

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 Directive of the European Parliament and of the Council on batteries and accumulators and spent batteries and accumulators (COM(2003)0723 – C6-0268/2005 – 2003/0282(COD))¹

Dear Mr Chairman,

We would inform you that, on 29 November 2005, the Committee on Legal Affairs decided to take the question of the legal basis for the above-mentioned proposal for a directive up on its own initiative pursuant to Rule 35(3) of the Rules of Procedure² given that your committee has adopted a Recommendation for second reading which proposes that the legal basis be changed from Article 175(1) and Article 95(1), as proposed by the Commission and accepted by the Council in its common position, to Article 175(1) TEC alone.

The Committee considered the above question at that same meeting.

In view of the fact that the Committee had already considered the legal basis for this proposal for a directive at first reading. It decided to refer to the opinion it delivered at that time.

Analysis

The Environment Committee wishes to change the legal basis from "Article 175(1) and Article 95(1) [TEC] in relation to Articles 4, 5 and 18 of this Directive" to Article 175(1)

¹ OJ C 264, 25.10.2005, p. 0001-0017

² "The committee responsible for legal affairs may also on its own initiative take up questions concerning the legal basis of the proposals submitted by the Commission. In such cases it shall duly inform the committee responsible."

alone.

The justification for the relevant amendment is as follows:

"The main purpose of this Directive is to minimise the negative environmental effects of discarded batteries, therefore environment should be the only legal base. This is also in line with the (non-binding) opinion of the Advocate General in Case C-178/03 delivered 26 May 2005 (Commission versus Parliament and the Council on the legal base of the PIC-regulation) in which it is concluded that a dual legal base is excluded if the procedures laid down for them cannot be reconciled with each other and that if a piece of legislation has both environmental and internal market aspects, the act must be founded on the single legal basis required by the main or predominant purpose or component of the act."

However, this is based on a misreading of Advocate General Kokott's Opinion in Case C-178/03, which deals with an instrument based on **Article 133** and Article 175, **not** on Article 95 and Article 175, as in this case. Moreover, the Advocate General admits the possibility of two legal bases provided that the procedures provided in the relevant articles are compatible.

For the rest, since the Legal Affairs Committee has already ruled **unanimously** on the legal basis of the original Commission proposal in first reading, it is sufficient to refer to thereto.

"It is clear from settled case law of the ECJ that the choice of the legal basis does not depend on the discretion of the Community legislature but must be based on objective elements which are amenable to judicial control. Among these elements are, in particular, the aim and the content of the legal act. In practice, the Court bases its findings essentially on the recitals stated in the preamble.

It is also necessary to determine whether the measures in question relate principally to a particular field of action, having only incidental effects on other policies, or whether both aspects are equally essential. If the first hypothesis is correct, recourse to a single legal basis is sufficient; if the second is correct, it is insufficient and the institution is required to adopt the measure on the basis of both of the provisions from which its competence derives. However, no such dual basis is possible where the procedures laid down for each legal basis are incompatible with each other.

In the present case, application of those criteria amounts to asking whether the draft Directive, in the light of its context, its aim and its content, constitutes an act principally concerning environmental protection which is liable to have incidental effects on the internal market, whether, conversely, it is principally an act concerning internal market which incidentally takes account of certain environmental requirements, or whether it is inextricably concerned both with environmental protection and with the internal market.

It is true that numerous provisions of the draft Directive relate specifically to the environment. However, the fact remains that, as shown by the above considerations, the draft Directive is, in the light of its aim and its content, also an instrument intended to harmonise the legislation of the Member States which have as their object the establishment and functioning of the internal market.

It follows from all of the foregoing considerations that adoption of the Directive must be

founded on a dual legal basis. Consequently, Article 95(1) and Article 175(1) of the EC Treaty, is the appropriate legal basis."

Conclusion

At its meeting of 29 November 2005 the Committee on Legal Affairs accordingly decided, unanimously¹, to recommend that you that Article 175(1) and Article 95(1) (limited to the specifically internal market provisions of the proposed directive) should constitute the appropriate legal basis for the proposal for a directive.

Yours sincerely,

Giuseppe Gargani

¹ The following were present for the vote Giuseppe Gargani (chairman), Janelly Fourtou (for Diana Wallis), Jean-Paul Gauzès (for Bert Doorn), Kurt Lechner, Klaus-Heiner Lehne, Aloyzas Sakalas, Nicola Zingaretti and Jaroslav Zvěřina.