JUDGMENT OF THE COURT (Fifth Chamber)
12 December 2002 *

In Case C-281/01,

Commission of the European Communities, represented by H. van Lier and B. Martenczuk, acting as Agents, with an address for service in Luxembourg,

applicant,

v

Council of the European Union, represented by J.-P. Jacqué and E. Karlsson, acting as Agents,

defendant,

APPLICATION for annulment of Council Decision 2001/469/EC of 14 May 2001 concerning the conclusion on behalf of the European Community of the Agreement between the Government of the United States of America and the European Community on the coordination of energy-efficient labelling programs for office equipment (OJ 2001 L 172, p. 1),

* Language of the case: English.

THE COURT (Fifth Chamber),

composed of: M. Wathelet (Rapporteur), President of the Chamber, D.A.O. Edward, A. La Pergola, P. Jann and S. von Bahr, Judges,

Advocate General: S. Alber,

Registrar: H.A. Rühl, Principal Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 13 June 2002,

after hearing the Opinion of the Advocate General at the sitting on 12 September 2002,

gives the following

Judgment

1 By application lodged at the Court Registry on 16 July 2001, the Commission of the European Communities brought an action under Article 230 EC for annulment of Council Decision 2001/469/EC of 14 May 2001 concerning the

conclusion on behalf of the European Community of the Agreement between the Government of the United States of America and the European Community on the coordination of energy-efficient labelling programs for office equipment (OJ 2001 L 172, p. 1).

The Energy Star Agreement

2 In 1992 the United States Environmental Protection Agency ('the EPA') set up a voluntary labelling programme for office equipment, called 'the Energy Star Program'. The programme, which enjoyed a high level of manufacturer participation, encouraged the vast majority of manufacturers to introduce energy-saving features and raised consumer awareness of the energy losses of office equipment in stand-by mode. The programme was subsequently extended to cover, *inter alia*, household appliances, heating and cooling equipment, consumer electronics, home office equipment, water-coolers, house construction and lighting. The Energy Star logo was introduced for the labelling of equipment which adheres to certain rules concerning energy consumption adopted under the programme.

3 After observing that the American Energy Star Program already established the standard for office equipment sold on the American market and that the Energy Star requirements were becoming the standard world-wide, including in the Community, the Commission decided that, rather than developing a separate labelling programme for energy-efficient office equipment in the Community, the better course was to introduce the American Energy Star Program there.

4 Accordingly, the Agreement between the Government of the United States of America and the European Community on the coordination of energy-efficient labelling programs for office equipment ('the Energy Star Agreement') was signed in Washington on 19 December 2000.

5 It is apparent from the preamble to the Energy Star Agreement that the contracting parties wished 'to maximise energy savings and environmental benefits by stimulating the supply of and demand for energy-efficient products'.

6 Article I of the Energy Star Agreement, headed 'General Principles', provides:

'1. A common set of energy-efficiency specifications and a common logo shall be used by the Parties for the purpose of establishing consistent targets for manufacturers, thereby maximising the effect of their individual efforts on the supply of and demand for such product types.

2. The Parties shall use the Common Logo for the purpose of identifying qualified energy-efficient product types listed in Annex C [namely computers, monitors, printers, fax machines, mailing machines, copiers, scanners and multifunction devices].

3. The Parties shall ensure that common specifications encourage continuing improvement in efficiency, taking into account the most advanced technical practices on the market.

4. The Parties shall ensure that consumers have the opportunity to identify efficient products by finding the label in the market.'

7 Annex A to the Energy Star Agreement establishes a common logo.

8 Under Article III of the Energy Star Agreement, the European Community and the United States of America designated the Commission and the EPA as their respective management entities responsible for implementation of the Agreement.

9 Pursuant to Article IV of the Energy Star Agreement, each management entity is responsible, in particular, for registering participants in the Energy Star labelling program on a voluntary basis, enforcing the terms of the logo use guidelines set out in Annex B to the Agreement and informing consumers about Energy Star marks.

10 By virtue of Article V(1), any manufacturer, vendor or resale agent may enter the Energy Star labelling program by registering with the management entity of either party to the Agreement. Under Article V(2), programme participants may use the Energy Star logo to identify products which meet the specifications for energy-efficient equipment set out in Annex C to the Agreement. Article V(3) states that registration of a programme participant by the management entity of one contracting party is to be recognised by the management entity of the other party. In accordance with Article V(5), the management entities are to communicate and cooperate fully with one another to ensure that all products

bearing the common logo meet the specifications set out in Annex C.

11 Articles VI, VII and VIII deal with coordination of the Energy Star labelling program between the contracting parties, registration of the Energy Star marks in the Community and monitoring by each management entity of compliance with the provisions on the proper use of the Energy Star marks.

12 Article IX sets out the procedures for amending the Energy Star Agreement and Annexes A and B thereto and for adding new annexes. Article X establishes the procedures for amending the technical specifications contained in Annex C.

13 Article XI provides that other environmental labelling programmes are not covered by the Energy Star Agreement and may be developed and adopted by either of the contracting parties, that either management entity may run labelling programmes with respect to product types not included in Annex C to the Agreement and that neither contracting party may hinder the import, export, sale or distribution of any product because it bears the energy-efficiency marks of the management entity of the other party.

14 Article XII(2) states that the Energy Star Agreement is to remain in force for a period of five years and may be renewed. Article XIII(1) provides that either contracting party may terminate the Agreement at any time by giving three months' written notice.

15 In addition, diplomatic notes exchanged following signature of the Energy Star Agreement provide in paragraph 1:

'To maximise the impact of their individual programs for energy efficiency of office equipment, the European Community and the Government of the United States of America will use a single set of energy-efficiency specifications and a Common Logo, in accordance with Annex A to the [Energy Star] Agreement.'

The procedure for conclusion of the Energy Star Agreement by the Community

16 On 1 July 1999 the Commission submitted to the Council, for the purpose of concluding the Energy Star Agreement, a proposal for a decision based on Article 133 EC, in conjunction with Article 300(2) EC.

17 On 14 December 2000 the Council unanimously adopted the decision authorising signature of the Energy Star Agreement on the basis of Article 175(1) EC, in conjunction with Article 300(2) EC.

18 Following a favourable opinion from the Parliament, on 14 May 2001 the Council, by Decision 2001/469, approved the Energy Star Agreement on behalf of the Community on the basis of Article 175(1) EC, in conjunction with the first sentence of the first subparagraph of Article 300(2), the first subparagraph of Article 300(3) and Article 300(4) EC.

19 The Energy Star Agreement entered into force, in accordance with Article XII(1) thereof, on 7 June 2001.

The action

Arguments of the parties

20 The Commission submits that Decision 2001/469 should have been adopted on the basis of Article 133 EC relating to common commercial policy, on the ground that the Energy Star Agreement seeks to facilitate trade. It enables manufacturers to sell their equipment on both the European and the American market using one single label and a single registration procedure. Manufacturers of office equipment are thereby spared the costs which would have resulted from the establishment of separate labelling programmes with different requirements and registration procedures. The aim of the Agreement, as is apparent from its title, is thus to coordinate European and American labelling programmes, resulting in the elimination of any obstacles to trade which would have arisen from the existence of concurrent programmes.

21 The Commission also cites a number of agreements concerning the mutual recognition of technical standards concluded by the Community with non-member countries on the basis of Article 113 of the EC Treaty (now, after amendment, Article 133 EC) or Article 133 EC.

22 The fact that participation in the Energy Star labelling program is voluntary and that affixing the Energy Star logo is not a precondition for the placing of products

on the market does not justify recourse to a different legal basis, since voluntary standards may also constitute barriers to trade.

23 Nor, in the Commission's submission, can a measure concerning international trade fall outside the field of the common commercial policy merely because, in accordance with Article 6 EC, it takes account of environmental-protection requirements. Given also that the trade effects of environmental rules are taken into account *inter alia* by the World Trade Organisation, a narrow interpretation excluding environment-related aspects from the scope of the common commercial policy would be a step back from well-established case-law and practice and would undermine the effectiveness of the common commercial policy.

24 The Commission also maintains that the choice of legal basis when adopting an internal Community measure does not affect the choice of legal basis when the Community concludes an international agreement. Regulation (EC) No 1980/2000 of the European Parliament and of the Council of 17 July 2000 on a revised Community eco-label award scheme (OJ 2000 L 237, p. 1), unlike the Energy Star Agreement, concerns neither the coordination of the Community programme with programmes of non-member countries nor the recognition of certifications issued by non-member countries under such programmes. The fact that that regulation was adopted on the basis of Article 175(1) EC is therefore in no way incompatible with the Commission's view that the Energy Star Agreement should have been concluded on the basis of Article 133 EC.

25 The Commission submits in the alternative that Article 175(1) EC could not in any event constitute the legal basis for the conclusion of an international agreement, since that provision concerns the adoption of internal measures only. International agreements in the field of environmental policy must be concluded on the basis of Article 174(4) EC.

26 The Council submits that the aim and content of the Energy Star Agreement are entirely covered by Community policy on the environment as referred to in Article 174 EC.

27 The Energy Star Agreement is designed, in any event principally, to reduce energy consumption by stimulating the supply of, and demand for, energy-efficient equipment. The Council bases its interpretation on the preamble to the Agreement, Article I(1) of the Agreement and paragraph 1 of the diplomatic notes exchanged in respect of the Agreement.

28 On the other hand, the Energy Star Agreement does not have significant effects on international trade. The Energy Star logo was already the *de facto* standard for manufacturers. Nor does the Agreement prevent the contracting parties or the Member States from introducing other labelling programmes in order to promote energy savings.

29 As regards the content of the Energy Star Agreement, the Council maintains that it contains no provisions which clearly relate to the common commercial policy or are specifically directed towards the promotion of international trade. By contrast, the objective of energy conservation is at the heart of the Agreement's provisions, such as those in Articles IV to VI and VIII to X on information to consumers, controls and measures to ensure that the logo is used correctly, cooperation between the contracting parties and the mutual recognition of registrations.

30 The Council submits in support of its view, first, that numerous international agreements have been concluded on the basis of Article 175 EC even though they related to issues of commercial policy and, second, that the intra-Community measures concerning the award of voluntary eco-labels are likewise founded on

the Treaty provisions relating to environmental policy. In particular, it cites Council Regulation (EEC) No 880/92 of 23 March 1992 on a Community eco-label award scheme (OJ 1992 L 99, p. 1), adopted on the basis of Article 130s of the EC Treaty (now, after amendment, Article 175 EC), and Commission Decision 1999/205/EC of 26 February 1999 establishing ecological criteria for the award of the Community eco-label to personal computers (OJ 1999 L 70, p. 46). The preamble to that decision specifically refers to the negotiations on the Energy Star Agreement and states that 'it is appropriate to revise the criteria within a period of two years in order to adapt the energy requirements to technological innovation, market developments and the above-mentioned "Energy Star programme"'. Following the conclusion of the Energy Star Agreement, it has not been considered necessary to renew that decision under the revised Community eco-label award scheme introduced by Regulation No 1980/2000, which was itself based on Article 175 EC.

31 The Council also relies, in support of its view, on the power of the Member States to adopt eco-labels of their own, such as the Blauer Engel (Blue Angel) in Germany, the Svanen (Swan) in the Nordic countries and the GEA-label for office equipment in Germany. If the introduction of eco-labelling were a commercial-policy measure, the Community would have exclusive competence and it would be unlawful for the Member States to act in that field.

32 As to the claim, put in the alternative, that the correct legal basis for concluding the Energy Star Agreement would in any event be not Article 175(1) EC but Article 174(4) EC, the Council refers to the Court's case-law to the effect that Article 174(4) EC is confined to defining the general objectives of environmental policy whereas Article 175 EC constitutes the legal basis for Community measures designed to put that policy into effect (see Case C-284/95 *Safety Hi-Tech* [1998] ECR I-4301, paragraph 43, and Case C-341/95 *Bettati* [1998] ECR I-4355, paragraph 41). Opinion 2/00 [2001] ECR I-9713 (paragraphs 23, 24 and 25) confirms that interpretation.

Findings of the Court

33 It is settled case-law that the choice of the legal basis for a Community measure must rest on objective factors amenable to judicial review, which include in particular the aim and the content of the measure (see, *inter alia*, Case C-300/89 *Commission* v *Council* [1991] ECR I-2867, paragraph 10, and Case C-269/97 *Commission* v *Council* [2000] ECR I-2257, paragraph 43).

34 If examination of a Community measure reveals that it pursues a twofold purpose or that it has a twofold component and if one is identifiable as the main or predominant purpose or component, whereas the other is merely incidental, the measure must be founded on a single legal basis, namely that required by the main or predominant purpose or component (see Case C-155/91 *Commission* v *Council* [1993] ECR I-939, paragraphs 19 and 21, Case C-42/97 *Parliament* v *Council* [1999] ECR I-869, paragraphs 39 and 40, and Case C-36/98 *Spain* v *Council* [2001] ECR I-779, paragraph 59).

35 By way of exception, if it is established that the measure simultaneously pursues several objectives which are inseparably linked without one being secondary and indirect in relation to the other, the measure must be founded on the corresponding legal bases (see Case C-300/89 *Commission* v *Council*, cited above, paragraphs 13 and 17, *Parliament* v *Council*, cited above, paragraphs 38 and 43, Case C-336/00 *Huber* [2002] ECR I-7699, paragraph 31, and Opinion 2/00, cited above, paragraph 23).

36 In the present case, it is not in dispute that, as is clear from its title, the Energy Star Agreement is designed to coordinate energy-efficient labelling programmes for office equipment.

37 As the Commission points out, such coordination necessarily facilitates trade inasmuch as manufacturers henceforth need to refer to just one standard as regards labelling and to comply with just one registration procedure with a single management entity in order to sell equipment bearing the Energy Star logo on the European and American markets. That coordination therefore undoubtedly constitutes a commercial-policy measure.

38 However, it is also clear, on reading the preamble to the Energy Star Agreement and Article I thereof, that, by stimulating the supply of and demand for energy-efficient products, the labelling programme in question is intended to promote energy savings and therefore in itself constitutes an environmental-policy measure.

39 It follows that the Energy Star Agreement simultaneously pursues a commercial-policy objective and an environmental-protection objective. Thus, in order to determine the appropriate legal basis for the measure concluding the Agreement, it must be established whether either objective is the Agreement's main or predominant aim, in which case the measure should be founded on a single legal basis, or whether the objectives pursued are inseparable without one being secondary and indirect in relation to the other, in which case the measure should be founded on a dual legal basis.

40 It is clear from the terms in which the Energy Star Agreement is couched, in particular from Articles I and V, that the Energy Star labelling program is essentially intended to enable manufacturers to use, in accordance with a procedure for the mutual recognition of registrations, a common logo to identify for consumers certain products complying with a common set of energy-efficiency specifications which they intend to sell on the American and Community markets. An instrument having a direct impact on trade in office equipment is therefore involved.

41 It is true that in the long term, depending on how manufacturers and consumers in fact behave, the programme should have a positive environmental effect as a result of the reduction in energy consumption which it should achieve. However, that is merely an indirect and distant effect, in contrast to the effect on trade in office equipment which is direct and immediate.

42 Furthermore, while it is not in dispute, first, that the American Energy Star Program was devised in order to stimulate the supply of, and demand for, energy-efficient products and therefore to promote energy conservation, and second, that its extension to the Community undoubtedly helps to achieve that objective, the fact remains that the Energy Star Agreement itself does not contain new energy-efficiency requirements. It merely renders the specifications initially adopted by the EPA applicable on both the American market and the European market and makes their amendment subject to the agreement of both contracting parties.

43 The commercial-policy objective pursued by the Energy Star Agreement must therefore be regarded as predominant, so that the decision approving the Agreement should have been based on Article 133 EC, in conjunction with Article 300(3) EC.

44 The fact that participation in the Energy Star labelling program is not mandatory cannot affect that conclusion. The Agreement is none the less designed to have a direct impact on trade in office equipment by facilitating such trade for manufacturers and enabling consumers to choose the products which use the least energy.

45 In addition, as the Advocate General has pointed out in point 62 of his Opinion, it is clear from the Agreement on Technical Barriers to Trade which is annexed to the Agreement establishing the World Trade Organisation, approved on behalf of the European Community, as regards matters within its competence, by Council Decision 94/800/EC of 22 December 1994 (OJ 1994 L 336, p. 1), that non-binding labelling provisions may constitute an obstacle to international trade.

46 Furthermore, the fact that the Treaty provisions relating to environmental policy have been chosen as the legal basis for the adoption of internal measures such as Regulations No 880/92 and No 1980/2000 is not sufficient to establish that the same basis must be used when approving an international agreement with similar subject-matter. Suffice it to state that, as observed by the Advocate General in point 78 of his Opinion, since Article 133 EC relates to external trade, it could not in any event serve as legal basis for a measure whose effects are purely internal to the Community. With regard specifically to completion of the internal market, recourse should be had, where appropriate, to Article 95 EC. It was, moreover, Article 100a of the EC Treaty (now, after amendment, Article 95 EC) that was chosen as the legal basis for the adoption of Council Directive 92/75/EEC of 22 September 1992 on the indication by labelling and standard product information of the consumption of energy and other resources by household appliances (OJ 1992 L 297, p. 16).

47 Nor does the fact that certain Member States have adopted their own eco-label prevent the Energy Star Agreement from being regarded as a commercial-policy measure covered by Article 133 EC which therefore falls within a field in which the Community has exclusive competence. The eco-labels adopted by the Member States, to which the Council has referred, do not in fact concern the external trade of the Community.

48 It follows from the foregoing considerations that the Council should have chosen Article 133 EC, in conjunction with Article 300(3) EC, as the legal basis for the decision concluding the Energy Star Agreement on behalf of the Community.

49 Since Article 175(1) EC, in conjunction with the first sentence of the first subparagraph of Article 300(2), the first subparagraph of Article 300(3) and Article 300(4) EC, is the only legal basis referred to in that measure, Decision 2001/469 must be annulled.

Costs

50 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 party's pleadings. Since the Commission has applied for costs and the Council has been unsuccessful, the latter must be ordered to pay the costs.

On those grounds,

THE COURT (Fifth Chamber)

hereby:

1. **Annuls Council Decision 2001/469/EC of 14 May 2001 concerning the conclusion on behalf of the European Community of the Agreement between the Government of the United States of America and the European Community on the coordination of energy-efficient labelling programs for office equipment;**

2. **Orders the Council of the European Union to pay the costs.**

Wathelet Edward La Pergola

Jann von Bahr

Delivered in open court in Luxembourg on 12 December 2002.

R. Grass M. Wathelet

Registrar President of the Fifth Chamber