

# Case C-178/03

**Commission of the European Communities**

**v**

**European Parliament and  
Council of the European Union**

(Action for annulment — 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 — Choice of legal basis — Articles 133 EC and 175 EC)

Opinion of Advocate General Kokott delivered on 26 May 2005 . . . . .	I - 111
Judgment of the Court (Second Chamber), 10 January 2006 . . . . .	I - 129

## Summary of the Judgment

- 1. Acts of the institutions — Choice of legal basis — Criteria — Community measure pursuing a twofold purpose or having a twofold component*

2. *Environment — Common commercial policy — Regulation concerning the export and import of dangerous chemicals*  
(Arts 133 EC and 175(1) EC; European Parliament and Council Regulation No 304/2003)
3. *Actions for annulment — Judgment annulling a measure — Effects — Limitation by the Court*  
(Art. 231, second para, EC; European Parliament and Council Regulation No 304/2003)

1. 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.

with each other or where the use of two legal bases is liable to undermine the rights of the Parliament.

(see paras 41-43, 57)

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. 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. However, recourse to a dual legal basis is not possible where the procedures laid down for each legal basis are incompatible

2. Regulation No 304/2003 concerning the export and import of dangerous chemicals 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.

First, the Rotterdam Convention on the prior informed consent procedure for certain hazardous chemicals and pesticides in international trade, the imple-

mentation of which is the primary objective of Regulation No 304/2003, 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. 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. 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 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.

Secondly, the provisions of Regulation No 304/2003 which go beyond the scope of the Rotterdam Convention

fully justify recourse to Article 133 EC in addition to recourse to Article 175(1) EC.

Therefore, Regulation No 304/2003 should be founded on the two corresponding legal bases, namely, in this case, Articles 133 EC and 175(1) EC.

In this respect, it should be observed, first, that recourse to both Articles 133 EC and 175(1) EC is not impossible on the grounds of incompatibility of the procedures laid down for those two legal bases, since 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. 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, enables the Parliament to adopt the measure under the co-decision procedure.

It follows that Regulation No 304/2003 must be annulled in so far as it is based solely on Article 175(1) EC.

(see paras 44-47, 50, 56-60)

3. Following the entry into force of Regulation No 304/2003 concerning the export and import of dangerous chemicals, the rules applicable to trade in those products are governed by that regulation and the Commission has been prompted to adopt, in implementation of that

regulation, a number of Community import decisions concerning certain chemical products and substances. 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 that regulation, it is appropriate for the Court to maintain its effects until the adoption, within a reasonable period, of a new regulation founded on appropriate legal bases.

(see paras 62, 64-65)