JUDGMENT OF THE COURT
17 March 1993 *

In Case C-155/91,

Commission of the European Communities, represented by Rolf Wägenbaur, Principal Legal Adviser, and Ingolf Pernice, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Roberto Hayder, of its Legal Service, Wagner Centre, Kirchberg,

applicant,

supported by

European Parliament, represented by Jorge Campinos, Jurisconsult, assisted by Kieran Bradley, of the Parliament's Legal Service acting as Agents, with an address for service in Luxembourg at the Secretariat of the European Parliament, Kirchberg,

intervener,

v

Council of the European Communities, represented by Arthur Alan Dashwood, Director in the Council's Legal Service, and Jill Aussant, Principal Administrator in that service, acting as Agents, with an address for service in Luxembourg at the office of Jörg Käser, Manager of the Legal Directorate of the European Investment Bank, 100 Boulevard Konrad Adenauer, Kirchberg,

defendant,

supported by

Kingdom of Spain, represented by Alberto José Navarro González, Director-General for Community Legal and Institutional Coordination, and Antonio Hernández-Mora, Abogado del Estado, of the Department for Community Legal

* Language of the case: French.

Affairs, acting as Agents, with an address for service in Luxembourg at the Spanish Embassy, 4-6 Boulevard Emmanuel Servais,

intervener,

APPLICATION for the annulment of Council Directive 91/156/EEC of 18 March 1991 amending Directive 75/442/EEC on waste (OJ 1991 L 78, p. 32),

THE COURT,

composed of: O. Due, President, C. N. Kakouris, M. Zuleeg and J. L. Murray (Presidents of Chambers), G. F. Mancini, R. Joliet, F. A. Schockweiler, J. C. Moitinho de Almeida, F. Grévisse, M. Diez de Velasco and P. J. G. Kapteyn, Judges,

Advocate General: G. Tesauro,
Registrar: H. von Holstein, Deputy Registrar,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 25 November 1992,

after hearing the Opinion of the Advocate General at the sitting on 1 December 1992,

gives the following

Judgment

1 By application lodged at the Court Registry on 11 June 1991, the Commission of the European Communities brought an action under the first paragraph of Article 173 of the EEC Treaty for the annulment of Council Directive 91/156/EEC of 18 March 1991 amending Directive 75/442/EEC on waste (OJ 1991 L 78, p. 32).

2 Directive 75/442 laid down Community rules on waste disposal. On 16 August 1988, in order to take account of experience gained in the implementation of that directive by the Member States, the Commission submitted a proposal for the adoption of Directive 91/156. The Commission opted for Article 100a of the Treaty as the legal basis. However, a common position emerged within the Council in favour of basing the future directive on Article 130s of the Treaty. Despite the objections voiced by the European Parliament which, on being consulted by the Council pursuant to Article 130s, considered the legal basis proposed by the Commission to be appropriate, the Council adopted the directive at issue on the basis of Article 130s of the Treaty.

3 In support of its application, the Commission relies on a single plea alleging that the wrong legal basis was chosen for the directive in question. Parliament, which has intervened in support of the form of order sought by the Commission, also seeks the annulment of Article 18 of the directive.

4 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the procedure and the pleas and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

The legal basis

5 The Commission, supported by the European Parliament, argues essentially that the directive has as its object both the protection of the environment and the establishment and functioning of the internal market. Consequently, it should have been adopted on the sole basis of Article 100a of the Treaty, in common with the directive on waste from the titanium dioxide industry which was the subject of the judgment in Case C-300/89 *Commission* v *Council* [1991] ECR I-2867 (hereinafter 'the judgment in the titanium dioxide case').

6 For its part, the Council maintains that Article 130s of the Treaty constitutes the correct legal basis for Directive 91/156, which, in view of its aim and content, relates essentially to protection of health and the environment.

7 According to what is now settled case-law, in the context of the organization of the powers of the Community, the choice of a legal basis for a measure must be based on objective factors which are amenable to judicial review. Those factors include, in particular, the aim and content of the measure (see, most recently, the judgment in Case C-295/90 *Parliament* v *Council* [1992] ECR I-4193, paragraph 13).

8 As for the aim pursued by Directive 91/156, the fourth, sixth, seventh and ninth recitals in its preamble state that, in order to achieve a high level of environmental protection, the Member States must take measures to restrict the production of waste and to encourage the recycling of waste and its re-use as raw materials, and they must become self-sufficient in waste disposal and reduce movements of waste.

9 As for the content of the directive, it requires the Member States, in particular, to encourage the prevention or reduction of waste production and waste recovery and disposal without endangering human health and without harming the environment and to prohibit the abandonment, dumping and uncontrolled disposal of waste (Articles 3 and 4). Accordingly, the directive requires the Member States to establish an integrated and adequate network of disposal installations which will enable the Community as a whole and the Member States individually to become self-sufficient in waste disposal, with the waste being disposed of in one of the nearest installations (Article 5). In order to attain those objectives, the Member States are to draw up waste management plans and may prevent movements of waste which are not in accordance with those plans (Article 7). Lastly, the directive requires the Member States to subject disposal undertakings and establishments to rules providing for permits, registration and inspections (Articles 9 to 14) and confirms, in the field of waste disposal, the 'polluter pays' principle enshrined in Article 130r(2) of the Treaty (Article 15).

10 It appears from the above particulars that, according to its aim and content, the directive at issue has the object of ensuring the management of waste, whether it is of industrial or domestic origin, in accordance with the requirements of environmental protection.

11 However, the Commission adds that the directive implements the principle of the free movement of waste intended for recovery and subjects the free movement of waste intended for disposal to conditions consistent with the internal market.

12 Admittedly, waste, whether recyclable or not, is to be regarded as goods the movement of which, in accordance with Article 30 of the Treaty, must in principle not be prevented (judgment in Case C-2/90 *Commission* v *Belgium* [1992] ECR I-4431, paragraph 28).

13 However, the Court has held that imperative requirements relating to the protection of the environment justify exceptions to the free movement of waste. In that context, the Court has acknowledged that the principle that environmental damage should as a matter of priority be remedied at source, laid down by Article 130r(2) of the Treaty as a basis for action by the Community relating to the environment, entails that it is for each region, municipality or other local authority to take appropriate steps to ensure that its own waste is collected, treated and disposed of; it must accordingly be disposed of as close as possible to the place where it is produced, in order to limit as far as possible the transport of waste (judgment in *Commission* v *Belgium*, cited above, paragraph 34).

14 The aim of the directive is to implement those principles. It lays down, in particular in Article 5, the principle that the place at which waste is disposed of should be near the place where it was produced in order to ensure, as far as possible, that each Member State is self-suffient in waste disposal. Moreover, Article 7 of the directive authorizes Member States to prevent movements of waste for recovery or disposal which are not in accordance with their waste management plans.

15 In those circumstances, the directive cannot be regarded as intended to implement the free movement of waste within the Community, as, moreover, the Commission admitted at the hearing.

16 The Commission further argues that the directive leads to the approximation of legislation inasmuch as Article 1 introduces a single, common definition of waste and related activities. In that connection, it refers in particular to the fifth recital in the preamble to the directive, according to which any disparity between Member States' laws on waste disposal and recovery can affect the quality of the environment and interfere with the functioning of the internal market.

17 Lastly, the Commission refers to the fact that the directive also contributes to harmonization of the conditions of competition, at the level of both industrial production and waste disposal. In that connection, it argues that to some extent the directive brings to an end the advantages enjoyed by industries in certain Member States in terms of production costs owing to the fact that their legislation on the treatment of waste is less strict than that of other Member States. Accordingly, it argues that the wording of Article 4, which provides for the recovery and disposal of waste 'without risk to water, air, soil and plants and animals', is sufficiently precise to ensure that the burdens on economic operators will henceforth be largely equivalent in all the Member States, provided that it is faithfully transposed into national law.

18 Admittedly, it must be acknowledged that some provisions of the directive, in particular the definitions set out in Article 1, affect the functioning of the internal market.

19 However, contrary to the Commission's contention, the mere fact that the establishment or functioning of the internal market is affected is not sufficient for Article 100a of the Treaty to apply. It appears from the Court's case-law that recourse to Article 100a is not justified where the measure to be adopted has only the incidental effect of harmonizing market conditions within the Community (judgment in Case C-70/88 *Parliament* v *Council* [1991] ECR I-4529, paragraph 17).

20 That is the case here. The harmonization provided for in Article 1 of the directive has as its main object to ensure, with a view to protecting the environment, the

effective management of waste in the Community, regardless of its origin, and has only ancillary effects on the conditions of competition and trade. As a result, it differs from Council Directive 89/428/EEC of 21 June 1989 on procedures for harmonizing the programmes for the reduction and eventual elimination of pollution caused by waste from the titanium dioxide industry (OJ 1989 L 201, p. 56), which was the subject of the judgment in the titanium dioxide case, cited above, and is intended to approximate national rules concerning production conditions in a given industrial sector with the aim of eliminating distortions of competition in that sector.

21 Accordingly, the contested directive must be deemed to have been validly adopted on the sole basis of Article 130s of the Treaty. The plea alleging that the wrong legal basis was chosen for the directive must therefore be rejected.

Article 18 of the directive

22 Parliament seeks the annulment of Article 18 of Directive 91/156 on the ground that the regulatory committee procedure provided for therein does not comply with the Treaty.

23 According to the third paragraph of Article 37 of the Protocol on the Statute of the Court of Justice, submissions made in an application for leave to intervene are to be limited to supporting the submissions of one of the parties.

24 It must be held that, whilst the form of order sought by the Commission is to the effect that Directive 91/156 should be annulled, the form of order sought by Parliament is to the effect that Article 18 of the directive should be annulled on grounds which are entirely unconnected with those relied on by the Commission. Consequently, the grounds relied on by Parliament cannot be regarded as having the same object as those relied on by the Commission and must therefore be rejected as inadmissible.

25 It follows from the whole of the foregoing that the application must be dismissed.

Costs

26 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the Commission has been unsuccessful, it must be ordered to pay the costs. In accordance with Article 69(4) of those rules, the Kingdom of Spain and the European Parliament are to bear their own costs.

On those grounds,

THE COURT

hereby:

1. Dismisses the application;

2. Orders the Commission to pay the costs, except for those of the Kingdom of Spain and the European Parliament which are to bear their own costs.

Due	Kakouris	Zuleeg	Murray
Mancini	Joliet	Schockweiler	
Moitinho de Almeida	Grévisse	Diez de Velasco	Kapteyn

Delivered in open court in Luxembourg on 17 March 1993.

J.-G. Giraud	O. Due
Registrar	President