and procedures provided for in the Convention. Articles 7 and 8 of the contested regulation thus clearly refer to Article 12 of the Convention, concerning export notifications, whilst Articles 12 and 13 of the contested regulation, concerning obligations associated with imports and exports of chemicals, directly echo Articles 10 and 11 of the Convention, setting out the same obligations.

50 Second, it must be observed that, as well as purporting to operate in parallel with the Convention, which it is intended to implement at Community level, the contested regulation goes beyond the scope of the Convention since, as moreover is apparent from the express terms of the fourth recital in its preamble, the Community legislature displays a clear intention to 'go further than the provisions of the Convention in certain respects'. The provisions included, to that end, in the contested regulation fully justify recourse to Article 133 EC in addition to recourse to Article 175(1) EC.

51 That applies, for example, to Articles 14(2) and 16(1) of the contested regulation. In so far as the first imposes a total ban on exports of the chemicals and articles listed in Annex V to the regulation and the second, read in conjunction with Articles 1(2) and 2(1)(c) of the regulation, requires compliance, in the case of exports, with the relevant Community rules on classification, packaging and labelling of dangerous substances and preparations, without prejudice to the specific requirements imposed by the importing party or country, those two articles in fact directly regulate commerce and trade in those products.

52 In that context, the defendants contend in particular that recourse to Article 133 EC was not necessary because, first, no major distortion had been observed in intra-Community trade in previous years and, second, in the exercise of their competences, the Member States are in any event required to comply with the relevant Community legislation, as moreover is apparent from Article 10(7) of the contested regulation.

53 In that connection, it need merely be observed that, even if it were assumed to be correct, the fact that no major distortion has been observed in intra-Community trade in the products concerned is not such as to call in question recourse in this case to Article 133 EC. The well-foundedness of recourse to that article as a legal basis for a Community measure depends on the specific characteristics of the measure and on whether those characteristics meet the objective criteria determining the applicability of that legal basis. As observed earlier, the contested regulation specifically meets those criteria.

54 As regards the argument that, in the exercise of their competences, the Member States are in all circumstances required to comply with the relevant Community legislation, such an argument, the correctness of which cannot in itself be contested, is nevertheless irrelevant as regards choice of the appropriate legal basis for a Community measure.

55 As regards the fact, referred to by the defendants, that other Community measures, such as Regulations Nos 259/93 and 338/97, or Regulation No 2455/92, which preceded the contested regulation, have a legal basis relating to environmental policy, it is entirely irrelevant in the context of the present case. In fact, according to settled case-law, 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 measures which might, in certain cases, display similar characteristics (see, in particular, Case C-187/93 *Parliament v Council* [1994] ECR I-2857, paragraph 28, regarding, specifically, the choice of legal basis for Regulation No 259/93).

56 In view of all the foregoing considerations, it must be concluded that the contested regulation includes, as regards both the aims pursued by its authors and its content, two indissociably linked components, neither of which can be regarded as secondary or indirect as compared with the other, one relating to the common commercial policy and the other to the policy of protection of human health and the environment. In accordance with the case-law cited in paragraph 43 of this judgment, that regulation should therefore have been founded on the two corresponding legal bases, namely, in this case, Articles 133 EC and 175(1) EC.

57 Admittedly, and as the Court held, in substance, in paragraphs 17 to 21 of the *Titanium dioxide* judgment, cited above, recourse to a dual legal basis is not possible where the procedures laid down for each legal basis are incompatible with each other or where the use of two legal bases is liable to undermine the rights of the Parliament (see also, to that effect, Joined Cases C-164/97 and C-165/97 *Parliament v Council* [1999] ECR I-1139, paragraph 14; and Case C-338/01 *Commission v Council*, cited above, paragraph 57). In this case, however, neither of those consequences follows from recourse to both Articles 133 EC and 175(1) EC.

58 First, recourse to Article 133 EC as an additional basis could not in this case have had any impact on the voting rules applicable within the Council because, in the same way as Article 175(1) EC, Article 133(4) EC provides that the Council, in exercising the powers conferred upon it by that provision, is to act by a qualified majority.

59 Second, recourse to Article 133 EC jointly with Article 175(1) EC is likewise not liable to undermine the Parliament's rights because, although the first-mentioned article does not formally provide for the participation of that institution in the adoption of a measure of the kind at issue in this case, the second article, on the other hand, expressly refers to the procedure provided for in Article 251 EC. In contrast to the situation at issue in the abovementioned *Titanium dioxide* case, the use of a combination of legal bases does not therefore in this case involve any encroachment upon the Parliament's rights since recourse to Article 175(1) EC enables that institution to adopt the measure under the co-decision procedure.

60 In view of all the foregoing, it is therefore necessary to annul the contested measure inasmuch as it is based solely on Article 175(1) EC.

### **Limitation of the effects of the annulment**

61 In its pleadings, the Commission requested that, in the event of its action being upheld, the Court should direct that the effects of the contested regulation be maintained until the adoption of a new regulation.

62 In that regard, it must be borne in mind that, under the second paragraph of Article 231 EC, the Court may, if it considers it necessary to do so, state which of the effects of the regulation that it has declared void are to be considered as definitive.

63 In this case, it must be noted that, pursuant to Article 26 thereof, the contested regulation entered into force on the day following its publication in the *Official Journal of the European Union* and that it was published on 6 March 2003.

64 Since 7 March 2003, exports and imports of hazardous chemicals have thus been governed by that regulation and the Commission has been prompted to adopt, in implementation of it, a number of Community import decisions concerning certain chemical products and substances.

65 In those circumstances and in order, in particular, to avoid any legal uncertainty regarding the rules applicable to trade in those products following annulment of the contested regulation, it is appropriate to maintain the effects of that regulation until the adoption, within a reasonable period, of a new regulation founded on appropriate legal bases.

## Costs

66 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been asked for in the successful party's pleadings. Under the first subparagraph of Article 69(3) of the same rules, the Court may nevertheless order that the costs be shared or decide that each party is to bear its own costs where each party succeeds on some and fails on other claims, or where the circumstances are exceptional. Since the Commission, the Council and the Parliament have each been partially unsuccessful in this case, they should bear their own costs. Pursuant to Article 69(4) of the Rules of Procedure, the institutions that have intervened in the proceedings should bear their own costs.

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

- 1. Annuls 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;**
- 2. Maintains the effects of that regulation until the adoption, within a reasonable period, of a new regulation founded on appropriate legal bases;**
- 3. Orders the Commission of European Communities, the European Parliament and the Council of the European Union to bear their own costs;**
- 4. Orders the French Republic, the Republic of Finland and the United Kingdom of Great Britain and Northern Ireland to bear their own costs.**

[Signatures]