



European Economic Law

Lesson 13 and 14

**External Relations/Common Commercial
Policy/General Economic Policy/Industrial Policy/
Consumer Protection/Environment**



European Economic Law

Overview of the course

- I. Principles of European Economic Law – The Economic Constitution of the European Union and the Foundations of the Internal Market
- II. Fundamental Freedoms
- III. EU Competition Law
- IV. The Role of the State/Subsidies
- V. Community Policies**



➤ **External Relations/Common Commercial Policy**

Craig/de Búrca, p. 302-361

➤ **General Economic Policy/Industrial Policy/
Consumer Protection**

➤ **Here: Environment Protection**



I. Increasing Importance of European Environmental Policy

- Until **1972**, the European institutions paid no specific attention to the development of an environment policy.
- In **1972**, the European Council underlined the value of an European environment policy.
- On **22 November 1973**, the Council adopted a Programme of action. The interrelationship between environmental protection and the economy was highlighted. The protection of the environment became a fundamental task:



I. Increasing Importance of European Environmental Policy



*“Whereas in particular, in accordance with Article 2 of the Treaty; the task of the European Economic Community is to promote throughout the Community a harmonious development of economic activities and a continuous and balanced expansion, which cannot now be imagined in the **absence of an effective campaign to combat pollution and nuisances or of an improvement in the quality of life and the protection of the environment;** whereas improvement in the quality of life and the protection of the natural environment are among the fundamental tasks of the Community ; whereas it is therefore necessary to implement a Community environment policy; ”*



I. Increasing Importance of European Environmental Policy

- Environmental protection was not part of the EEC-Treaty until the Single European Act (entry into force 1987) introduced provisions designed to protect the environment: 130r, 130s, 130t, 100a(3), 100a(4) (which later became Articles 174, 175, 176, 95(3) and 95 (4) EC and now have become articles 191, 192, 193, 114(3) and 114(4) TFEU).
- These articles define objectives and principles of the European Environmental policy.

I. Increasing Importance of European Environmental Policy



Nevertheless, environmental protection was earlier considered an objective of the EC. This was confirmed by the Court of Justice in 1985 in the ADBHU case (*Procureur de la République v Association de Défense des Brûleurs d'Huiles Usagées*, case C-240/83). The concern was the validity of the Waste Oil directive. The facts are less important than what was stated by the Court:

“(12) [...] The principle of freedom of trade is not to be viewed in absolute terms but is subject to certain limits justified by the objectives of general interest pursued by the Community provided that the rights in question are not substantially impaired.”

“(13) [the directive] must be seen in the perspective of environmental protection, which is one of the Community’s essential objectives.”



I. Increasing Importance of European Environmental Policy

Treaty of Maastricht (entry into force 1993):

The term “environment” was introduced into the articles 2 and 3 EC, which set out the objectives and activities of the Community.

The Treaty of Amsterdam (entry into force 1999):

Article 95 (4) EC was reformulated and the so-called “concept of sustainable development” was introduced into the “integration principle” in article 6 EC.

The Treaty of Nice (entry into force 2003): no substantial changes



I. Increasing Importance of European Environmental Policy



Treaty of Lisbon (entry into force 1st December 2009):

- The new article 6 (1) TEU states: *“The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties”*. The rights and principles of this Charter are now part of European primary law.
- Article 37 of the Charter: Environmental protection
“A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.”



II. Aspects of European Environment Policy

Art. 191 (1) TFEU – Objectives:

- Preserving, protecting and improving the quality of the environment,
 - Protecting human health,
 - Prudent and rational utilisation of natural resources,
 - Promoting measures at international level to deal with regional or worldwide environmental problems.
- ➔ Some problems exist: The objectives are formulated fairly general and indeterminate. The term “environment” is not defined in the Treaty.



II. Aspects of European Environment Policy

Art. 191 (2) TFEU – Principles:

- High level of protection
 - Precautionary principle
 - Prevention principle
 - Source principle
 - Polluter pays principle
 - Safeguard clause
- ➔ These principles have to be translated into concrete obligations for Member States. Secondary law can be interpreted in the light of these principles.

II. Aspects of European Environment Policy



The European environment policy is still more or less sectoral. A lot of secondary law has been decreed.

Many rules on the environment are still adopted on the level of the Member States. Environmental regulations have to be compatible with Articles 34 – 36 TFEU).

We will successively examine two cases in which “environmental protection” and free movement of goods had to be balanced.

III. Case Law: Environmental Protection and Art. 34 TFEU



ECJ, case 302/86 - Danish Bottles

Denmark had introduced a system under which all containers for beer and soft drinks had to be returnable. This meant that manufacturers had to market beer and soft drinks in re-usable containers. A National agency for the Protection of the Environment had to approve the containers.

In 1984 these rules were amended in such a way that, provided that a deposit-and-return system is established, non-approved containers, except for any form of metal container, may be used for quantities not exceeding 3000 hectolitres a year per producer and for drinks which are sold by foreign producers in order to test the market.

The Commission of the European communities presumed that this system was not compatible with article 34 TFEU.

III. Case Law: Environmental Protection and Art. 34 TFEU



In the Danish bottles case, the Court stated that

*“(8) the protection of the environment is one of the Community’s **essential objectives**, which may as such **justify certain limitations of the principle of the free movement of goods**. That view is moreover confirmed by the Single European Act.”*

“(9) In view of the foregoing, it must therefore be stated that the protection of the environment is a mandatory requirement which may limit the application of Article 30 EEC” [article 34 TFEU].

After analyzing whether the measure did “[11] not go beyond the inevitable restrictions which are justified by the pursuit of the objective of environmental protection”

the Court concluded that “(22)[...] Denmark has failed,[..], to fulfil its obligations under Article 30 of the EEC” [article 34 TFEU].

III. Case Law: Environmental Protection and Art. 34 TFEU



ECJ, Case C-142/05 – *Personal Watercraft*

The case of 4 June 2009 concerns a preliminary ruling on the Swedish regulation on the use of personal watercraft ("Wassermotorräder"). The defendants in the main proceedings had been brought before the national Court for having driven personal watercraft on waters on which personal watercraft was not admitted in Swedish law at that time.

The defendants claim that the Swedish regulation infringes among others articles 34 and 36 TFEU.



III. Case Law: Environmental Protection and Art. 34 TFEU

- The advocate general Kokott analyzed in her conclusions whether the Court's *Keck*-case law could be applied to *arrangements for use*. This could be the case, if the characteristics of *arrangements for use* and *selling arrangements* are comparable. As a consequence, a regulation prohibiting certain arrangements would be excluded from the scope of article 34 TFEU.
- The Court did not apply the Keck formula. It followed its argumentation in *Commission v Italy (C-110/05)*.



III. Case Law: Environmental Protection and Art. 34 TFEU



The Courts main argument in order to consider the regulation a “measure having equivalent” effect was:

*(26) „Even if the national regulations at issue do not have the aim or effect of treating goods coming from other Member States less favourably, which is for the national court to ascertain, **the restriction which they impose on the use of a product in the territory of a Member State may, depending on its scope, have a considerable influence on the behaviour of consumers, which may, in turn, affect the access of that product to the market of that Member State (see to that effect, Commission v Italy, paragraph 56).***

*(27) **Consumers, knowing that the use permitted by such regulations is very limited, have only a limited interest in buying that product (see to that effect, Commission v Italy, paragraph 57).***”



III. Case Law: Environmental Protection and Art. 34 TFEU



Conclusion of the Court:

*“(28)[...] national regulations for the designation of navigable waters and waterways have the effect of preventing users of personal watercraft from using them for the specific and inherent purposes for which they were intended or of greatly restricting their use, which is for the national court to ascertain, such regulations have the effect of hindering the access to the domestic market in question for those goods and therefore constitute, save where there is a **justification** pursuant to article 30 EC [now: article 36 TFEU] or there are overriding public interest requirements, measures having equivalent effect to quantitative restrictions on imports prohibited by Article 28 EC [now: article 34 TFEU].”*

III. Case Law: Environmental Protection and Art. 34 TFEU



(31) The Court decided that articles 34 and 36 TFEU did not categorically preclude such national regulations if they are justified by the objective of protection of the environment provided that the measures in question are proportionate to the aim pursued.

III. Case Law: Environmental Protection and Art. 34 TFEU



- The question of proportionality is crucial, giving the Court of justice the possibility of balancing the different interests.
- In the Danish bottles case the Court shortly stated that the measure restricting the quantity of non-approved containers was disproportionate to the objective pursued, since it affected only limited quantities of beverages compared to the quantities of beverages consumed in Denmark. The system for returning non-approved containers was considered capable of protecting the environment.



III. Case Law: Environmental Protection and Art. 34 TFEU

In the personal watercraft case, the Court was much more accurate, examining different aspects of proportionality:

- The Court stated that the rule was appropriate for the purpose of protecting the environment.
- The Court examined whether the effects of the prohibition go beyond what is necessary to achieve the aim. The Court accepts that the measure is necessary “*on account of the particular geographical circumstances of the Member State*”.



III. Case Law: Environmental Protection and Art. 34 TFEU



However, the Court defined several conditions which have to be satisfied for the measure to be proportionate.

- *the competent national authorities are required to adopt the implementing measures provided for in order to designate waters other than general navigable waterways on which personal watercraft may be used;*
- *those authorities have actually made use of the power conferred on them in that regard and designated the waters which satisfy the conditions laid down in the national regulations, and*
- *such measures have been adopted within a reasonable period after the entry into force of that regulation.*