

Case C-300/89

Commission of the European Communities

v

Council of the European Communities

(Directive on waste from the titanium dioxide industry —
Legal basis)

Report for the Hearing	2869
Opinion of Mr Advocate General Tesauro delivered on 13 March 1991	2878
Judgment of the Court, 11 June 1991	2895

Summary of the Judgment

1. *Measures adopted by the institutions — Choice of legal basis — Criteria*

2. *Measures adopted by the institutions — Choice of legal basis — Powers of the institution based on two provisions of the Treaty — Joint legal basis — Limitation — Joint basis prejudicial to the Parliament's participation in the legislative process (EEC Treaty, Arts 100a, 130s and 149(2))*

3. *Approximation of laws — Directive intended to eliminate distortions of competition in an industrial sector deriving from measures adopted individually by the Member States with a view to safeguarding the environment — Contribution to attainment of the single market — Legal basis — Article 100a the Treaty*
(EEC Treaty, Arts 100a, 130r and 130s; Council Directive 89/428/EEC)

1. In the context of the organization of the powers of the Community the choice of the legal basis for a measure may not depend simply on an institution's conviction as to the objective pursued but must be based on objective factors which are amenable to judicial review. Those factors include in particular the aim and content of the measure.
2. Where an institution's power is based on two provisions of the Treaty, it is bound to adopt the relevant measures on the basis of the two relevant provisions. However, where, as in the case of Article 100a of the Treaty, one of the enabling provisions requires recourse to the cooperation procedure provided for in Article 149(2) of the Treaty, on conclusion of which the Council may act by a qualified majority provided that it intends accepting the amendments proposed by the Parliament and put forward by the Commission, and the other provision, as in the case of Article 130s, requires the Council to act unanimously after merely consulting the European Parliament, use of both of them as a joint legal basis would divest the cooperation procedure of its very substance, the purpose of that procedure being to increase the involvement of the European Parliament in the legislative process of the Community. That participation reflects a fundamental democratic principle that the peoples should take part in the exercise of power through the intermediary of a representative assembly. It follows that in such a case recourse to a dual legal basis is excluded and that it is necessary to determine which of those two provisions is the appropriate legal basis.
3. In view of the fact that, in the first place, it is apparent from the very terms of Article 130r(2) of the Treaty that a Community measure cannot be covered by Article 130s merely because it pursues, among others, objectives of environmental protection, secondly, that action intended to approximate, in a given industrial sector, national rules concerning production conditions which were adopted for reasons relating to environmental protection but are liable to lead to distortions of competition, falls within the scope of Article 100a, since it is conducive to the attainment of the internal market, and, finally, that the objectives of environmental protection referred to in Article 130r may be effectively pursued by means of harmonizing measures adopted on the basis of Article 100a, the Council should have used Article 100a as the legal basis for Directive 89/428/EEC on procedures for harmonizing the programmes for the reduction and eventual elimination of pollution caused by waste from the titanium dioxide industry. Since the Council wrongly based the directive on Article 130s, the directive must be annulled.