

EUROPEAN PARLIAMENT

2004



2009

*Committee on Legal Affairs
The Chairman*

Mr Karl-Heinz Florenz
Chairman
Committee on the Environment, Public Health and Food Safety
BRUSSELS

Subject: Legal basis of the Proposal for a Council Regulation establishing a Rapid Response and Preparedness Instrument for major emergencies (COM(2005)0113 – C6-0181/2005 – 2005/0052(CNS))¹

Dear Mr Florenz,

By letter of 18 July 2005 you asked the Committee on Legal Affairs pursuant to Rule 35(2) to consider whether the legal basis of the above Commission proposal was valid and appropriate.

Whereas the proposal has Article 308 of the EC Treaty and Article 203 of the EAEC Treaty as its legal basis, you suggest that its preponderant purpose is protection of people's health and the environment and that its legal basis should therefore be Article 175(1) of the EC Treaty.

The Committee considered this question at its meeting on 15 September 2005.

The proposal for a regulation sets out to establish "a Rapid Response and Preparedness Instrument for major emergencies". The Committee noted that it cites Article 3(1)(u) of the EC Treaty in so far as the activities of the Community are to include measures in the sphere of *civil protection*, which is a separate activity or policy area from "*policy in the sphere of the environment*" referred to in Article 3(1)(l). The Committee also had regard to the fact that under Article 6 of the EC Treaty environmental protection requirements must be integrated into the definition and implementation of the Community policies and activities referred to in Article 3 and that there is no *ad hoc* legal basis for civil protection in either the EC Treaty or the EAEC Treaty.

¹ Not yet published in the OJ.

Consequently, it was necessary to consider, in the light of the traditional tests employed by the Court of Justice, whether the centre of gravity of the proposal is civil protection, in which case the suppletive legal bases of Article 308 of the EC Treaty and Article 203 of the EAEC Treaty are the only possible option, or whether instead it is protection of people's health and the environment, in which case Article 175(1) of the EC Treaty would be the proper legal basis.

In this connection, it is important to note that Article 308 of the EC Treaty and Article 203 of the EAEC Treaty can be used as a legal basis only if the Treaties have not provided the necessary powers elsewhere¹.

According to the Court of Justice the choice of legal basis is not a subjective one, but "must be based on objective factors which are amenable to judicial review"², such as the aim and content of the measure in question³. Furthermore, the decisive factor should be the main object of a measure.⁴

Careful analysis of the recitals and enacting terms of the proposal for a regulation shows that its centre of gravity is in fact civil protection. Patently, civil protection measures do have implications for protection of the environment and public health. But the proposed instrument is concerned with how to mobilise the means and equipment so as to ensure preparedness for major emergencies (see Article 2 (scope) in conjunction with Article 4 (eligible actions) and Article 5 (criteria for granting assistance)). Consequently, the proposed measure is not about environment protection and protection of people's health *per se*.

However, there seems no justification in the text for basing the proposed regulation on both Article 308 of the EC Treaty and Article 203 of the EAEC Treaty.

Accordingly, the proper legal basis for the proposal for a Council Regulation is Article 308 of the EC Treaty.

Consequently, at its meeting of 15 September 2005 and in accordance with the proposal made by its rapporteur Mr. Antonio López-Istúriz White, the Committee on Legal Affairs decided, by 15 votes to 2 with 4 abstentions⁵, to recommend that the reference to Article 203 of the EAEC Treaty be removed, leaving Article 308 of the EC Treaty as the sole legal basis.

¹ Case 45/86 *Commission v. Council* [1987] ECR I-1493, para. 13.

² Case 45/86, *Commission v. Council* [1987] ECR I-1439, para. 5.

³ Case C-300/89, *Commission v. Council* [1991] ECR I-287, para. 10.

⁴ Case C-377/98, *Netherlands v. European Parliament and Council* [2001] ECR I-7079, para. 27, quoting Case C-155/91, *Commission v. Council* [1993] ECR I-939, paras 19-21.

⁵ The following were present for the vote : Giuseppe Gargani (Chairman), Rainer Wieland (Vice-Chairman), Antonio López-Istúriz White (Draftsman), Maria Berger, Marek Aleksander Czarnecki, Bert Doorn, Nicole Fontaine (for Syed Kamall), Janelly Fourtou (for Diana Wallis), Monica Frassoni, Adeline Hazan (for Katalin Lévai), Kurt Lechner, Klaus-Heiner Lehne, Eva Lichtenberger (for Alain Lipietz), Toine Manders (for Viktória Mohácsi), Antonio Masip Hidalgo, Hans-Peter Mayer, Dimitrios Papadimoulis, Alexander Radwan (for Piia-Noora Kauppi), Aloyzas Sakalas, Francesco Enrico Speroni, Andrzej Tomasz Zapałowski, Jaroslav Zvěřina, Tadeusz Zwiefka .

Yours sincerely,

Giuseppe Gargani