

## **LEGAL BASES OF EU ACTS AIMING AT THE PROTECTION OF THE ENVIRONMENT**

### **A. Procedural obligation to refer to a legal basis in the environmental sector**

#### **Case C-370/07 *European Commission v Council* [1994] ECR I-8917**

Decision determining the positions to be adopted on behalf of the Community in a body established by a convention on nature protection – 14th meeting of the Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) – Absence of reference to the legal basis – Breach of essential procedural requirements – Reference to a legal basis, as a minimum requirement for a statement of reasons (Article 253 EC, now Article 296 TFUE) – Principle of transparency

### **B. Environment and Internal Market**

#### **Case C-187/93 *European Parliament v Council* [1994] ECR I-2857**

Regulation No 259/93 on shipments of waste – Relevant legal basis – Choice between the internal market legal basis and the environmental legal basis – Ancillary effects on the functioning of the internal market

#### **Case C-155/91 *Commission v Council* [1993] ECR I-939**

*Framework Waste Directive* – Directive intended to implement the principle that damage to the environment should be rectified at source – Relevant legal basis – Choice between the internal market legal basis (Article 100A EEC, now Article 114 TFUE) and the environmental legal basis (Article 130s EEC, now Article 192 TFUE) – Incidental effects on the functioning of the internal market – No effect

#### **Case 300/89 *Commission v Council* [1991] ECR I-2867**

Directive on waste from the titanium dioxide industry – 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 – Choice between the internal market legal basis (Article 100A EEC, now Article 114 TFUE) and the environmental legal basis (Article 130s EEC, now Article 192 TFUE) – Distortions of competition – Internal market legislation seeking a high level of environmental protection – Internal market procedure markedly more democratic than that laid down in Article 130s – Joint basis prejudicial to the Parliament's participation in the legislative process

### **C. Environment and Common Commercial Policy**

#### **Case C-411/06 *Commission v European Parliament and Council* [2009] ECR I-7585**

Transfrontier Shipment of Waste Regulation (EC) No 1013/2006 – Action for annulment – Choice of legal basis – Common Commercial Policy (Article 133 EC, now Article 207 TFEU) and Environmental Policy (Article 175(1) EC, now Article 192 TFEU) – Regime applicable to transfers of waste with third countries based on the same type of environmental

control mechanism as that governing transfers within the Union – No justified recourse to a dual legal basis

**Opinion 2/00 [2001] ECR I-9713**

Cartagena Protocol on Biosafety to the Convention on Biological Diversity – Convention on Biological Diversity Control of biotechnological risks – Regulating trade in GMOs – Agreement falling in part within the competence of the Community and in part within that of the Member States – Difficulties associated with implementation of an envisaged agreement – Need for close cooperation in negotiating, concluding and complying with the agreement – Choice of legal basis – Criteria – Community act pursuing a twofold purpose or having a twofold component – Reference to the main or predominant purpose or component Instrument falling principally within environmental policy – Legal basis : Article 175(1) EC (192 TFEU) – Shared EU and Member State competence

**Case C-94/03 *Commission v Council* [2006] ECR I-1**

Export and import of dangerous chemicals – Rotterdam Convention on the Prior Informed Consent procedure for certain hazardous chemicals and pesticides – Parliament and Council Regulation transposing the provisions of the above international treaty – Commercial components not merely incidental to the objective of environmental protection – Objective of protecting human health and the environment attained through the adoption of measures of a commercial nature, relating to trade in certain hazardous chemicals or pesticides – Commercial and environmental components indissociably linked – Direct and immediate effects on trade – Recourse to a dual legal base possible: Article 175(1) EC (192 TFEU) and Article 133 EC (Article 207 TFEU)

**Case C-178/03 *Commission v European Parliament and Council* [2006] ECR I-12049**

Regulation (EC) No 304/2003 concerning the export and import of dangerous chemicals – Environmental and commercial components indissociably linked, neither of which can be regarded as secondary or indirect as compared with the other – Recourse to a dual legal base possible: Article 175(1) EC (192 TFEU) and Article 133 EC (Article 207 TFEU)

**Case C-281/01 *Commission v Council* [2002] ECR I-12049**

Coordination of energy efficient labeling programs for office equipment – Any new energy efficiency requirements – – Direct and immediate effects on trade CCP objectives predominant – Article 133 EC (now Article 207 TFEU) prevails over Article 175(1) EC (now Article 192(1) TFEU)

**Case 62/88 *Greece v Council* [2002] ECR I-1549**

Tchernobyl accident - Regulation on the conditions governing imports of agricultural products originating in third countries - Article 113 EEC (now Article 207 TFEU) – Act not concerned exclusively with the protection of the health of the general public - Regulating trade between the EEC and non-member countries - Applicability of the CCP legal base

## **D. Environment and Common Agricultural Policy**

### **Case C-405/92 *Mondiet* [1993] ECR I-6133**

Conservation of the resources of the sea – Technical conservation measures – Prohibition of the use of certain driftnets – Protection of dolphins – Legal basis – Provisions governing the common fisheries policy – Environmental protection considerations also taken into account

### **Case C-336/00 *Republik Osterreich and Martin Huber* [2002] ECR I-7699**

Common agricultural policy – Promotion of production methods compatible with environmental requirements – Regulation No 2078/92 – Transition from intensive cultivation to a more extensive cultivation environmentally- Friendly forms of production – Environmental protection as one CAP objective – Possibility of identifying a predominant purpose – Use of the sole legal basis corresponding to the main purpose: EC Treaty, Art. 42 (now Art. 43 TFEU)

### **Case C-428/07 *Mark Horvath v Secretary of State for Environment* [2009]**

Regulation No 1782/2003 – Legal base: Articles 36 EC and 37 EC ('Agriculture) and not the articles contained in Title XIX ('Environment') – Principle of integration

## **E. Environment and Criminal Law**

### **Case C-176/03 *Commission v Council* [2005] ECR I-7879**

Framework Decision No 2003/80 on the protection of the environment through criminal law – Article 175 EC (now Article 192 TFEU) – Harmonization measures 'in relation to the Member States' criminal law' within the ambit of the first pillar – Obligation to achieve a high level of environmental protection – Fundamental and transversal nature of the environmental policy – Effective, proportionate and dissuasive criminal penalties as essential measures for combating serious environmental offences

### **Case C-440/05 *Commission v Council* [2007] ECR I-9097**

Framework Decision No 2005/667 of 12 July 2005 to strengthen the criminal law framework for the enforcement of the law against ship-source pollution – Maritime safety – Common transport policy – Effective, proportionate and dissuasive criminal penalties by the competent national authorities' as essential measures for combating serious environmental offences

## **F. Environment and Nuclear Law**

### **Case C-29/99 *Commission v Council* [2002] ECR I-11221**

Convention on Nuclear Safety – Article 30 of the Euratom Treaty basic standards for the protection of the health of workers and the general public – uniform safety standards – Controlling the sources of harmful radiation – Opening and operation of nuclear installations – Risk resulting from the operation of such installations falls within the Community's competence.

**Case C-70/88 *Parliament v Council* [1991] ECR I-4561**

Tchernobyl accident - Regulation No 3954/87 laying down maximum permitted levels of radioactive contamination of foodstuffs and feedingstuffs - Article 31 of the European Atomic Energy Community Treaty (EAEG) – Only incidental effect of harmonizing the conditions for the free movement of goods - Not an internal market measure based on Article 100a EC (Article 114 TFEU)

**Case 62/88 *Greece v Council* [2002] ECR I-1549**

Tchernobyl accident – Regulation on the conditions governing imports of agricultural products originating in third countries - Article 113 EEC (Article 207 TFEU) – Act not concerned exclusively with the protection of the health of the general public – Regulating trade between the EEC and non-member countries - Applicability of the CCP legal base