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Environmental Aid and its Regulation in the EU Law

Diploma thesis

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I would like to express many thanks to my diploma thesis supervisor doc. JUDr. Martin Janků, CSc. for his professional guidance and personal consultations.

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Abstract

Bc. Věra Zvěřinová, Environment Aid and its Regulation in the EU law. Diploma thesis. Brno: Mendel University in Brno, 2015.

The environment is important not only for individuals, but for all mankind and future generations also. The environment and its global issues have become a burning issue for the whole population. The European Union decided to implement the environment into its legal system also. The theoretical part deals with defining sources which control the environment aid and examining the permissibility conditions for providing such aid. Practical part focuses on waste management and analysis of individual legal cases in this area.

Keywords

Environmental aid, law, European Union, waste management, analysis

Abstrakt

Bc. Věra Zvěřinová, Podpora životního prostředí a její regulace v právu EU. Diplomová práce. Brno: Mendlova univerzita v Brně, 2015.

Životní prostředí není důležité jen pro jednotlivce, ale pro celé lidstvo a budoucí generace. Protože se životní prostředí a jeho globální problémy staly palčivým problémem dnešní populace, i Evropská Unie se rozhodla životní prostředí ve svém právu zohlednit a zakotvit určitá ustanovení právem. Teoretická část práce se zabývá vymezením zdrojů regulací podpory životního prostředí a zkoumáním přípustných podmínek pro udělení této podpory. Praktická práce je zaměřena na odpadové hospodářství a analýzu jeho jednotlivých právních případů.

Klíčová slova

Podpora životního prostředí, právo, Evropská Unie, odpadové hospodářství, analýza

CONTENT

1 INTRODUCTION

The industrial development has produced more waste products and fumes, increased the content of CO_2 in the atmosphere, caused the formation of acid rain, and also Greenhouse effect.

The fatal impact came in the 18th century when the Industrial Revolution first started. Human beings have been increasingly affecting the Ecosystem. Many species have been wiped out and there have been reduction in species diversity. There has been the sharp increase of the amount of domesticated livestock and the pasture areas. The human population saw major changes during the 18th century. The acceleration of the social development, the increasing level of education and the medical care improved living conditions. The world population doubled during the 19th century. In 1900 there lived approximately 1.7 billion people on the earth's surface. At the beginning of the 19th century the first conscious effort to protect the quality of the environment and biodiversity emerged and approximately at the half of the 19th century the effort appeared even in administrative acts.

The period of time between the 1800s to 1950s is characterized by extensive manifestations of urbanization and demographic changes. There was a significant increase in world population during this period, and the consequences of the two world wars had a big impact. The dramatic changes in people's thinking, the development of the technical world and the related changes in the production areas caused release of environmentally harmful substances (CFCs or CO_2 emissions). The significant impacts on production in the 20th century brought two world war conflicts.

During the 20th century, the world population increased threefold and the consumption of raw materials increased as well. This trend is no longer sustainable. Problems in the area of forest and marine ecosystems have been growing. The atmosphere is facing great pressure and in connection with the growth of carbon dioxide concentration the temperature of our planet has been increasing. The higher temperatures are accompanied by melting glaciers, rising of sea level, increasing number of storms, tornadoes or hurricanes and there is a risk of lower food production. Since the 80s of the 20th century the global issues and the state of the environment are devoted to specialized scientific discipline, the environmental ecology. This scientific discipline examines the relationship between economic development and environment of human beings. Due to the ever-growing world population, the situation will be still severe so the biggest polluters have to be willing to reduce their behaviour even though it will mean the loss of their profit.

The environmental ecology is not only important for the individuals, but also for the whole mass of the people, and especially our future generations. Since this scientific discipline and global environmental problems have become a pressing issue for today's population, the European Union decided to reflect the environment within the law and enshrine certain provisions of the law.

Diploma thesis deals with the environmental aid and its regulation in the EU law. It analyses the three main sources of the regulation - primary EU law, secondary Union law and the case law created by the EU Commission and EU Court of Justice

The main objective of the fist part of DT is to define the individual criteria of permissibility conditions as settled by the virtue of Commission decisions. To define their scope and evaluate their effectivity, determine what criteria are fundamental for the permissibility of aids. To outline the forseen reforms of the legal regulation in this field.

The application part shall focus on the issues concerning the waste management.

Thesis uses mainly the analytical method to define main feature of the legal regulation, the method of deduction and comparison when examining the decisions of the Commission.

2 OBJECTIVES AND METHODOLOGY

2.1 Objectives

One of the core objectives of the European Union is to achieve a safe, sound and sustainable environment in such a way that meets the needs of the present without compromising the ability of future generations to meet their own needs. Article 191 of the EC lays down the guiding principles for environmental protection and obliges member states to take preventive as well as corrective measures to ensure the protection of the environment. These measures can be in the form of directives, regulations and aid. However state aid, in any form is regulated by Article 107 (ex Article 87) and Article 108 (ex Article 88) which prohibit aid that is not compatible with the common market. To ensure that state aid for environmental protection does not infringe on Article 107 and 108, the Commission sets guidelines on state aid for environmental protection and takes steps to ensure member states comply with these regulations.

The objective of this thesis, therefore, is to examine the various legal regulations on environmental aid, tracing the sources of the law, examining the various provisions and the application of the law in the form of case law.

The main objective is to define the individual criteria of permissibility conditions as settled by the virtue of Commission decisions. To define their scope and evaluate their effectivity, determine what criteria are fundamental for the permissibility of aids.

Partial aim of the theoretical part is to provide a comprehensive view at the environmental aid and its regulation in the EU law and the practical part shall focus on the issues concerning the waste management. The examination is done in the form of stating the legal basis, the particular national legislation under contest, Community legislation on the specific provisions, and this is followed by a case analysis and concludes with looking at the implications of those rulings.

2.2 Methodology

The diploma thesis is divided on the theoretical and practical part. The diploma tackles four defined aims. The theoretical part analyzes all sources of the regulation of the environmental aid. EU law constitutes from primary, secondary and case law. This part is based on own research. The primary law is mainly created by the treaties which are establishing the Union, it is defining the legal basis and establishing the objectives and procedures. On the other hand the secondary law comprises from the unilateral acts, conventions and agreements. Case law can be defined as legal principles enunciated and embodied in judicial decisions. All of these three sources are playing crucial role in defining the EU law. Synthesis from all the collected information has been done and it is described which sources are adjusting the regulation of the environmental aid.

The main objective of the theoretical part is to define the individual criteria of the permissibility conditions as settled by the Commission decision and to outline the foreseen reforms of the legal regulation in this field.

Over the years, the Commission has issued a number of guidelines on environmental aid. The theoretical part describes the 2014-2020 guidelines which stress the 2020 Europe strategy which has its principal objectives of focusing on creating the conditions for a sustainable growth.

The general conditions for environmental and energy aid is compatible with the internal market if it has an incentive effect where the aid motivates the beneficiary to change its behaviour for an increase level of environmental protection. This part of the thesis has been carried out on the basis of the research, analyzes and synthesis. Very helpful was the primary source European Community Law of State Aid which is edited by Kelyn Bacon. Information used in this study were then mainly sourced from the websites of eur-lex.europa.eu, curia.europa.eu and individual cases, articles, directives, guidelines and plans. Moreover in the theoretical part there has been introduced the directive of the waste management. The waste management is one of the top issues concerning the EU so even from this reason the practical part is mostly focused on this area.

An examination has been made using four cases that concern waste management and the protection of the environment. The examination has been done in the form of first stating the legal basis, the particular national legislation under contest, community legislation on the specific provisions, and this was followed by a case analysis and concludes with looking at the implications of those rulings. The practical part analyzes these four cases: CASE C-2/90, Case 302/86, Case C-309/02, Case C-494/01.

Thesis mainly uses the analytical method to define main feature of the legal regulation, the method of deduction and comparison when examining the decisions of the Commission. In the end synthesis of the collected data shall be made and outline the predicted development.

3 LITERATURE OVERVIEW

The first United Nations conference for environment and development known as the Earth Summit was held in Stockholm in 1972 and brought together leaders from across the world to discuss the impact of the environment on climate change and development. In 1992, the second United Nations Earth Summit was organised in Rio de Janeiro which again brought together leaders, activists and non-governmental organisations from around the world to discuss the world's ecological challenges, debated the links between environment and development, fought pitched diplomatic battles over proposed solutions to those issues(Robert L. Hicks 2008).

The EU policy on the environment started with the First Environmental Action Programme emanating from the adoption of Article 3(1)(1) which required the EU to adopt a common Environmental policy. The Amsterdam Treaty further reinforced the community's affirmation to meeting the United Nations Environment Programme's mission of a balanced and sustainable development that meets the needs of the present without compromising the ability of future generations to meet their own needs. The Amsterdam Treaty of 1999 therefore declared environmental protection one of the treaty's corpus objectives and was enshrined in Article 6 of the EC requiring an integration of environmental policy objectives into the EU's policies and activities.

Also taking into account many resolutions and agreements entered into force between the EU on one hand and other third countries or parties which started with the Stockholm declaration on the human environment.

The Rio declaration on the environment also stipulated the importance of the environment and development.

Further declarations include the General Assembly resolutions 37/7 of 28 October 1982 on the world charter for nature and 45/94 of 14 December 1990 on the need to ensure a healthy environment for the well being of individuals.

The European Charter on the Environment and Health was adopted at the first European Conference on environment and health of the world health organisation in Frankfurt, Germany on 8 December 1989.

Article 191 (ex Article 174 TEC) provides the guiding principles and objectives of the Community's Environmental policy declaring that environmental damage should as a priority be rectified at source and that the polluter pays.

Over the decades, a number of Environment Action Programmes (EAP) have been set up by the Union since 1972. The latest EAP is the 7th EAP with a long term goal to achieve the set objectives by 2050. The 7th EAP will guide the European Environment policy towards achieving the objectives to protect, conserve and enhance the union's natural capital, to turn the union into a resource-efficient, green, and competitive low-carbon economy and to safeguard the union's citizens from environment-related pressures and risks to health and wellbeing (European Parliament, Committee on Industry, Research

and Energy, Committee on Regional Development, Committee on the Environment, Public Health and Food Safety 2013).

The 6th EAP which was adopted in 2002 had set out four core priorities for a ten year action plan in combating climate change; reducing adverse environmental impact on health; halting biodiversity loss and protecting nature; and natural resource management and managing waste (European Parliament, Committee on Industry, Research and Energy, Committee on Regional Development, Committee on the Environment, Public Health and Food Safety 2013).

The European parliament resolution of 20 April 2012 on the review of the 6th EAP and the setting of priorities for the 7th Environment Action Programme noted the success and shortcomings of the 6th EAP. The report indicated that for a decade the 6th EAP had provided an overarching framework for environment policy, during which time environmental legislation had been consolidated and substantially completed, and whereas its adoption by co decision has increased its legitimacy and has helped create a sense of ownership (European Parliament, Committee on Industry, Research and Energy, Committee on Regional Development, Committee on the Environment, Public Health and Food Safety 2013).

However there were still shortcomings as addressed by the report. The report noted that progress towards the objectives set out in the 6th EAP had been variable, with some objectives in climate and waste having been achieved and others objectives with regards to air, urban, environment, natural resource not achieved while the attainment of other objectives related to chemicals, pesticides and water depends on future implementation efforts (European Parliament, Committee on Industry, Research and Energy, Committee on Regional Development, Committee on the Environment, Public Health and Food Safety 2013).

The report considers that the 7th EAP should provide a positive narrative on the benefits of stringent environmental policy to strengthen public support and political will to act. The resolution takes the view that the 7th should set concrete targets for 2020 as well as setting out a clear ambitious vision for the environment in 2050 aimed at providing a high quality of life and well-being for all within safe environmental limits (European Parliament, Committee on Industry, Research and Energy, Committee on Regional Development, Committee on the Environment, Public Health and Food Safety 2013).

As environmental protection is intricately linked and taken into account in every and any energy policy, the European Council in 2007 having regard for the need of a strategic and coordinated energy policy adopted the energy action plan dubbed The Energy Plan for Europe with the main objectives being increasing security of supply; ensuring the competitiveness of European economies and the availability of affordable energy; and promoting environmental sustainability and combating climate change (European Commission 2007).

The set - plan was adopted to establish an energy technology policy for Europe with a strategic plan to accelerate the development and deployment of

cost-effective low carbon technologies. To achieve this, measures relating to planning, implementation, resources and international cooperation in the field of energy technology will be adopted and pursued(European Commission 2007).

Environmental protection has been a key policy goal for the EU and over the years, a number of guidelines have been adopted on the allocation of resources to the protection of the environment. State aid to environmental protection however must follow the relevant provisions in the treaty. With particular importance is Article 107 (ex Article 87 of TEC) which lays down the criteria and permissibility considerations for State aid with special emphasis on the need for State aid to be compatible with the internal market.

This thesis deals with environmental aid and its regulation in the EU law by analysing the three main sources of the regulation - primary EU law, secondary union law and the case law created by the EU commission and EU court of justice.

The main objective of the first part is to define the individual criteria of permissibility conditions as settled by the virtue of commission decisions. To define their scope and evaluate their effectiveness, determine what criteria are fundamental for the permissibility of aids and to outline the foreseen reforms of the legal regulation in this field.

3.1 Sources of environmental aid law

The European Union law is comprised of a body of treaties and legislations binding member states which can have direct or indirect effect

3.1.1 Primary union law on environmental aid law

The primary source of EU law is derived from the treaties establishing the European Union which set out the EU's constitutional basis and establishing the EU institutions, procedures and objectives. Others include the amending EU treaties, the protocols annexed to the founding treaties and treaties on new member states' accession to the EU.

3.1.1.1 Article 191

The first source represents the union's core law on the environment requiring the union to preserve, protect and improve the quality of the environment. Article 191 declares that the union's environment policy shall aim at a high level of protection taking into account the diversity of the situation and shall be based on the precautionary principle and on the principles that preventive action should be taken (The Member States 2012).

Article 191 noted that on matters of environmental aid, harmonisation measures answering environmental protection requirements shall include, where appropriate, a safeguard clause allowing member states to take provi-

sional measures, for non-economic environmental reasons, subject to a procedure of inspection by the union(The Member States 2012).

3.1.1.2 Article 107

According to Article 107 any aid granted by a member state or through state resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between member states, be incompatible with the internal market.

Article 107 further outline aid that is compatible with the internal market to include aid having a social character, granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned, aid to fix the damage caused by natural disasters or exceptional occurrences(Council of the European Union 2012).

Other types of aid which are also compatible with the internal market include aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extend contrary to the common interest, aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the union to an extend that is contrary to the common interest(Council of the European Union 2012).

3.1.1.3 Article 108

Article 108 provides a brief overview of the procedures set in place to review State aid to ensure they are compatible with the internal market. It sets out penalties for non compliant parties. The commission shall in cooperation with member states, keep under constant review all systems of aid existing in those states. It shall propose to member states any appropriate measures required by the progressive development or by the functioning of the internal market (Council of the European Union 2012).

Article 108(2) states that if, after giving notice to the parties concerned to submit their comments, the commission finds that aid granted by a state or through state resources is not compatible with the internal market having regard to Article 107, or that such aid is being misused, it shall decide that the state concerned shall abolish or alter such aid within a period of time to be determined by the commission(Council of the European Union 2012).

In 2010, aid for meeting the objectives of environmental protection represented 23.7% of all EU aid whereas regional development represented 24.3% of total aid and research and development represented 17.4% which according to the 2010 scoreboard comprised a major share of state aid, thus environmental aid must be applied with due regard to the provisions enshrined in Article 107 and Article 108 (Council of the European Union 2012).

3.1.2 Secondary union law on environmental aid

Secondary law comprises unilateral acts, conventions and agreements. Conventions and agreements are international agreements signed by the EU and a country or outside organisation. They can also be agreements between member states or inter institutional agreements i.e. agreements between the EU institutions(Sauter a Vedder 2012).

3.1.2.1 Unilateral acts

Unilateral acts are part of the secondary legislation of the EU through which rights are conferred on the institutions of the EU to act in an autonomous manner.

There are two acts that deal with unilateral acts. The first act is defined in Article 288 of the Treaty on the Functioning of the EU (TFEU) and is defined as regulations, directives, decisions, opinions and recommendations. The second act deals with the atypical acts like communications, white papers and green papers(Sauter a Vedder 2012).

Union directive of 2009 on the Renewable Energy Directive (RED) and the Fuel Quality Directive all constitute union unilateral acts with regard to the environment.

The guidelines on state aid for environmental protection fall within unilateral acts and based on the rights conferred on the institutions of the union, unilateral acts have binding implications for member States but mostly that the guidelines are drawn based on the legal provisions in the primary union law.

3.1.2.2 Conventions and agreements

Conventions and agreements in addition to unilateral acts constitute the basis for the secondary EU law. Conventions and agreements are a result of consensus between the EU institutions or between the EU and a third party. Conventions and agreements are not the direct result of any legislative procedure or the sole will of an institution but based on agreements and consensus reached and concluded between the community and other third country or party for a common interest of protecting the environment in a sustainable and balanced way. International agreements have a greater value than unilateral acts.

The introduction of Article 24 by the 1997 Amsterdam Treaty in the Treaty on European Union was meant to provide an explicit legal basis for the union to conclude agreements with third states and other international organisations.

The convention on the conservation of European wildlife and natural habitats was adopted in Bern, on 19 September 1979 and entered into force in 1982, with the aim of ensuring the conservation of wild flora and fauna species and their habitats. The convention gave special emphasis on endangered, vulnerable and migratory species and demanded from the parties to integrate into their planning and development policies and pollution control(Council of the European Union 1992).

To achieve this, the convention established a standing committee on which the parties are represented with a principal role to monitor the provisions of the convention in the light of development of wild flora and its assessments. Signatories to this convention included member states of the council of Europe and other non members including Belarus, Burkina Faso, Morocco, Senegal and Tunisia(Council of the European Union 1992).

3.1.2.3 The Convention on the protection of the Environment through Criminal Law

The convention was adopted in Strasbourg in 1998 and sought to pursue a common criminal policy aimed at the protection of the environment with regards to intentional offences resulting from acts that have direct and hazardous consequences for the environment. Negligent offences shall also be instituted against legal persons that have not taken enough measures to prevent and protect the environment through acts and omissions with disastrous consequences for the environment(Council of the European Union 1998).

3.1.2.4 The Aarhus Convention

This convention was signed in Aarhus Denmark in 1998 and affirmed the need to protect, preserve and improve the state of the environment and to ensure sustainable and environmentally sound development(www.unece.org 2011).

The convention recognised that every person has the right to live in an environment adequate to his or her health and well-being, and the duty both individually and in association with others to protect and improve the environment for the benefit of present and future generations. To this end citizens must have access to information, be entitled to participate in decision-making and have access to justice in environmental matters. The convention acknowledged in this regard that citizens may need assistance in order to exercise their rights(www.unece.org 2011).

3.1.2.5 Inter Institutional Agreements

Article 295 of the Treaty of Lisbon on the functioning of the EU recognised inter institutional agreements as essential and necessary for the smooth functioning of the EU. Inter institutional agreements are concluded between EU institutions. The aim of these agreements is to organise and facilitate cooperation between the institutions, specifically the commission, the parliament and the council. These agreements are binding and can take the form of code of conduct, guidelines or declarations(The Member States 2012).

3.1.3 The case law created by the EU Commission and EU Court of Justice

The EU court of justice is the highest judicial body in the European Union. It was formerly called Court of Justice of the European Communities but with the

adoption of the Treaty of Lisbon in 2009, the name of the court system was changed to Court of Justice of the European Union while the court itself was renamed as court of justice. It is made up of three courts; the court of justice, the court of first instance and the civil service tribunal, with the main objective to examine the legality of measures and ensure the uniform interpretation and application of community law (http://www.hri.org 2012).

Case law can be defined as legal principles enunciated and embodied in judicial decisions that are derived from the application of particular areas of law to the facts on individual cases. Case law is dynamic and a constantly developing and changing body of laws that originate from rulings of the EU court of justice on individual cases but with particular implications for similar cases brought before the court. The case law sets a precedent which is referenced when a similar case is brought before the EU court of justice.

Through the case-law, the court of justice identified and established fundamental principles, such as the primacy of community law over national law or the liability of member states for breach of community law.

With regards to environmental cases, the development of the court's case-law contributed to clarifying the obligations of member states on environmental aid and biodiversity protection with particular prominence to the directive establishing a scheme for greenhouse gas emission allowance trading within the community(Council of the European Union, The European Parliament 2003).

Below is an examination of notable environmental case law handled by the court.

3.1.3.1 The European Commission vs. Netherlands; September 2011

The facts of the case are that the Dutch government set up a trading scheme for NOx emissions. The scheme sets an emission ceiling for large industrial facilities whereby a company that stays below this limit may sell the surplus emission and companies exceeding the emission cap can escape fines by buying emission allowances. The general court decided, in 2008, that the scheme did not constitute state aid, as it applies to all NOx facilities and can be justified with regards to environmental protection. However the commission appealed to the court of justice which overturned the decision of the general court, in 2011, and ruling that the court must look at the impact of the scheme and not just the objective of environmental protection. The court of justice judgement points to the fact that the trading scheme was selective and state resources were involved if a company complies with emission limits through the acquisition of emission allowances in order to avoid fines (Court of Justice 2011).

The ruling on the dutch NOx trading schemes initiated a precedent, which led to emission trading schemes being included in both the 2008 and the 2014 - 2020 guidelines on environmental aid.

3.1.3.2 Lucchini SpA vs. Commission of the European Communities

The facts of the case are that the Italian government designed an environmental aid package for Lucchini SpA and Siderpotenza SpA a steel company to replacement of a blast furnace in the pig-iron production installations and in particular the fume extraction equipment for the converters as an environmental protection measure.
The Italian government also earmarked aid for environmental measures with regards to the coking plant. The court ruled that except for aid for the coking plant, environmental investments in the blast furnace and the steelworks are incompatible with the internal market and the relevant provisions in the EU Law(Court of Justice 2006).

3.2 Guidelines based on article 107

Over the years, the commission has issued a number of guidelines on environmental aid taking into account Article 107 of the treaty establishing the European Union. The first guidelines on state aid were issued by the commission in 1974 with an aim to help businesses meet minimum mandatory environmental standards. The 1994 guidelines were the first comprehensive guidelines on state aid for environmental protection with the theme of the polluter pays (www.europa.eu 2009).

The principle of the guidelines is that state aid in whatsoever form should not distort competition in the internal market as enshrined in Article 107.

The guidelines are expected to consider the negative impacts of environmentally harmful subsidies, while taking into account the need to address trade-offs between different areas and policies as recognised by the flagship initiatives. The guidelines emphasized the need for respect to the polluter pays principle thereby making state aid an inappropriate instrument so far as the beneficiary of the aid could be held liable for the pollution under existing union or national law (Council of the European Union 1992).

In 1999, a new set of environmental aid guidelines were adopted. It was an enhancement from the previous one and revised the old rules in accordance with the Kyoto Protocol on climate change. The 1999 guidelines considered the use of the new forms or increased use of existing forms of operating aid and fiscal measures (European Commission 2000).

The commission settled about 350 decisions in its seven years and in the vast majority of cases (98%) the commission found the measure not to constitute state aid at all, or to be compatible, either in the form in which the measures were notified or following agreed modification(Bacon 2009).

3.2.1 Environmental Aid Guidelines 2008

The principle of these guidelines is that controlling state aid for environmental protection is primarily intended to guarantee that aid measures will lead to higher levels of environmental protection than would have been reached in the absence of aid. The guidelines takes into account the principle of the polluter pays principle (Bacon 2009).

The 2008 guidelines also introduced an assessment method which is called balancing test.

3.2.1.1 The Balancing Test

It was suggested in the state aid action plan to determine the compatibility of aid with the rules of the common market. It was adopted to guarantee that incentives from state aid are well targeted and proportional, and has a limited negative effect on competition (Bacon 2009).

According to the commission, aid must be able to correct market failures that are harmful to the environment. The commission identified the most common market failure in the field of environmental protection as related to negative externalities created by undertakings. These undertakings may use technology or production methods that did not take into account environmental protection. To this end, undertakings are able to cut down their costs lower than the environmental costs borne by society. To correct these market failures, states may impose regulation, standards and taxes on undertakings that pollute to compensate for the negative externalities they produce in accordance with the polluter pays principle (European Commission 2005).

In assessing whether an aid measure can be deemed compatible with the common market, the commission balances the positive impact of the aid measure in reaching an objective of common interest against its potentially negative side effects, such as distortion of trade and competition(European Commission 2005).

The state aid action plan, building on existing practice, has formalised this balancing exercise where the balancing test was introduced. It operates in three steps; the first two steps address the positive effects of the state aid and the third addresses the negative effects and resulting balancing of the positive and negative effects. The balancing test examines if the aid is defined for objective of the common interest (for example: growth, employment, cohesion, environment, energy security, protection of the environment). It also watches if the aid is well designed for meeting the objective of common interest and if the aid does not involve some market failure or it will not change the behaviour of undertakings. From these it arises that this provision of aid has to be proportional (European Commission 2005).

The 2008 guidelines also include for the first time aid for early adaptation to standards, aid for environmental studies, aid for district heating, aid for waste management and aid related to tradable permit schemes. Another significant innovation is the introduction of a detailed assessment method for cases

involving large amounts of aid to individual beneficiaries and also increasing the permissible aid intensity, which in certain cases extend to 100% of the eligible costs (Bacon 2009).

For the purpose of this thesis, the 2014 – 2020 guidelines will be the main regulation for analysing the various types of aid that are compatible with the internal market. However, as one of the sub-themes in this thesis deals with aid to waste management, an attempt is made to analyse the commission regulation for 2008 concerning aid for waste management.

3.2.1.2 Aid for waste management

Aid for waste management outline in the 2008 guidelines aims to give individual incentives to reach environmental targets linked to waste management. The commission intimated that the 6th EAP identified waste prevention and management as one of the four top priorities with the primary objective to separate waste generation from economic activity, so that EU growth will not lead to more waste.

The commission indicated that state aid may be granted to the producer of the waste (under section 3.1.1) as well as to undertakings managing or recycling waste created by other undertakings (under section 3.1.9). However, the positive effects on the environment must be ensured, the polluter pays principle must not be circumvented and the normal functioning of secondary material markets should not be distorted (Publications Office 2008).

3.2.2The 2014-2020 Guidelines on Environmental Aid.

The 2014-2020 guidelines puts emphasis on the Europe 2020 strategy which has its principal objectives of focusing on creating the conditions for a smart, sustainable and inclusive growth with targets of achieving 20 % reduction in Union greenhouse gas emissions when compared to 1990 levels; raising the share of Union energy consumption produced from renewable resources to 20 %; and 20 % improvement in the EU's energy-efficiency compared to 1990 levels (European Commission 2014).

Member states have also been asked to address gaps in their performance and ensure compliance with union environmental legislation and carry out an environmental impact assessment when it is required by union law and ensure all relevant permits (European Commission 2014).

One other new reform to the 2014- 202 guidelines is the identification and definition of common principles applicable to the assessment of compatibility of all aid measures carried out by the commission. This was as a result of deliberations resulting in the communication on state aid modernisation of 8 May 2012. In order to achieve this, the commission will consider a state aid measure as compatible with the internal market only if it satisfies contribution to a well-defined objective of common interest, appropriateness of the aid, incentive effect of the aid and proportionality of the aid (aid kept to the minimum). The state aid measure is targeted towards a situation where aid can

bring about a material improvement that the market alone cannot deliver, for example by remedying a well-defined market failure (European Commission 2014).

The 2014-2020 Guidelines also highlighted a number of environmental and energy aid measures which are compatible with the internal market under Article 107. They include, among other things, aid for early adaptation, aid for environmental studies, aid for the remediation of contaminated sites, aid for energy from renewable sources, aid for energy efficiency measures, including cogeneration and district heating and district cooling, aid for resource efficiency and, in particular, for waste management, aid for CO2 capture, transport and storage including individual elements of the carbon capture storage chain(European Commission 2014).

3.2.2.1 Market Failures

The commission recognised that competitive markets tend to bring about efficient results in terms of prices, output and use of resources, in the presence of market failures, state intervention may improve the efficient functioning of markets and can under certain conditions correct market failures and thereby contribute towards achieving the common objectives to the extent that the market on its own fails to deliver an efficient outcome and the aid should be targeted towards situations where aid can bring a material improvement that the market cannot alone deliver(European Commission 2014).

To this end, member states are to identify market failures impeding increased levels of environmental protection or a well-functioning secure, affordable and sustainable internal energy market.

The commission noted that market failures related to environmental and energy objectives may be different or similar, but can prevent the optimal outcome and can lead to an inefficient outcome for the following reasons (European Commission 2014).

3.2.2.2 Negative externalities

Negative externalities can arise when the cost borne by society is greater than the production cost of the undertaking. When pollution is not adequately priced, that is to say, the firm in question does not face the full cost of pollution. In this case, undertakings acting in their own interest may have insufficient incentives to take the negative externalities arising from production into account either when they decide on a particular production technology or when they decide on the production level (European Commission 2014).

Therefore undertakings typically have insufficient incentive to reduce their level of pollution or to take individual measures to protect the environment(European Commission 2014).

3.2.2.3 Positive externalities

The guidelines recognised the fact that part of the benefit from an investment will accrue to market participants other than the investor, which will lead undertakings to under invest (European Commission 2014).

The guidelines noted that positive externalities may occur in investments in eco-innovation, system stability, new and innovative renewable technologies and innovative demand-response measures or in case of energy infrastructures or generation adequacy measures that benefit many member states or a wider number of consumers(European Commission 2014).

3.2.2.4 Asymmetric information

Asymmetric information emanates from markets where there is a discrepancy in information available to all the participants in the market involved. This can happen when external financial investors do not have enough information about the possible returns and risks of an undertaking. It may also come up in cross-border infrastructure collaboration where one party has an information disadvantage compared to the other party and although risk or uncertainty do not in themselves lead to the presence of a market failure, the problem of asymmetric information is linked to the degree of such risk and uncertainty(European Commission 2014).

3.2.2.5 Coordination failures

It is indicated in the guidelines that coordination failure may prevent the development of a project or its effective design due to diverging interests and incentives among investors, so called split incentives, the costs of contracting, uncertainty about the collaborative outcome and network effects, for example e.g. uninterrupted supply of electricity. Coordination problems may also stem from the need to reach a certain critical mass before it is commercially attractive to start a project which may be a particularly relevant aspect in (cross-border) infrastructure projects (European Commission 2014).

However, the guidelines noted that the mere existence of market failures in a certain context is not sufficient to justify State intervention; in particular, other policies and measures may already be in place to address some of the market failures identified. For instance sectorial regulation, mandatory pollution standards, pricing mechanisms such as the Union Emissions Trading System (ETS) and carbon taxes. Additional measures including state aid may only be directed at the residual market failure, that is the market failure that remains unaddressed by such other policies and measures and it is also important to show how state aid reinforces other policies and measures in place that aim at remedying the same market failure (European Commission 2014).

It is for the Member State to demonstrate that there is a market failure which is still not addressed with regards to the specific activity supported by the aid and whether the aid is effectively targeted to address that market failure (European Commission 2014).

The guidelines then concluded that the case for the necessity of state aid is weaker if it counteracts other policies targeted at the same market failure.

Based on the specific market failure that the aid sought to address, the commission will take into consideration whether other policy measures already sufficiently address the market failure, in particular the existence of environmental or other union standards, the union ETS or environmental taxes; whether state intervention is needed, taking into account, the cost of implementation of national standards for the aid beneficiary in the absence of aid compared to the costs, or absence thereof, implementation of those standards for the main competitors of the aid beneficiary; in the case of coordination failures, the number of undertakings required to collaborate, diverging interests between collaborating parties and practical problems to coordinate collaboration, such as linguistic issues, sensitivity of information and non-harmonised standards. The guidelines emphasised the need for the choice of an aid instrument to be coherent with the market failure that the aid measure aims at addressing. When the actual revenues are uncertain, for instance in case of energy saving measures, a repayable advance may constitute the appropriate instrument (European Commission 2014).

3.2.3 Permissibility Conditions for the Application of State Aid

The general conditions for environmental and energy aid is compatible with the internal market if it has an incentive effect where the aid motivates the beneficiary to change its behaviour for an increase level of environmental protection or to improve the functioning of a secure, affordable and sustainable energy market, a change in behaviour which it would not undertake without the aid.

However, the guidelines noted that the aid must not, in any way, subsidise the costs of an activity that an undertaking would anyhow incur and must not compensate for the normal business risk of an economic activity (European Commission 2014).

To be compatible with the principle of the polluter pays, the commission will consider that aid for contaminated sites can be granted only when the polluter is not identified or cannot be held legally liable for financing the remediation(European Commission 2014).

Moreover, when a beneficiary has already started to work on a project prior to the aid application to the national authorities, any such aid granted in respect of that project will not be considered compatible with the internal market.

The guidelines directs member states to introduce and use an application form for aid and the form must include; the applicant's name and the size of the undertaking, a description of the project, including its location and start and end dates, the amount of aid needed to carry it out and the eligible costs. A detailed description of the counterfactual scenario or alternative situation without aid and also sometimes it is asked to provide documentary evidence to support the alternative scenario (European Commission 2014).

The granting authority must carry out a credibility check of the counterfactual scenario and confirm that the aid has the required incentive effect. The alternative scenario can be considered credible if it is genuine and relates to the decision-making factors prevalent at the time of the decision by the beneficiary regarding the investment(European Commission 2014).

The incentive effect is, in principle, to be identified through the counterfactual scenario analysis, comparing the levels of intended activity with aid and without aid. Essentially, that amounts to checking the profitability of the project in the absence of the aid, to assess whether it indeed falls short of the profit obtained by the company by implementing the alternative project. To be able to carry out an effective credibility assessment, member states are, in particular, invited to rely on contemporary, relevant and credible evidence including, for example official board documents, credit committee reports, risk assessments financial reports, internal business plans, expert opinions and other studies related to the investment project under assessment. Documents containing information on demand forecasts, cost forecasts, financial forecasts, documents that are submitted to an investment committee and that elaborate on various investment scenarios, or documents provided to the financial institutions could help to verify the incentive effect (European Commission 2014).

Moreover the commission noted that environmental and energy aid is considered to be proportionate if the aid amount per beneficiary is limited to the minimum needed to achieve the environmental protection or energy objective aimed for and it defines eligible costs for environmental aid as the extra investment costs in tangible and/or in intangible assets which are directly linked to the achievement of the common objective (European Commission 2014).

The commission applies maximum aid intensities to ensure predictability and a level playing field and this reflect the need for state intervention to be determined, on one hand, by the relevance of the market failure and, on the other hand, by the expected level of distortion of competition and trade(European Commission 2014).

The guidelines allows certain types of high aid intensities for investments located in an assisted area, but the aid intensity can never exceed 100 % of eligible costs.

They can be justified under certain conditions in case of eco-innovation which can address a double market failure linked to the higher risks of innovation, coupled with the environmental aspect of the project, that applies in particular to resource efficiency measures (European Commission 2014).

The guidelines allows that aid may be awarded concurrently under several aid schemes or cumulated with ad hoc aid, provided that the total amount of state aid for an activity or project does not exceed the limits fixed by the aid ceilings laid down by the relevant provisions in the guidelines and other union regulations(European Commission 2014).

3.2.4 Environmental Aid and Competition

The Guidelines noted that aid for environmental purposes will by its very nature, tend to favour environmentally friendly products and technologies at the expense of other, more polluting ones and that effect of the aid will, in principle, not be viewed as an undue distortion of competition, since it is inherently linked to the very objective of the aid, that is to say making the economy greener (European Commission 2014).

The guidelines take into account the potential negative effects of environmental aid on competition in relation to non aided firms. Consideration will be placed in particular the distortive effects on competitors that likewise operate on an environmentally friendly basis, even without aid (European Commission 2014).

It is noted that the harmful effect of state aid for environmental protection is that it prevents the market mechanism from delivering efficient outcomes by rewarding the most efficient and innovative producers and putting pressure on the least inefficient to improve, restructure or exit the market. The likely result of such a scenario is that due to the aid granted to some undertakings, more efficient or innovative competitors, for example competitors with a different, possibly even cleaner technology that would otherwise be able to enter and expand are unable to do so (European Commission 2014).

3.2.4.1 Aid to energy from renewable sources

The EU 2020 strategy set out an ambitious climate change and energy sustainability targets for the union. The guidelines noted other union directives adopted in the past whose implementation and realisation have not yielded to the achievement of union environmental objectives. The guidelines expects between 2020 and 2030, the established renewal energy sources will become grid-competitive, implying that subsidies and exemptions from balancing responsibilities should be phased out in a regressive way(European Commission 2014).

The guidelines allow technology specific tenders to be carried out by member states, on the basis of the longer-term potential of a given new and innovative technology, the need to achieve diversification; network constraints and grid stability and system (integration) costs (European Commission 2014).

3.2.4.2 Bio fuel

The 2014 – 2020 guidelines outline new requirements for aid to food-based bio fuel plants. Aid can be considered to cover only the conversion costs for bio fuel firms to convert food-based bio fuel plants into advanced bio fuel plants. Otherwise investment aid to bio fuels can only be allowed to favour advance bio fuels (European Commission 2014).

3.2.4.3 Hydropower

With regard to aid for the production of hydropower, its impact can be twofold: on one hand, such aid has a positive impact in terms of low emissions; on the other hand, it might also have a negative impact on water systems and biodiversity (European Commission 2014).

Therefore, when granting aid for the production of hydropower, member states must respect Directive 2000/60/EC (61) and in particular Article 4(7) thereof, which lays down criteria in relation to allowing new modifications of bodies of water (European Commission 2014).

State aid for energy from renewable sources using waste, including waste heat, as input fuel can make a positive contribution to environmental protection, provided that it does not circumvent that principle (European Commission 2014).

The guidelines indicated that in a transitional phase covering the years 2015 and 2016, aid for at least 5 % of the planned new electricity capacity from renewable energy sources should be granted in a competitive bidding process on the basis of clear, transparent and non discriminatory criteria.

Aid is granted in a competitive bidding process on the basis of clear, transparent and non-discriminatory criteria unless member states demonstrate that only one or a very limited number of projects or sites could be eligible; or member states demonstrate that a competitive bidding process would lead to higher support levels (for example to avoid strategic bidding); or member states demonstrate that a competitive bidding process would result in low project realisation rates (avoid underbidding). These will be new requirements which would be applicable since 1 January 2017(European Commission 2014).

3.2.4.4 Aid for energy from renewable sources other than electricity

For energy from renewable sources other than electricity, operating aid will be considered compatible with the internal market if the following cumulative conditions are met: The aid per unit of energy does not exceed the difference between the total costs of producing energy ('LCOE') from the particular technology in question and the market price of the form of energy concerned. The LCOE may include a normal return on capital. Investment aid is deducted from the total investment amount in calculating the LCOE. The production costs are updated regularly, at least every year; and aid is only granted until the plant has been fully depreciated according to normal accounting rules in order to avoid that operating aid based on LCOE exceeds the depreciation of the investment (European Commission 2014).

3.2.4.5 Aid for existing biomass plants after plant depreciation

Unlike most other renewable sources of energy, biomass requires relatively low investment costs but higher operating costs. These higher operating costs may prevent a biomass plant from operating even after depreciation of the installa-

tion as the operating costs can be higher than the the market price (European Parliament 2013).
On the other hand, an existing biomass plant may operate by using fossil fuel instead of biomass as an input source if the use of fossil fuel as an input is more economically advantageous than the use of biomass. To preserve the use of biomass in both cases, the commission may find operating aid to be compatible with the internal market even after plant depreciation (European Parliament 2013).

The commission will consider operating aid for biomass after plant depreciation compatible with the internal market if a member state demonstrates that the operating costs borne by the beneficiary after plant depreciation are still higher than the market price of the energy concerned and provided that certain criteria are met. The aid is only granted on the basis of the energy produced from renewable sources, the measure is designed such that it compensates the difference in operating costs borne by the beneficiary and the market price, and a monitoring mechanism is in place to verify whether the operating costs borne are still higher than the market price of energy. The monitoring mechanism needs to be based on updated production cost information and take place at least on an annual basis (European Parliament 2013).

Energy efficiency measures, including cogeneration and district heating and district cooling.

The objective of the union is saving 20% of the union's primary energy consumption by 2020. In particular the union adopted the energy efficiency directive, which establishes a common framework to promote energy-efficiency within the union pursuing the overall objective of achieving the union's 2020 headline target on energy-efficiency and prepare the way for further energy-efficiency improvement beyond 2020 (European Parliament 2013).

In order to ensure that aid contributes to a higher level of environmental protection, aid for district heating and district cooling and cogeneration of heat and electricity (CHP) will only be considered compatible with the internal market if granted for investment, including upgrades, to high-efficient CHP and energy-efficient district heating and district cooling. For measures co-financed by the European structural and investments funds, member states may rely on the reasoning in the relevant operational programmes (European Parliament 2013).

State aid for cogeneration and district heating installations using waste, including waste heat, as input fuel can make a positive contribution to environmental protection, provided that it does not circumvent the waste hierarchy principle (European Parliament 2013).

3.2.4.6 Aid for resource efficiency and in particular aid to waste management

The Europe 2020 initiative for efficient resources in Europe aims for sustainable growth by identifying and creating new business opportunities, inter alia, through new and innovative means of production, business models and product

design. It sets out how such growth can be decoupled from the use of resources and its overall environmental impact (European Parliament 2013).

3.2.4.7 Aid to waste management

The 7th EAP identified the prevention, reuse and recycling of waste as one of its top priorities. The commission requires member states to establish waste management plans and design state aid measures that are coherent with implementation of these plans.

State aid for the management of waste, in particular for activities aimed at the prevention, reuse and recycling of waste, can make a positive contribution to environmental protection, provided that it does not circumvent the principles of the polutter pays. In particular, in light of the PPP, undertakings generating waste should not be relieved of the costs of its treatment. Moreover, the normal functioning of the secondary materials market should not be negatively impacted (European Parliament 2013).

The investment is aimed at reducing waste generated by other undertakings and does not extend to waste generated by the beneficiary of the aid. The aid does not indirectly relieve the polluters from a burden that should be borne by them under union or national law; such a burden should be considered a normal company cost for the polluters. The investment goes beyond the state of the art, i.e. prevention, reuse, recycling or recovery or uses conventional technologies in an innovative manner notably to move towards the creation of a circular economy using waste as a resource. The materials treated would otherwise be disposed of, or be treated in a less environmentally friendly manner, and the investment does not merely increase demand for the materials to be recycled without increasing collection of those materials. If all of these criteria will be fulfilled together with the objective of the common interest, then the commission will consider to provide this waste management aid (European Parliament 2013).

The eligible costs are limited to the extra costs borne by the beneficiary compared with conventional production and must be calculated net of any operating benefits and costs arising during the first five years. The maximum aid intensities are 50% for large enterprises, 60% for medium-sized enterprises and 70% for small enterprises (European Parliament 2013).

3.2.4.8 Aid to carbon capture and storage (CCS)

The union places emphasis on carbon capture and storage as a technology that can help mitigate climate change and this can be seen in Directive 2009/31/EC (73) and the commission communication on the future of CCS in Europe. In some industrial sectors, CCS may currently represent the only technology option able to reduce process-related emissions at the scale needed in the long term(European Parliament, Council of the European Union 2009).

In the transition to a fully low-carbon economy, CCS technology can reconcile the demand for fossil fuels, with the need to reduce greenhouse gas emis-

sions. Given that the cost of capture, transport and storage is an important barrier to the uptake of CCS, state aid can contribute to fostering the development of this technology(European Parliament, Council of the European Union 2009).

The aid may be provided to support fossil fuel and, or biomass power plants (including co-fired power plants with fossil fuels and biomass) or other industrial installations equipped with CO2 capture, transport and storage facilities, or individual elements of the CCS chain. However, aid to support CCS projects does not include aid for the CO2 emitting installation (industrial installations or power plants) as such, but aid for the costs resulting from the CCS project (European Parliament, Council of the European Union 2009).

3.2.4.9 Aid for environmental studies

One of the market failures associated with investment in environmental protection relates to lack of information concerning the potential benefits and cost savings that can accrue. Under the guidelines, aid may be authorized to help cover the cost of environmental studies into achieving a level of protection exceeding existing environmental standards or where no standards exist; or achieving energy savings; or producing renewable energy (European Parliament 2013).

The guidelines indicated that environmental taxes are imposed in order to increase the costs of environmentally harmful behaviour, thereby discouraging such behaviour and increasing the level of environmental protection.

Environmental taxes, should, in principle, reflect the overall costs to society, and correspondingly, the amount of tax paid per unit of emission should be the same for all emitting firms while reductions in or exemptions from environmental taxes may adversely impact that objective, such an approach may nonetheless be needed where the beneficiaries would otherwise be placed at such a competitive disadvantage that it would not be feasible to introduce the environmental tax in the first place (European Parliament 2013).

3.2.4.10 Aid to energy infrastructure

The guidelines noted that a modern energy infrastructure is crucial for an integrated energy market, which is key to ensuring energy security in the union, and to enable the union to meet its broader climate and energy goals (European Commission 2014).

Where market operators cannot deliver the infrastructure needed, state aid may be necessary in order to overcome market failures and to ensure that the union's considerable infrastructure needs are met especially for infrastructure projects having a cross border impact or contributing to regional cohesion. Aid to energy infrastructure should in principle be investment aid, including its modernisation and upgrade(European Commission 2014).

3.2.4.11 Aid for generation adequacy

The guidelines noted an increasing share of renewal energy sources shifting from a system of relatively stable and continuous supply towards a system with more numerous and small-scale supply of variable sources. The shift raises new challenges for ensuring generation adequacy.

To this end, aid can be considered to ensure generation adequacy, typically by granting support to generators for the mere availability of generation capacity.

However the following measures should be adopted by member states to avoid generation adequacy aid from conflicting with the internal market, this type of aid should not reduce incentives to invest in interconnection capacity, not undermine market coupling, including balancing markets, not undermine investment decisions on generation which preceded the measure or decisions by operators regarding the balancing or ancillary services market, not unduly strengthen market dominance, give preference to low-carbon generators in case of equivalent technical and economic parameters (European Parliament 2013).

3.2.4.12 Aid in the form of tradable permit schemes

This was first captured in the 2008 guidelines on environmental aid, as the commission did not have enough information on tradable permit schemes until the ruling on Commission vs The Netherlands.

Tradable permit schemes are set up to reduce emissions from pollutants, for instance to reduce NOx emissions and it can involve state aid, in particular when member states grant permits and allowances below their market value. If the global amount of permits granted by the member state is lower than the global expected needs of undertakings, the overall effect on the level of environmental protection will be positive (European Commission 2014).

Therefore tradable permit schemes are considered to be compatible with the internal market if the following cumulative conditions are met: The tradable permit schemes must be set up in such a way as to achieve environmental objectives beyond those intended to be achieved on the basis of union standards that are mandatory for the undertakings concerned. The allocation must be carried out in a transparent way, based on objective criteria and on data sources of the highest quality available, and the total amount of tradable permits or allowances granted to each undertaking for a price below their market value must not be higher than its expected needs as estimated for a situation without the trading scheme. The allocation methodology must not favour certain undertakings or certain sectors, unless this is justified by the environmental logic of the scheme itself or where such rules are necessary for consistency with other environmental policies. New entrants are not in principle to receive permits or allowances on more favourable conditions than existing undertakings operating on the same markets. Granting higher allocations to existing installations compared to new entrants should not result in creating undue barriers to entry.

The maximum aid intensities are 60% for large enterprises, 70% for medium-sized enterprises, 80% for small enterprises and 100% for aid provided following a competitive bidding process on non-discriminatory criteria (European Commission 2014).

3.2.4.13 Aid for the relocation of undertakings

The aim of investment aid for the relocation of undertakings is to create individual incentives to reduce negative externalities by relocating undertakings that create major pollution to areas where such pollution will have a less damaging effect, which will reduce external costs. The aid may therefore be justified if the relocation is made for environmental reasons, but it should be avoided that aid is granted for relocation for any other purpose (European Parliament 2013).

3.2.5 Permissibility Conditions under the General Block Exemption Regulation

Commission regulation (EC) No 800/2008 of 6 August 2008 declared certain categories of aid compatible with the common market in application of Articles 87 and 88 of the treaty or the general block exemption regulation (European Commission 2008).

Aid falling within the scope of a block exemption is deemed to be automatically compatible with the common market, and does not require formal notification provided that certain conditions and procedural formalities are met. The enabling regulation in 1998 provided the commission with power to block exempt specific categories of aid, including aid for environmental protection. Nevertheless, environmental aid was not among the first wave of commission block exemptions. However, with the introduction of the GBER14 the commission decided to expand the scope of automatic exemption to certain types of environmental investment aid and environmental aid in the form of tax reductions. Based on experience from the practical application of the 2001 guidelines, it was decided that the provisions on environmental aid in the GBER are complementary to, and should be interpreted in line with, the provisions of the guidelines (European Commission 2008).

Before the adoption of GBER, all environmental aid measures eligible for approval had to be notified to the commission. However, with the introduction of the GBER, many of those measures will benefit from automatic exemption (European Commission 2008).

According to Article 18 of the GBER, the following environmental aid shall be exempt if the aided investments fulfil one of the following criteria (European Commission 2008):

- The investment shall enable the beneficiary to increase the level of environmental protection resulting from its activities by going beyond the applicable community standards, irrespective of the presence of manda-

tory national standards that are more stringent than the community standards.
- The investment shall enable the beneficiary to increase the level of environmental protection resulting from its activities in the absence of community standards.
- The aid may not be granted where improvements are to ensure that companies comply with community standards already adopted and not yet in force.
- The aid intensity shall not exceed 35 % of the eligible costs. However, the aid intensity may be increased by 20 percentage points for aid awarded to small enterprises and by 10 percentage points for aid awarded to medium-sized enterprises.
- The eligible costs shall be the extra investment costs necessary to achieve a level of environmental protection higher than the level required by the community standards concerned, without taking account of operating benefits and operating costs (European Commission 2008).

The environmental aid provisions of the GBER apply to almost all sectors of the economy within the union including primary production of agricultural products, the processing and marketing of agricultural products, and the coal, steel, shipbuilding and synthetic fibres sectors, however, it does not apply to environmental aid in the fishery and aquaculture sectors (European Commission 2008).

There are six types of aid are excluded altogether from the GBER. These are aid to export-related activities, aid contingent upon the use of domestic over imported goods, aid favouring activities in the processing and marketing of agricultural products, where the amount of the aid is fixed on the basis of the price or quantity of such products purchased from primary producers or put on the market by the undertakings concerned, or when the aid is conditional on being passed on to primary producers. Further the aid granted to large enterprises, pursuant to the Deggendorf principle, aid schemes which do not explicitly exclude from their scope aid to undertakings subject to an unpaid recovery order and aid to undertakings in financial difficulties. Such aid must be assessed on the basis of the 2004 Rescue and Restructuring Guidelines alone (European Commission 2008).

Any aid granted on the basis of the GBER must, to be exempt from notification under Article 88(3), contain an express reference to the relevant provisions of the GBER by citing those provisions, the title and the publication reference of the GBER in the official journal. In the case of aid schemes, this requirement applies both to the scheme itself and any individual aid granted under such a scheme (European Commission 2008).

The environmental aid exemptions are set out in Section 4 of Chapter II of the GBER. They encompass both investment measures and fiscal instruments, and exempt eight categories of aid:

1) Investment aid for environmental protection improving on community standards.
2) Aid for the acquisition of transport vehicles which go beyond community standards.
3) Aid for early adaptation to future community standards.
4) Aid for investment in energy saving measures.
5) Aid for investment in high efficiency cogeneration.
6) Aid for investments to exploit renewable energy sources.
7) Aid for environmental studies.
8) And aid in the form of tax reductions (European Commission 2008).

Other areas where an incentive effect exist includes aid granted for; the acquisition of new transport vehicles for road, railway, inland waterway and maritime transport complying with adopted union standards, provided that the acquisition occurs before those standards enter into force and that, once mandatory, they do not apply to vehicles already purchased or retrofitting operations of existing transport vehicles for road, railway, inland waterway and maritime transport, provided that the union standards were not yet in force at the date of entry into operation of those vehicles and that, once mandatory, they do not apply to those vehicles (European Commission 2008).

3.3 Effectiveness of the environmental aid

Until mid-2011, the economy in the EU was characterised by a slow recovery following the downturn caused by the financial crisis of 2008-2009. GDP growth was very moderate and stood at 1.5 %. Private and public spending was still at a low level and began to rise only slowly, while public deficits continued to be at high levels. However, the recovery was subdued and sluggish and for the second half of 2011, the economy turned out to be weaker than expected, as evidenced by lower GDP growth that moved towards zero growth by the end of the year. At the same time, unemployment in the EU exceeded 10% and an intensifying European sovereign-debt crisis also weighted heavily on the EU economy (European Commission 2005).

Overall, state aid expenditure remained high in 2011 due to the additional support given to the financial sector. The worsening of the sovereign crisis in mid-2011 led the member states and the commission to agree on a package of measures to strengthen banks' capital and provide guarantees on their liabilities. On 1 December 2011 the commission prolonged the state aid crisis measures for the financial sector, clarifying and updating the rules on pricing and other conditions. With respect to crisis aid to the real economy, a substantial decrease was seen in 2011 (European Commission 2005).

In the Netherlands, the production of electricity from renewable energy sources is amongst others stimulated by a feed-in tariff. The measure aims at stimulating demand for renewable energy resulting in an increase in consumption and production of renewable energy (European Commission 2005).

This will contribute to the achievement of the national targets for the reduction of CO2 emission as agreed in the Kyoto Protocol to the United Nations framework convention on climate change. The publicly owned operator of the national high-voltage grid is given the task of distributing subsidies to the producers of renewable energy. The subsidies for electricity produced from renewable energy compensates for the difference between the production cost of electricity produced from renewable energy sources and the market price of conventional electricity (European Commission 2005).

The level of subsidy varies for the different forms of renewable electricity generation based on the difference of the production costs of the specific form of renewable energy (wind, solar etc) and the electricity market price of conventional electricity. The subsidy is capped at € 0.07 per kWh and is financed through a compulsory contribution by the electricity consumers, imposed by legislation (European Commission 2005).

The fees, which are collected by the network controllers, are transferred each month to the grid operator, who keeps the money separately in a current account. The commission considered that the measure constitutes state aid within the meaning of Article 87(1). The measure was found to be in line with the environmental guidelines. As the objective of the measure clearly is in the interest of the community and there is no over compensation, the measure was found to be compatible with the common market in accordance with Article 87(3)(c) (European Commission 2005).

3.3.1.1 Waste management

In 2002, the French government introduced an aid scheme for the elimination of dangerous waste for the water. The objective of the scheme is to preserve the water resources by promoting the elimination of waste that can pollute the subsurface and surface water or disturb the functioning of municipal purification plants. In order to achieve that objective, the scheme aims at orienting the waste pollutants, which are normally put in a disposal, in the relevant elimination procedures, successful at the technical level and optimal at the environmental level (European Commission 2005).

The aid is provided to enterprises that produce the waste, when these enterprises treat the waste in appropriate procedures in order to significantly reduce the potential pollutant. It is granted in the form of grants which are calculated on the basis of the difference between the cost of the treatment of the waste in the dedicated procedure and the cost of elimination of the same waste by disposal. Each beneficiary can benefit from the aid for maximum 5 years, either as a fixed level of 50 % during that period or at an aid level which is regressive in a linear manner from 100 % to 0 % during the 5 year period. The scheme was found to be in line with the environmental guidelines (particularly points 42 to 46). Since the scheme is covered by the environmental guidelines and does not lead to over compensation, the commission approved the scheme on the basis of Article 87(3)(c) (European Commission 2005).

3.3.1.2 Rehabilitation of polluted industrial sites

In May 2002, the Austrian government introduced a scheme with the objective to support the clean up and rehabilitation of polluted industrial sites. The investment aid is provided in the form of grants. Aid under the scheme may amount to up to 100 % of the eligible costs, plus 15 % of the cost of the work. Eligible costs under the scheme will always be directly linked to the rehabilitation and safeguarding (including planning, etc) of polluted industrial sites. The eligible costs are equal to the cost of the work less the increase in the value of the land. Since the scheme is in line with point 38 of the environmental guidelines and does not lead to over-compensation, the commission approved the scheme also (European Commission 2005).

3.3.1.3 Investment aid to improve production processes

In Germany, a measure promoting investments to create new methods of production which have special environment relevance was introduced in 2003. The measure aims at resources-preservation and creation of more efficient production processes as well as a production with less environment impairing consequences. The scheme focuses on the introduction of innovative production processes and an efficient use of natural resources and the reduction of emissions and waste and the substitution and avoidance of environment-impairing materials used in the production process. (European Commission 2005)

Total expenditure by member states on state aid measures for the environment and energy saving amounted to € 11.4 billion in 2004. This figure makes up 25% of total state aid less state aid to agriculture, fisheries and transport (European Commission 2005).

According to the 2012 scoreboard, state aid for environmental purposes in 2011, including energy saving, stood at € 12.4 billion and represented 23.4 % of total aid granted to industry and services. (European Commission 2012)

The largest grantors were Germany (€ 3.6 billion), Sweden (€ 2.4 billion), the United Kingdom (€ 1.4 billion), the Netherlands (€ 0.9 billion), Austria (€ 0.9 billion) and Spain (€ 0.8 billion) (European Commission 2012).

Aid measures, such as those to support energy saving and waste management or to improve production processes, pursue a direct benefit to the environment. In 2011, such expenditure was equivalent to around € 4.0 billion. The largest contributors to that amount were: the Netherlands (roughly € 1 billion), Spain45 (€ 0.8 billion), Sweden46 (€ 0.5 billion) and Austria (€ 0.4 billion) (European Commission 2012).

Aid for environmental protection amounted to € 4.6 billion in 2011, corresponding to around 37 % of total aid for environmental objectives. The share has increased sharply compared to last year, when it represented only 4.8 % of total environmental aid. Slightly more than 80 % of the block-exempted aid in that field was granted by Germany, Luxembourg and Portugal (European Commission 2012).

Since the environmental aid guidelines introduced new criteria for the necessity and proportionality test for tax exemptions below EU minimum tax levels (harmonised taxes), member states had to adopt appropriate measures to bring tax reductions into line with the environmental guidelines by 31 December 2012(European Commission 2012).

3.4 Application of the waste management directive

In 2002, the European Parliament passed a resolution for the effective implementation and application of the waste management directive. The resolution raised a number of issues which will be examined in this part of the thesis. The resolution was made based on a number of petitions alleging infringement by member states.

Petitions on environmental issues, as noted by the parliament, has been the primary group of petitions received and petitions relating to waste management represent an important part of that group. A number of concerns have been raised with regards to the fact that waste affects citizens very directly throughout the EU, notably as regards the permitting procedure for new waste management facilities or the operation of existing ones, followed by concerns about the overall management of waste(European Parliament, Committee on Petitions 2012).

The majority of petitions on waste concern waste management facilities, with about 40% concerning the permitting procedure for planned new plants and another 40% referring to the operation of existing ones, of which 75% concern landfills and 25% concern incinerators, while the remaining petitions raise problems of overall waste management(European Parliament, Committee on Petitions 2012).

It has been noted that EU citizens produce on average 513 kg of waste per year, with many new member states which some of them are below the average and the others are most industrialised countries in the lead. Countries producing the most waste have the highest rates of recycling, composting and incineration of waste for energy, while approaching or having reached zero for land filling, whilst by contrast, those member states which produce the least average waste are at the top of the league for land filling and show much lower rates of recycling and even incineration. It has been shown that some incinerators suffer from a lack of appropriate infrastructure for the separation and treatment of waste raising concerns over the fate of toxic ash resulting from incineration(European Parliament, Committee on Petitions 2012).

3.4.1 The waste framework directive (WFD)

The Waste Framework Directive (WFD) 2008/98/EC laid down rules designed to protect the environment and human health by preventing or reducing the adverse impacts of the generation and management of waste and by reducing overall impacts of resource use and improving the efficiency of such use, providing benefits to EU citizens in terms of health and well-being while at the

same time achieving an environmentally sustainable method of waste disposal(European Parliament, Committee on Petitions 2012).

The resolution noted that lack of implementation and enforcement, properly trained personnel at local and regional level and coordination at national level, insufficient controls at EU level, failure to allocate adequate resources and the lack of a fine system, thereby neglecting the opportunities of good waste management to reduce emissions and other environmental impacts and for reducing Europe's dependency on imported raw materials. The resolution indicated that an important factor, which is often neglected, is that the recycling industry offers the potential of up to half a million jobs, as certain types of waste constitute a productive resource which can contribute to enhancing environmental sustainability and to the move towards a green economy(European Parliament, Committee on Petitions 2012).

The resolution pointed out that bio waste management in the EU is still in its relative infancy and the current legislative instruments need to be developed and techniques made more efficient. It has to be noted that this shows the beginning of laws and guidelines in the future concerning bio waste management (European Parliament, Committee on Petitions 2012).

The resolution highlighted the importance it attaches to the right of citizens to be well informed and inputs sourced in terms of environmental protection. The resolution emphasized the EU commitments to the Aarhus Convention which, as already discussed in previous part of the thesis, provided that citizens have the right to be informed of the situation in their own territory and it is the duty of the authorities to provide information and to motivate citizens to develop a responsible attitude and behaviour and to ensure that the public is given early and effective opportunities to participate in the preparation and modification or review of the plans or programmes required to be drawn up(European Parliament, Committee on Petitions 2012).

The resolution noted that according to a recent study conducted for the commission to explore the feasibility of creating an EU waste management agency, it was discovered that many member states lack sufficient capacity for preparing waste management plans and for inspections, controls and other actions to enforce waste legislation properly. The study also identified a high level of non-compliance, illegal waste dumping and shipments, large numbers of complaints from citizens and infringement cases before the court, and therefore underachievement in protecting public health and the environment, an overarching goal of EU waste legislation(European Parliament, Committee on Petitions 2012).

The resolution noted that illegal waste disposal has also become part of the activities of organised crime, which raises questions about the role of the authorities responsible and, in respect of industrial waste, of industry collusion (European Parliament, Committee on Petitions 2012).

In terms of household waste, the resolution indicated that monitoring and control procedures in place to ensure that household waste is not contaminated by toxic waste are sometimes weak or non-existent, leading to contamination of landfills and incinerators; whereas it must be stressed that disposing

of toxic waste through incineration in installations conceived for burning household waste is categorically prohibited(European Parliament, Committee on Petitions 2012).

According to the resolution, an in-depth analysis of the petitions confirms that the legislation for a functioning and environmentally sound waste management system is largely in place and that the main issues concern implementation and enforcement, with 95% of the petitions related to failure at the local or regional level of government and one of the crucial factors identified for this state of affairs is a lack of information, awareness, administrative capacity and financial and other resources at local level(European Parliament, Committee on Petitions 2012).

The resolution having raised the issues surrounding waste management therefore made a number of calls and declarations to member states towards achieving an effective enforcement of waste management with regards to the waste management directive (European Parliament, Committee on Petitions 2012).

The resolution called on the Member States to transpose the WFD without further delay and to ensure full compliance with all its requirements, in particular establishing and implementing comprehensive waste management plans, including the timely conversion of all the set goals within the framework of European legislation(European Parliament, Committee on Petitions 2012).

3.4.1.1 Areas for enhancement

Concerning the EU Directive on the protection of the environment through Criminal law, the resolution urged Member States to monitor its transposition to ensure that it is done promptly and effectively while also urging the Commission to focus on the role of all forms of organised crime in respect of environmental offences.

Taking into consideration the fact that waste and pollution form a serious threat to human health and the integrity of the environment, the resolution urged the member states to speed up the introduction of an advanced waste management strategy in accordance with the WFD.

The resolution urged Member States to earmark a part of the Cohesion Fund resources to embark on major investments on waste management strategies, infrastructure and facilities. Member States can also seek direct funding from the European Investment Bank.

In terms of on-site inspection and enforcement capacity, there is the need to strengthen Member States in order to ensure better compliance with waste legislation and Member States were therefore urged by the resolution to strengthen their capacity for inspections, monitoring and other actions at all stages of the waste management chain to better enforce waste legislation, and calls on the Commission to make provision for specific procedures enabling the subsidiary principle to be fully applied in the event of serious shortcomings on the part of Member States.

The Resolution emphasised the importance of training of the competent authorities and officials in the waste management sector in order to implement the waste management directives and called for complementary financing and administrative measures to provide the necessary training facilities and experts**.**

To the Commission, the resolution urged them to turn their attention to identifying systemic weaknesses in implementing waste-related directives on the part of Member States.

The resolution did not consider as advisable calls for the establishment of a new EU Agency for waste management rather it called for the strengthening of the existing structures in order for them to provide more active oversight and enforcement. The resolution believes that the existing European Environment Agency could assist with this process and play a more constructive role in reporting on Member State waste management strategies and identifying weakness by assessing the compliance of waste management plans established by Member States with EU legislation.

The resolution called on Member States for closer cooperation between authorities at local, regional and national level and this has the potential to bring about positive results with regards to identifying models of best practice and which could play a more multi-purpose role in organising such interactions to build trust among the populations affected by essential waste policy implementation.

The Resolution reminded Member States the many opportunities that could be derived from adopting and implementing efficient and effective waste management strategies. Efficient Waste management strategies will create employment and enhance revenues and at the same time ensuring environmental sustainability by recycling, reuse and recovery of energy from waste.

The resolution urged Member States to promote systems and strategies for creating environmental awareness among the population about the advantages of pre-sorting waste. The population should also be advised of the real cost involved in collecting and disposing household waste.

The resolution introduced a common EU standard for the colour-coding waste into categories for sorting and recycling. This was believed to help facilitate citizens' participation in the waste process to compliment Member States' efforts in recycling at an increased significance and as quick as possible.

The resolution placed emphasis on the fundamental importance of the correct and full implementation of the Environmental Impact Assessment Directive and proper coordination of the permitting procedures required under environmental legislation.

The resolution therefore called upon the Member States to ensure that a complete environmental impact assessment is conducted before any decision is taken to establish or construct a new waste facility.

The resolution was convinced that dialogue with public authorities, and the private-sector operators concerned and the affected populations of certain waste measures has to be improved and citizens should have access to reliable

information, and a more effective system for administrative as well as judicial reviews for citizens where these are necessary.

Therefore, the resolution urged the Commission to help and reinforce the public-private partnership network for projects of the awareness campaigns; calls for support for the 'clean up the world' campaign.

The resolution urged petitioners to utilise such systems where they exist, and some may be more effective and effective than measures initiated at EU level, especially so where private and individual waste facilities are concerned.

The resolution emphasised the need for a clear definition of waste and the waste acceptance criteria and also necessary is to establish a tracking system for hazardous waste in order that only appropriate waste can be transported and disposed off in landfills and incinerators. Emphasis was also placed, for the first time, on recovery of organic waste, and noted that this was something that had received little or no attention until now. The resolution called for common criteria for measuring key emission values from incinerator plants on-line, in real time, for consultations by the public.

The resolution notes that urgent attention is needed to curb the practice of illegally dumping unidentified and mixed wastes and Member States must put in place strict enforcement management control measures to ensure compliance to IPP Directive (2008/1/EC). Member States are called to enact strict control with regards to the handling of particular types of industrial waste, without any regard to the origin. The Commission, on one hand was called to do its best within its means to monitor and control the authorities concerned to effectively and properly collect, separate and treat waste in the best possible way there is, for instance, through regular inspections and checks.

Member States must also demonstrate to the populations in the vicinity of a waste management facility that the operating and permitting authorities are respecting environmental protection rules and this will foster greater trust among the population.

Finally, the resolution advocated for the imposition of an adequate and dissuasive fines and penalties system for illegally dumping of waste, especially with regards to toxic and hazardous waste. The resolution called for very severe sentences for illegally dumping highly contaminated waste and toxics in the countryside and this should at least be commensurate with the dangers their actions caused. The resolution was wary of the dangers of the infiltration of organised crime in the waste management sector and therefore called for measures to combat such infiltration.

It can therefore be inferred from the above discussions on the resolution on the application of the waste management directive is of importance to the core goals of ensuring an effective waste management system towards achieving the objectives of the waste management directives.

4 THE PRACTICAL PART

As discussed in previous parts of this thesis, environmental protection constitute one of the main key working themes of the EU, the commission in its supervisory role must ensure that member states comply with directives and the community law. The commission takes action against member states that fail to fulfil their environmental obligations with respect to particular directives or regulations.

In this section, an examination will be made using four cases that concern waste management and the protection of the environment. The examination will be done in the form of first stating the legal basis, the particular national legislation under contest, community legislation on the specific provisions, and this will be followed by a case analysis and conclude with looking at the implications of those rulings.

4.1 Case law on waste management

4.1.1 Case C-2/90

The Walloon Regional Executive of 17 May 1983 concerning the disposal of certain waste products in the Region of Wallonia prohibited the tipping or dumping of waste from a foreign state in depots in Wallonia with the exception of depots annexed to an installation for the destruction, neutralisation and disposal of toxic waste. Such exemptions may be granted for a limited period only and must be justified by serious and exceptional circumstances (Court of Justice 1992).

The Walloon Decree also prohibited the tipping or dumping of waste from a region other than the Region of Wallonia. Per the decree, if the waste is the result of a process involving two or more states or regions, it originates from the state or region where the last substantial, economically justified conversion took place in an enterprise equipped for that purpose. The decree was amended in 1987 (Court of Justice 1992).

4.1.1.1 Community legislation

Council Directive 84/631 states that a member state has failed to fulfil its obligations on the supervision and control within the community of the transfrontier shipment of hazardous waste if it imposes an absolute prohibition on the storage, tipping or dumping in one of its regions of hazardous waste originating in another member state. The directive further introduced a comprehensive system relating to transfrontier shipments of hazardous waste and requires from the holder of the waste to give prior notification in detail, the relevant national authorities having the right to raise objections and hence to prohibit a particular shipment of hazardous waste in order to deal with problems relating to environmental and health protection as well as to public

safety and public policy, but not the possibility of prohibiting such shipments generally (Court of Justice 1992).

It has to be noted however that waste shipped across frontier for the purpose of commercial transactions are considered as goods and Article 30 of the treaty on the free movement of goods and services prohibit member states from imposing trade restrictions between member states.

Therefore without prejudice to the provisions of Directive 84/631 on transfrontier shipments of hazardous waste, a prohibition imposed by a member state on the storage, tipping or dumping in one of its regions of waste originating in another member state is capable of being justified by imperative requirements of environmental protection with regards to danger to the environment, limited capacity for waste reception and as laid down in Article 130, environmental damage should be rectified at source. This means that it is for each region, municipality or other local authority to take appropriate steps to ensure that its own waste is collected, treated and disposed of in order to limit as far as possible the transport of waste (Court of Justice 1992).

However, the commission was of the opinion that the Belgian legislation was contrary to community law, in so far as it prohibited, in absolute terms, the dumping in Wallonia of waste from other member states which had undergone substantial processing for economic reasons in another region of Belgium (Court of Justice 1992).

The Commission therefore initiated the procedure under Article 169 of the Treaty against the Kingdom of Belgium and pleaded with the Court to declare that by prohibiting the storage, tipping or dumping or causing the storage in Wallonia of waste originating in another Member State or in a region of Belgium other than Wallonia, the Kingdom of Belgium has failed to fulfil its obligations under Council Directive 75/442/EEC on waste, Council Directive 84/631/EEC on the supervision and control within the European Community of the transfrontier shipment of hazardous waste and Articles 30 and 36 of the EEC Treaty.

4.1.1.2 Case C-2/90 analysis

The Commission argued that no provision in Directive 75/442/EEC on waste authorizes a general prohibition of the kind laid down in the Belgian legislation. Furthermore, such a prohibition would be contrary to the objectives of the directive and the structure of its provisions, whose aim is to ensure the free movement of waste under conditions which are not harmful to human health or the environment.

The directive provides for Member States to take appropriate steps to encourage the prevention, recycling and processing of waste, and also such measures as are necessary to ensure that waste is disposed of without endangering human health or the environment. It provides that undertakings transporting, collecting, storing, tipping or treating their own waste or that of third parties must obtain a permit to do so or be subject to supervision by the competent authorities (Court of Justice 1992).

In the opinion of the Court, there was no breach of Directive 75/442/EEC as alleged by the Commission since neither the general scheme introduced by the directive in question nor any of its provisions refers specifically to trade in waste between Member States, nor is there any specific prohibition against adopting measures such as those laid down by the contested legislation.

The second Directive which the Commission contends the Kingdom of Belgium had breached was Directive 84/631/EEC and its amendment.

The directive proposes programmes of Community action designed to control the disposal of hazardous waste and requires from Member States to take the necessary measures to ensure that toxic and dangerous waste is disposed of without endangering human health and without harming the environment.

The Directive also contends that shipment of waste between Member States may be necessary in order to dispose of it under the best possible conditions, and emphasised the necessity for supervision and control of hazardous waste from the moment of its formation until its treatment or ultimate safe disposal.

The Directive therefore lays down conditions with respect to the disposal of the waste in question to ensure that such disposal does not endanger human health or the environment, provides for a system of permits for the storage, treatment or tipping of such waste, and obliges Member States to forward to the Commission certain data on the installations, establishments or undertakings holding a permit.

If a holder of waste intends to ship it from one Member State to another or to have it routed through one or more Member States, he must notify the competent authorities of the Member States concerned by means of a uniform "consignment note" containing information on the source and composition of the waste, the provisions made for routes and insurance, and the measures to be taken to ensure safe transport. In this regard, a transfrontier shipment may not be executed until the competent authorities of the Member States concerned have acknowledged receipt of the notification. The authorities may raise objections, which must be substantiated on the basis of laws and regulations relating to environmental protection, safety and public policy or health protection which are in accordance with the directive, with other Community instruments or with international conventions on this subject concluded by the Member State concerned. It must therefore be held that the contested Belgian rules, in so far as they preclude the application of the procedure laid down in the directive and introduce an absolute prohibition on the import into Wallonia of hazardous waste, are not consistent with the directive in question even though they provide that certain derogations may be granted by the relevant authorities(Court of Justice 1992).

With regards to the breach on Article 30 of the Treaty, the Commission noted that it is not disputed that recyclable and reusable waste has an intrinsic commercial value, possibly after being treated, constitutes goods for the

purposes of the Treaty, and consequently comes under Article 30 of the Treaty (Court of Justice 1992).

The defendant argued that waste which was not recyclable and not reusable could not be regarded as goods within the meaning of Article 30 of the Treaty. It had no intrinsic commercial value and thus could not be the subject of a sale. Operations for the disposal or tipping of such waste came under the Treaty provisions on the freedom to provide services. Moreoever, the defendant contends that waste at any rate when it cannot be recycled or reused has no commercial value and therefore cannot be considered to fall within the scope of the provisions relating to the free movement of goods. It relies in this respect on Case 7/68, E.C. Commission v. Italy, where it is stated that by goods within the meaning of Article 9 EEC it must be determined which can be used for commercial trading. Belgium also points out that the prohibitions in the degree affect not only waste produced in other member-States, but also that from other Belgian regions. Finally, Belgium argues that the ban is justified under Article 36 and that it must be seen as an urgent and temporary safeguard measure which was taken to prevent Wallonia becoming European bin as a consequence of influxes of waste from countries where disposal is more tightly regulated and more highly taxed.

The Court therefore concluded that waste, whether recyclable or not, is to be regarded as goods the movement of which, in accordance with Article 30 of the Treaty, must in principle not be prevented.

The defendant therefore argues that in view of the abnormal large-scale inflow of waste from other regions for tipping in Wallonia, there was a real danger to the environment, having regard to the limited capacity of that region.

In the opinion of the court, it follows that the argument that the contested measures were justified by imperative requirements of environmental protection must be considered to be well founded.

The Commission contended that those imperative requirements cannot be relied upon in the present case, given that the measures in question discriminate against waste originating in other Member States, which is not more harmful than waste produced in Wallonia.

In this regard, imperative requirements can indeed be taken into account only in the case of measures which apply without distinction to both domestic and imported products.

However, having regard to the principle that environmental damage should as a matter of priority be remedied at source, laid down by Article 130r (2) of the Treaty and consistent with the principles of self-sufficiency and proximity set out in the Basel Convention of 22 March 1989 on the control of transboundary movements of hazardous wastes and their disposal, to which the Community is a signatory, the Court's opinion was that the contested measure cannot be regarded as discriminatory(Court of Justice 1992).

The Court therefore dismissed the application from the Commission and ruled that the contested measure does not breach any Community law to the extent that it relates to waste which is not covered by Directive 84/631/EEC. However, the Kingdom of Belgium did fail to fulfil its obligation with regards to

the introduction of an absolute prohibition on the storage, tipping or dumping in the Region of Wallonia of hazardous waste from another member State, and by thus precluding the application of the procedure laid down by Council Directive 84/631 on the supervision and control within the Community of the transfrontier shipment of hazardous waste.

4.1.2 Case 302/86

The practice in Denmark has been, for a long time, to charge a deposit on the sale of bottles containing beer and soft beverages and this deposit is refunded to the consumer upon returning the empty bottles. The aim of the practice was to discourage discarding empty bottles in the countryside and empty spaces for environmental protection. This was the practice on a voluntary basis and the number of bottles used was limited. However this did not work out well for foreign manufacturers of beer with a market share in Denmark as they were required to acquire a license or bottle their products in Denmark. However Denmark producers in the 1970s began use cans and different shaped bottles for the products, thus moving the competition from merely products to containers. This meant that the deposit system could be become obsolete.

To ensure that the deposit system continued to be effective, the Danish government introduced legislation in the form of anti-pollution measures. The legislation empowered the concerned National Agency to introduce rules limiting or prohibiting the use of certain materials and types of containers or requiring the use of certain materials and types of containers to promulgate rules introducing compulsory deposits for certain types of container and to fix the amount of such deposits. The legislation also laid down certain notification requirements for manufacturers. Penalties were prescribed for the sale of containers not complying with the directives. A manufacturer wishing to introduce a different bottle system must first gain approval from the Agency before rolling the products to the market.

4.1.2.1 Community legislation

The measures adopted by Denmark did not go well with producers and retailers of beverage and containers from other Member States in the Community who made a formal protest to the Commission to the effect that the containers in which drinks were normally sold, could not be used in Denmark and the costs involved in the collection system in Denmark were not competitive for producers from other Member States.

The Commission having considered these protests with regards to the community rules decided that the provisions were not compatible with Article 30 of the Treaty and therefore notified the Danish Goverment in a reasoned opinion on the contested legislation (Court of Justice 1988).

The Danish Government replied by promulgating Order No 95 which replaced the existing Article 3 of Order No 397 modifying the limited derogation to the effect that beverages of the types in question may be sold in

non-approved containers provided that the quantity sold does not exceed 3000 hectolitres a year per producer or that the beverage is being sold in a container normally used for that product in the country of production in order to test the market in Denmark. The container used may not be of metal; a system for returning containers for refilling or recycling must be set up; and the deposit per container must be equal to that normally charged on a similar approved container. The person marketing the product must keep the Agency fully informed to show compliance with these conditions. From the replies given by counsel for Denmark at the hearing, it appears that the 3 000hectolitre derogation is available to Danish producers and to importers of beverages manufactured outside Denmark alike whereas the test-marketing derogation is available only to importers of beverages manufactured outside Denmark (Court of Justice 1988).

However, the Commission was not satisfied with the amendments and considered that a system achieving either reusage or recycling was sufficient to achieve the environmental aim and that to limit the volume of the product which could be marketed in bottles not approved under Article 2, or the period during which a test might be made, was unjustified. After issuing a new letter of formal notice of 20 June 1984 and a further reasoned opinion of 18 December 1984, the Commission iniated action against the Kingdom of Denmark seeking for a declaration that by introducing and applying by Order No 397 of 2 July 1981 a system under which containers for beer and soft drinks must be returnable, as modified by Order No 95 of 16 March 1984, the Kingdom of Denmark has failed to fulfil its obligations under Article 30 of the EEC Treaty. The Commission was supported by United Kingdom.

4.1.2.2 Case 302/86 analysis

If common community rules relating to the marketing of certain goods are absent, restrictions or obstacles to the free movement of goods, as stipulated in Article 30 of the Treaty, resulting from incoherence between national laws must be accepted so long as such rules are applied to both domestic and imported products without discrimination. Such restrictions may be accepted as important in order to satisfy mandatory requirements such as environmental protection recognised by Community law, in so far as they constitute a measure which has a minimal effect on free movement of goods. National legislations imposed on manufacturers and importers in the marketing of beer and soft drinks is authorised only in reusable containers, therefore to establish a deposit and return system for empty containers must be regarded as necessary to achieve the objectives pursued in relation to the protection of the environment so that the resulting restrictions on the free movement of goods cannot be regarded as disproportionate (Court of Justice 1988).

However, the requirements that foreign manufacturers must either use only containers approved by the national authorities, which may refuse approval even if a manufacturer is prepared to ensure that returned containers are reused, or not market annually more than a certain volume of drinks in non

approved containers is to be regarded as disproportionate and therefore unacceptable since whilst the system of returnable non approved containers does not ensure a maximum rate of reuse, unlike the system established for approved containers, it is capable of protecting the environment, especially as the quantity of beverages likely to be imported is limited in relation to total national consumption by reason of the restrictive effect of the requirement that containers should be returned(Court of Justice 1988).

On the part of the Commission, the Danish rules are incompatible with the principle of porportionality as long as the aim of the protection of the environment may be achieved by means less restrictive of intra Community trade.

Making reference to judgment of 7 February 1985, the Court stated that measures adopted to protect the environment must not go beyond the envitable restrictions which are justified by the pursuit of the objectives of environmental protection (Court of Justice 1988).

It was therefore necessary to examine whether all the restrictions which the contested rules impose on the free movement of goods are necessary to achieve the objectives pursued by those rules. The Court noted that as regards the obligation to establish a deposit and return system for empty containers, it must be observed that this requirement is an indispensable element of a system intended to ensure the reuse of containers and therefore appears necessary to achieve the aims pursued by the contested rules. In that regard, the restrictions which it imposes on the free movement of goods cannot be regarded as disproportionate (Court of Justice 1988).

The Court further indicated that it is necessary to consider the requirement that producers and importers must use only containers approved by the National Agency for the Protection of the Environment. It is noted that the Danish Government stated in the proceedings before the Court that the present deposit and return system would not work if the number of approved containers were to exceed 30, since the retailers taking part in the system would not be prepared to accept too many types of bottles owing to the higher handling costs and the need for more storage space. For that reason the Agency has hitherto followed the practice of ensuring that fresh approvals are normally accompanied by the withdrawal of existing approvals(Court of Justice 1988).

The Court contended that even though there is some force in that argument, it must nevertheless be observed that under the system at present in force in Denmark the Danish authorities may refuse approval to a foreign producer even if he is prepared to ensure that returned containers are reused. The Court further intimated that in those circumstances, a foreign producer who still wished to sell his products in Denmark would be obliged to manufacture or purchase containers of a type already approved, which would involve substantial additional costs for that producer and therefore make the importation of his products into Denmark very difficult(Court of Justice 1988).

The Court noted that to overcome that obstacle the Danish Government altered its rules by the aforementioned Order No 95 of 16 March 1984, which allows a producer to market up to 3000 hectolitres of beer and soft drinks a

year in non approved containers, provided that a deposit and return system is established(Court of Justice 1988).

The Court indicated that the provision in Order No 95 restricting the quantity of beer and soft drinks which may be marketed by a producer in non approved containers to 3 000 hectolitres a year is challenged by the Commission on the ground that it is unnecessary to achieve the objectives pursued by the system. It is undoubtedly true that the existing system for returning approved containers ensures a maximum rate of reuse and therefore a very considerable degree of protection of the environment since empty containers can be returned to any retailer of beverages (Court of Justice 1988).

Non approved containers, on the other hand, can be returned only to the retailer who sold the beverages, since it is impossible to set up such a comprehensive system for those containers as well. Nevertheless, the system for returning non approved containers is capable of protecting the environment and, as far as imports are concerned, affects only limited quantities of beverages compared with the quantity of beverages consumed in Denmark owing to the restrictive effect which the requirement that containers should be returnable has on imports. In those circumstances, a restriction of the quantity of products which may be marketed by importers is disproportionate to the objective pursued (Court of Justice 1988).

The Court taking into account the arguments from both sides with regard to EU law held and declared that by restricting, by Order No 95 of 16 March 1984, the quantity of beer and soft drinks which may be marketed by a single producer in non approved containers to 3000 hectolitres a year, the Kingdom of Denmark has failed, as regards imports of those products from other Member States, to fulfil its obligations under Article 30 of the EEC Treaty and dismissed the remainder of the application(Court of Justice 1988).

4.1.3 Case C-309/02

The German regulation on the avoidance and recovery of packaging waste of 21 August 1998 (the VerpackV) prescribes many measures to avoid and reduce the environmental impact of packaging waste. The VerpackV was intended, in particular, to transpose Directive 94/62 and replaced the Regulation on the Avoidance of Packaging Waste of 12 June 1991. The obligations laid by the VerpackV are as follows:

1) Distributors shall accept the return of used empty sales packaging from final consumers, free of charge, at, or in the immediate vicinity of, the actual point of delivery, recover the packaging in accordance with the requirements of point 1 of Annex I and fulfil the requirements of point 2 of Annex I. The recovery requirements may also be satisfied by reusing the packaging or passing it on to distributors or producers under subparagraph (www.juris.de 1998).
2) The distributor must draw the attention of the private final consumer, by means of clearly visible, legible notices, to the fact that the packaging

> may be returned in accordance with the first sentence. The obligation under the first sentence applies only to packaging of the type, form and size and to packaging of goods that the distributor carries in his range. For distributors with a sales area of less than 200 square metres, the obligation to take back returned packaging applies only to packaging for brands which the distributor puts into circulation. In the case of a mail order business, the taking back of returned packaging shall be ensured by means of suitable return facilities within reasonable distance of the final consumer. The possibility of returning the packaging is to be referred to in the consignment and in catalogues. Where sales packaging does not come from private final consumers, the parties may make other arrangements regarding the place of return and the allocation of costs. Where distributors do not fulfil the obligations under the first sentence by accepting the return of packaging at the point of delivery, they shall ensure compliance with them by means of a system as provided for by subparagraph (www.juris.de 1998).

The VerpackV obliges producers and distributors to accept free of charge at the place of actual delivery packaging returned to distributors under subparagraph 1, recover the packaging in accordance with the requirements of point 1 of Annex I and fulfil the requirements of point 2 of Annex I. The recovery requirements may also be satisfied by reusing the packaging. The obligations under the first sentence apply only to packaging of the type, form and size and to packaging of goods that the particular producer or distributor puts into circulation. The eighth, ninth and tenth sentences of subparagraph 1 shall apply mutatis mutandis.

Under Paragraph 6(3), those obligations to take back and recover packaging may in principle also be met by participation of the producer or distributor in a global system for the collection of used sales packaging. The competent Land authority has the task of determining that the system fulfils the conditions imposed by the VerpackV with regard to its coverage rate (www.juris.de 1998).

By virtue of Paragraph 8(1) of the VerpackV, distributors who put liquids for consumption into circulation in non-reusable drinks packaging are required to charge the purchaser a deposit of at least EUR 0.25 including value added tax per item of packaging. Where the net volume exceeds 1.5 litres, the deposit is to be at least EUR 0.50 including value added tax. The deposit is to be charged by each further distributor at every stage in the chain of distribution until sale to the final consumer. The deposit is to be repaid when the packaging is returned under Paragraph 6(1) and (2) of the VerpackV (www.juris.de 1998).

In accordance with Paragraph 9(1) of the VerpackV, this mandatory deposit is not to apply where the producer or distributor is exempt from the obligation to accept return of the packaging because he participates in a global collection system as referred to in Paragraph 6(3) (www.juris.de 1998).

However, Paragraph 9(2) of the VerpackV prescribes circumstances in which, for certain drinks, recourse to Paragraph 6(3) ceases to be possible. Paragraph 9(2) states as follows:

'If, for beer, mineral water (including spring water, table water and spa water), carbonated soft drinks, fruit juices and wine the combined proportion of drinks in reusable packaging falls below 72% in the calendar year in the geographical area to which this regulation applies, a new survey of the relevant proportions of reusable packaging shall be carried out for the 12 months following publication of the failure to achieve the required proportions. If this shows that the proportion of reusable packaging in Federal territory is below the proportion laid down under the first sentence, the decision under Paragraph 6(3) shall be deemed to be revoked throughout Federal territory in respect of the drinks categories for which the reusable proportion determined in 1991 is not achieved, with effect from the first day of the sixth calendar month following publication in accordance with subparagraph 3' (Court of Justice 2004).

As per Paragraph 9(3) of the VerpackV, the German Government is to publish each year the relevant proportions, as referred to in Paragraph 9(2), of drinks packaged in ecologically sound drinks packaging. Under Paragraph 9(4) the competent authority, following an application or on its own initiative, is to make a new determination pursuant to Paragraph 6(3) where the relevant proportion of drinks in such packaging is again achieved following a revocation.

4.1.3.1 Community legislation

Community Directive 94/62 empowered Member States to promote systems for the reuse of packaging while giving no right to producers and distributors to continue to participate in a given packaging and waste management system. It precludes the replacement of a global system for the collection of packaging waste with a deposit and return system where the new system is not equally appropriate for the purpose of attaining the objectives of that directive or where the changeover to the new system does not take place without a break and without jeopardising the ability of economic operators in the sectors concerned actually to participate in the new system as soon as it enters into force.

According to Article 1(1), Directive 94/62 aims to harmonise national measures concerning the management of packaging and packaging waste in order, on the one hand, to prevent any impact thereof on the environment of all Member States as well as of third countries or to reduce such impact, thus providing a high level of environmental protection, and, on the other hand, to ensure the functioning of the internal market and to avoid obstacles to trade and distortion and restriction of competition within the Community (Court of Justice 2004).

The directive in Article 1(2) lays down measures aimed, as a first priority, at preventing the production of packaging waste and, as additional fundamental principles, at reusing packaging, at recycling and other forms of recovering

packaging waste and, hence, at reducing the final disposal of such waste (European Parliament, Council of the European Union 1994).

Article 5 of the directive provides that Member States may encourage reuse systems of packaging, which can be reused in an environmentally sound manner, in conformity with the Treaty (European Parliament, Council of the European Union 1994).

Article 7 provides that necessary measures must be taken by Member States to ensure systems are put in place to provide for:

1) The return and/or collection of used packaging and/or packaging waste from the consumer, other final user, or from the waste stream in order to channel it to the most appropriate waste management alternatives (European Parliament, Council of the European Union 1994).
2) The reuse or recovery including recycling of the packaging and/or packaging waste collected, in order to meet the objectives laid down in this Directive (European Parliament, Council of the European Union 1994).

These systems shall be open to the participation of the economic operators of the sectors concerned and to the participation of the competent public authorities. They shall also apply to imported products under non-discriminatory conditions, including the detailed arrangements and any tariffs imposed for access to the systems, and shall be designed so as to avoid barriers to trade or distortions of competition in conformity with the Treaty. The measures referred to in paragraph 1 shall form part of a policy covering all packaging and packaging waste and shall take into account, in particular, requirements regarding the protection of environmental and consumer health, safety and hygiene; the protection of the quality, the authenticity and the technical characteristics of the packed goods and materials used; and the protection of industrial and commercial property rights (European Parliament, Council of the European Union 1994).

4.1.3.2 Case C-309/02 analysis

The applicant in this case was Radlberger Getränkegesellschaft mbH & Co. and S. Spitz KG who export carbonated soft drinks, fruit juices, other non-carbonated drinks and table water to Germany, in non reusable recoverable packaging. In order to recover that packaging, the applicant joined the global waste collection system operated by the company Der Grüne Punkt – Duales System Deutschland AG and on that basis were exempted from the obligation to charge the deposit laid down in Paragraph 8(1) of the VerpackV for drinks distributed in Germany in non reusable packaging (Court of Justice 2004).

On 28 January 1999, the German Government announced that in 1997 the proportion of reusable drinks packaging fell below 72% for the first time, namely to 71.33%. Since over two consecutive periods, namely between February 1999 and January 2000 and between May 2000 and April 2001, this

proportion remained below 72% throughout Federal territory, on 2 July 2002 the Government announced pursuant to Paragraph 9(3) of the VerpackV that from 1 January 2003 a mandatory deposit would be charged on mineral water, beer and soft drinks. Under the VerpackV, the claimants in the main proceedings would therefore be required from that date to charge the deposit prescribed in Paragraph 8(1) thereof on most of their packaging for drinks distributed in Germany and then to accept the return of, and recover, the empty packaging(Court of Justice 2004).

However, this did not go down with the Applicant who on 23 May 2002 brought an action against Land Baden-Württemberg before the Administrative Court in Stuttgart in which they submit that the rules laid down in the VerpackV on quotas for reusable packaging and the related deposit and return obligations are contrary to Articles 1(1) and (2), 5, 7 and 18 of Directive 94/62 and Article 28 EC. The Federal Republic of Germany was joined as a party to the proceedings.

The Administrative court noted that, if one proceeds on the basis of the interpretation put forward by the Applicant according to which Article 1(2) of Directive 94/62 presumes that the reuse of packaging and its recovery rank equally, the question arises as to whether the system laid down in the VerpackV is compatible with the directive inasmuch as that system makes it more difficult to put non-reusable packaging into circulation when the proportion of reusable packaging falls below a certain threshold. The Administrative court observed that producers established in another Member State are exposed to higher costs than German producers if they decide to market their drinks in reusable packaging. It points out that, in the applicant's submission, even when the obligation to charge a deposit is suspended the German legislation affects the situation of producers established in another Member State because German distributors tend to exclude products with non reusable packaging from their range of drinks in order that the proportion of reusable packaging does not fall below 72% (Court of Justice 2004).

The Administrative Court in Stuttgart decided to refer a number of questions to the European Court of Justice for a preliminary ruling on the contested provisions.

The first question posed to the court for a preliminary ruling concerned whether Article 1(2) of Directive 94/62 prohibits Member States from favouring systems for reusing drinks packaging over recoverable non reusable packaging by removing, where a Federal target for reusable packaging of 72% is not reached, the possibility of exemption from a return, management and deposit obligation laid down in respect of empty non-reusable drinks packaging by participation in a return and management system, so far as concerns drinks sectors in which the proportion of reusable packaging has fallen below the level determined in 1991 (Court of Justice 2004)?

To this question, the Court ruled that Article 1(2) of Directive 94/62 does not preclude the Member States from introducing measures designed to promote systems for the reuse of packaging.

In the second question the Administrative Court in Stuttgart wanted to know if Article 18 of Directive 94/62 prohibits Member States from impeding the placing of drinks in recoverable non-reusable packaging on the market by removing, where a Federal target for reusable packaging of 72% is not reached, the possibility of exemption from a return, management and deposit obligation laid down in respect of empty non-reusable drinks packaging by participation in a return and management system, so far as concerns drinks sectors in which the proportion of reusable packaging has fallen below the level determined in 1991 (Court of Justice 2004)?

The answer to the second question is provided in the ruling to the fourth question.

The Third question asked whether Article 7 of Directive 94/62 give producers and distributors of drinks in recoverable non-reusable packaging a right to participate in an existing return and management system for used drinks packaging, in order to meet a statutory obligation to charge a deposit on non-reusable drinks packaging and accept the return of used drinks packaging (Court of Justice 2004)?

To this question, the Court ruled that while Article 7 of Directive 94/62 does not confer on the producers and distributors concerned any right to continue to participate in a given packaging-waste management system, it precludes the replacement of a global system for the collection of packaging waste with a deposit and return system where the new system is not equally appropriate for the purpose of attaining the objectives of that directive or where the changeover to the new system does not take place without a break and without jeopardising the ability of economic operators in the sectors concerned actually to participate in the new system as soon as it enters into force(Court of Justice 2004).

The fourth question concerned Article 28 EC and the Administrative Court wanted to know if the article prohibits Member States from adopting rules providing that where a Federal target for reusable drinks packaging of 72% is not reached, the possibility of exemption from a return, management and deposit obligation laid down in respect of empty non-reusable drinks packaging by participation in a return and management system is removed so far as concerns drinks sectors in which the proportion of reusable packaging has fallen below the level determined in 1991 (Court of Justice 2004)?

To this question, the Court ruled that Article 28 EC precludes national rules, such as those laid down in Paragraphs 8(1) and 9(2) of the VerpackV, when they announce that a global packaging-waste collection system is to be replaced by a deposit and return system without the producers and distributors concerned having a reasonable transitional period to adapt thereto and being assured that, at the time when the packaging-waste management system changes, they can actually participate in an operational system (Court of Justice 2004).

4.1.4 Case C-494/01

The Commission initiated action against Ireland after receiving three complaints concerning the failure of Ireland to fulfil its environmental obligations. Complaint 1997/4705 concerned dumping of contruction and demolition waste on wetlands within the area of the City of Limerick. According to the Commission, in 1997, Limerick Corporation, a local authority with responsibility for applying waste legislation, tolerated dumping of construction and demolition waste on wetlands in Limerick. The Commission further observed that the EPA stated in a letter of 23 January 1998 that depositing of that kind amounted to recovery operations not requiring authorisation. In addition, the waste was not entirely removed, and dumping continued on the wetlands and other nearby areas of wetland.

The Complainant in Complaint 1997/4705, also provided photographic negatives showing mounds of debris amidst wetland vegetation, newspaper articles indicating that the instances of unauthorised dumping of waste on the wetlands in Limerick were common knowledge and photographs from complainants taken in 2002 testifying to the presence of demolition and construction waste on those wetlands.

The Second Complaint was Complaint 1997/4792 which concerned unauthorised operations involving the storage of waste in lagoons and its landspreading, at Ballard, Fermoy, County Cork. The Complainant noted that since 1990, the competent waste management authority, has tolerated the carrying out by a private operator without a permit of operations involving the storage on a large scale of organic waste in lagoons at Ballard and the disposal of that waste by landspreading, failing to ensure that those operations ceased and were punished. Furthermore, the facilities in question were constructed without the necessary planning consent and the latter was granted in 1998, making it easier for those operations to continue (Court of Justice 2005).

The third Complaint was Complaint 1997/4847 which concerned unauthorised waste storage operations at Pembrokestown, Whiterock Hill, County Wexford. The Commission noted that a private operator stored waste between 1995 and 2001 on a site at Pembrokestown, notwithstanding three district court decisions in 1996 and 1997 successively fining him, on conviction in this regard, IEP 100, and then IEP 400 twice, a fact which testifies in particular to the inadequacy of the penalties imposed. Furthermore, those operations exposed local residents to substantial nuisances of which Wexford County Council was aware, as is apparent in particular from the terms of its decision of 23 February 1996 refusing an application for planning consent relating to the site concerned, a decision which is adduced by the Commission (Court of Justice 2005).

Other wideswpread Complaints were further made against Ireland including: Complaint 1999/4351 on unauthorised operation of the Powerstown municipal landfill, County Carlow and Complaint 1999/4478 on unauthorised operation of a waste storage and treatment facility at Cullinagh, Fermoy, County Cork.

Further complaints include: Complaint 1999/4801 on dumping of waste and unauthorised operation of waste treatment facilities on the Poolbeg Pensinsula, Dublin; Complaint 1999/5008 on unauthorised operation of municipal landfills at Tramore and Kilbarry, County Waterford and Complaint 1999/5112 on unauthorised operation of waste facilities at Lea Road and Ballymorris, County Laois (Court of Justice 2005).

The Commission therefore based its action on the widespread complaints made against Ireland within their respective provisions. The Commission sent a formal notice to Ireland in respect of these complaints over time, beginning with the first three complaints and the other complaints were further noted and formal notices sent to Ireland. The Commission first sent a formal notice relating only to Complaints 1997/4705 and 1997/4792, which alleged that Ireland had infringed the second paragraph of Article 4 and Articles 9 and 10 of the Directive. The Commission requested Ireland to take the measures necessary to comply with the reasoned opinion within two months following its notification.

In response, Ireland denied that it had in any way failed to fulfil its obligations as regards the two complaints referred to above. Other formal notices were sent to Ireland but Ireland did not comply. This led the Commission to take action against Ireland at the Court.

4.1.4.1 Case C-494/01 analysis

In examining the breaches to the particular directives, the Court considered the subject matter of the action which is to determine whether the alleged failures to fulfil obligations have occurred and the admissibility of certain grounds of complaint relied on by the Commission. The Commission started by noting that following a Treaty infringement procedure initiated against Ireland and the subsequent adoption of the Waste Management Act, 1996– one of the aims of which was to make operations in respect of waste managed by local authorities ('municipal waste') subject to a system of licences issued by the Environmental Protection Agenc and its implementing regulations, the legal framework for waste management in Ireland has been improved considerably. With the exception of a failure to transpose Article 12 of the Directive, the present proceedings therefore principally seek a finding that the Irish authorities are not complying with their obligations to achieve a certain result because they are not ensuring that the Directive is actually applied (Court of Justice 2005).

The Commission therefore sought for a declaration of failure to fulfil obligations not only on account of the shortcomings noted in the specific situations covered by the 12 complaints referred to in paragraphs 11, 14 and 16 of this judgment but also, and more fundamentally, on account of the general and persistent nature of the deficiencies which characterise the actual application of the Directive in Ireland, of which the specific situations mentioned in those complaints simply constitute examples. It is a matter of ensuring the full recognition and implementation in Ireland of the seamless chain of responsibility for waste which the Directive establishes, by requiring:

holders of waste to discard it through specified operators; the operators collecting or dealing with the waste to be subject to a permit or registration system and to inspection; and the abandonment, dumping or uncontrolled disposal of waste to be prohibited(Court of Justice 2005).

The Irish Government argued that the 12 complaints to which the Commission referred in the reasoned opinion must delimit the subject-matter of the proceedings. Other facts or complaints not notified to Ireland during the pre-litigation procedure may not be relied on in support of the action, and the Commission is not permitted to draw general conclusions from the examination of specific complaints by presuming an alleged systemic failure on Ireland's part. Furthermore, the question whether Ireland might have failed to fulfil its obligations must be determined by reference to the situation prevailing on the date upon which the two-month period set in the reasoned opinion of 26 July 2001 expired(Court of Justice 2005).

In the opinion of the Court, contrary to the Irish Government's submissions, although they were not referred to during the pre-litigation procedure the facts relating to massive illegal dumping of, on occasions hazardous, waste in County Wicklow, of which the Commission became aware after issue of the reasoned opinion, could therefore properly be mentioned by the latter in support of its application for the purpose of illustrating the failures of a general nature to fulfil obligations raised by it (Court of Justice 2005).

In response to the first complaint, the Irish Government replied that, according to Limerick Corporation, just three lorry loads were, in error, deposited in October 1997 on the area covered by Complaint 1997/4705 and that the waste was removed within hours of its deposit. The facts alleged are not proved, particularly at the date upon which the period set in the 2001 reasoned opinion expired. As to the more recent deposits on the area covered by that complaint, the Irish Government states that they are small in amount and affirms that the waste will be removed promptly. The other deposits alleged by the Commission are not material to the present proceedings and occurred for infilling and development purposes. Moreover, as regards an infilling proposal with a view to developing sporting facilities, the EPA's position was consistent with Irish legislation which, until 20 May 1998, did not require a licence for waste recovery (Court of Justice 2005).

In the opinion of the Court, given the detailed nature of Complaint 1997/4705 and the evidence adduced by the Commission, the Irish Government cannot, as is apparent from paragraphs 42 to 47 of the judgment, take refuge behind the otherwise unsupported assertions of Limerick Corporation or simply contend that the facts alleged are not proved or that the waste deposits in question occurred in implementation of a controlled policy of recovery or infrastructure development, without challenging in substance and in detail the information produced by the Commission or supporting its own allegations with specific evidence (Court of Justice 2005).

The Court therefore concluded that the evidence adduced by the Commission shows to the required legal standard that in 1997 the competent local authority tolerated unauthorised depositing of construction and

demolition waste on wetlands in Limerick, that such depositing continued in the area in question, in particular in the course of the present proceedings, and that other depositing also took place on two further wetlands very close by. However the importance of the wetland to ecological interest has also been recognised by the Irish goverment. It is also proved that the EPA stated in a letter sent on 23 January 1998 to Limerick Corporation that, under the Irish legislation in force at that time, such depositing did not require authorisation if it occurred for the purpose of recovery.

In its defence, to the second complaint alleging unauthorised operations involving the storage of waste in lagoons and its landspreading, at Ballard, Fermoy, County Cork, the Irish Government concedes that the storage and landspreading operations carried out by the operator concerned required possession of a permit. It considers, however, that the conduct of Cork County Council was appropriate. That authority established in April 1992 that the activities complained of had ceased. When they recommenced, it took steps in 1996 to ensure that no further material was deposited in the lagoons in question. After finding none the less, on an inspection carried out in August 2001, that the storage activity had recommenced, Cork County Council commenced legal proceedings which resulted, in March 2002, in the defendant's being found guilty and fined EUR 1 800. All illegal depositing has ceased since then and the waste still present was removed and that Cork County Council is considering the question of bringing legal proceedings against the operator in question. The removal of the waste still on the site is moreover imminent(Court of Justice 2005).

However the Commission maintains that the operations in question never ceased. It adduces for this purpose various letters, including a number from Cork County Council itself, which show that waste was deposited at Ballard until June 2002 at least. Furthermore, the only penalty imposed on the operator responsible was for failure to provide information to the council(Court of Justice 2005).

The Court therefore declared that it is proved to the required legal standard that substantial unauthorised operations involving the storage of waste in lagoons and/or its landspreading were pursued on the initiative of a private operator in Ballard, County Cork, between 1990 and June 2002 at least, without the competent authorities taking appropriate measures to bring those operations to an end and without the operations giving rise to penalties. Nor is it disputed that the installations necessary for such operations were retained although they did not have the necessary planning consent and that in 1998 the competent authorities issued such a consent authorising the retention of such installations(Court of Justice 2005).

The other Complaints were examined separetely for the Court to make findings into the widespread complaints. The Court declared that Ireland had failed to comply with Articles 4, 5, 8, 9, 10, 12, 13 and 14 of Council Directive 75/442 (Court of Justice 2003).

The Court therefore ruled that by failing to take all the measures necessary to ensure a correct implementation of the provisions of Council

Directive 75/442, Ireland has failed to comply with its obligations under those provisions and by failing to respond to a request for information dated 20 September 1999 in relation to waste operations at Fermoy, County Cork, Ireland has failed to fulfil the obligations which it has pursuant to Article 10 EC. Ireland was therefore ordered, as the unsuccesful party to pay the costs.

5 DISCUSSION

By ruling that the Wallonian Decree does not breach any community law to the extend that it relates to waste, the Court had given more importance to environmental protection and given not only Wallonia but other Member States the power to enact tougher rules regarding waste management. This ruling is without prejudice to Article 30 on the free movement of goods, recognising that waste has an intrinsic economic value however waste also poses human health hazards and to a much greater extend, the capacity and sustainability of the dumping site. The Court's ruling sought to prevent Wallonia from becoming the 'dumping site of Europe' and to set a precedent for similar plans in the future.

It is to be noted that although the Court did not find any breach of Community law in the Wallonia Decree, it did however found the absolute prohibition as a failure of Belgium to fulfil its obligation with regards to the procedure laid down in Council Directive 84/631 on the supervision and control of transfrontier shipment of hazardous waste. Reasoning from the decision of the Court, it is possible to see that Member States can take tougher measures to restrict dumping sites, but not to adopt absolute prohibition. This can be seen from the fact that there are better facilities in other Member States capable of effectively recycling or processing certain hazardous waste. An absolute prohibition means that certain hazardous waste will not be properly and effectively disposed off or recycled under the best environmental conditions and also recognising that there is a commercial transaction in recycling, dumping or tipping of waste. This ruling therefore empowered Member States to take tougher rules against dumping sites and landfills whereas recognising that hazardous waste has to be dispossed of properly and effectively.

With regard to non-hazardous waste, the Court found first that the Waste Directive did not preclude such a measure and on free movement of goods, the Court noted that waste, whether recyclable or not, was to be regarded as ‘goods’ the movement of which must in principle not be prevented, but concluded that the prohibition was justified by the imperative requirement of environmental protection. This was remarkable because (as the Court explicitly recognised) imperative requirements could be taken into account only in the case of measures that apply without distinction to both domestic and imported products. Disregarding Advocate General Jacobs’ view (shared by the vast majority of commentators) that the measure in question, which favours waste produced in one region of a Member States, is plainly not indistinctly applicable to domestic and imported products (www.jel.oxfordjournals.org 2013).

The implication of the Danish Bottles ruling is interesting as it strengthened and advanced the cause of environmental protection, in line with the core values of the Community with regards to the environment. The Court's decision gave Member States more power to enact tough environmental measures by declaring that environmental protection was a mandatory requirement under Community law without prejudice to Article 30 of the

Treaty drawing on the Cassis de Dijon decision, where the ECJ held that in the absence of Community legislation, Member States may adopt measures regarding the marketing of products that result in a restriction on free movement in order to satisfy mandatory requirements relating in particular to the effectiveness of fiscal supervision, the protection of public health, the fairness of commercial transactions, and the defense of the consumer.

These tough measures that Member States can enact however must not be disguised restrictions with a view to distorting competition.

The Court's decision tried to clarify what types of environmental measures lawfully may restrict the fundamental Community provisions on free movement (Mathew L. Schemmel 1994).

The Court's decision indicated that a measure must be entirely intended to protect the environment and not a subtle disguised trade restriction.

Furthermore, the said measure must be indistinctly applicable and the measure must fall within the principle of proportionality.

The Court's decision strengthens the power of Member States to enact stringent national environmental policies, thereby providing what some describe as a spur for tougher policies at the Community level. Advocate General, Sir Gordon Slynn concluded that the Danish measures were disproportionate and that other methods could have achieved a reasonable standard of environmental protection without seriously impinging Article 30 (Mathew L. Schemmel 1994).

However, in taking a course of action different from that recommended by the Advocate General, the ECJ implicitly rejected the reasonable standard approach and opted for a more effective approach to environmental protection(Mathew L. Schemmel 1994).

The Advocate General indicated that the packaging satisfied all the basic conditions set out in Annex II to the directive, so that the prohibition was clearly contrary to Article 18, which establishes the freedom to place packaging on the market in any of the Member States. In his opinion, national measures on the management of packaging and packaging waste had been harmonised when the directive was adopted. In such circumstances, according to the case law, if the national legislation is compatible with the directive, it cannot be subject to a review of its compatibility with the primary legislation governing the free movement of goods(Court of Justice 2004).

One can therefore argue that Danish bottles led to tougher comprehensive community level action as it was more difficult for Member States to justify action if the Community has already acted under one of those provisions to achieve a high level environmental protection.

In the VerpackV case, the Court's declaration that Directive 94/62/EC of 20 December 1994 on packaging and packaging waste does not preclude the Member States from introducing measures designed to promote systems for the reuse of packaging, gives Member States more flexibility to enact stringent waste management schemes that are effective and environmentally sustainable in line with the Community's core values on Environmental Protection.

It can be seen that the ruling made emphasis to some provisions in the VerpackV which Article 28 EC precludes from national rules. Provisions laid down in the Regulation on the Avoidance and Recovery of Packaging Waste makes it possible to replace a global packaging-waste collection system with a deposit and return system without the producers and distributors concerned having a reasonable transitional period to adapt thereto and being assured, that, at the time when the packaging-waste management system changes, they can actually participate in an operational system.

In the opinion of the Court, while Article 7 of Directive 94/62 does not confer on the producers and distributors concerned any right to continue to participate in a given packaging-waste management system, it precludes the replacement of a global system for the collection of packaging waste with a deposit and return system where the new system is not equally appropriate for the purpose of attaining the objectives of that directive or where the changeover to the new system does not take place without a break and without jeopardising the ability of economic operators in the sectors concerned actually to participate in the new system as soon as it enters into force.

This stance taken by the Court is meant to ensure that no disruption to competition might arise when economic operators are not given sufficient time to adjust and prepare for the impending changes and adapt to them properly without jeopadising their operations while recognising that the intended measure have the objectives of environmental protection. If the overriding environmental protection objectives are greater than the effect on competition, such a measure will be considered compatible in view of its environmental protection objectives and that such a measure is proportionate to the aim pursued.

In the Commission v Ireland, the Court's ruling showed that Ireland had persistently failed to fulfil its obligations with regards to all the measures necessary to ensure a correct implementation of the provisions of Articles 4, 5, 8, 9, 10, 12, 13 and 14 of Council Directive 75/442, and by failing to respond to a request for information dated 20 September 1999 in relation to waste operations at Fermoy, County Cork, Ireland has failed to fulfil the obligations which it has pursuant to Article 10 EC, the Court set the precedent for tougher Community level action against Member States that fail to fulfil their environmental obligations. It also started the fine system for neglect to implement environmental and waste management directives.

Advocate General Geelhoed was of the opinion that the failure to comply with Articles 4, 5, 9 and 10, which constitute the core of the waste directive, has been persistent, widespread and serious so that there are sufficient grounds for establishing that Ireland has infringed the waste directive in a general and structural manner as the evidential material contained in the 12 complaints also illustrates that the problems of illegal, i.e. unlicensed, waste operations were not confined to certain localities but that these were widespread in Irish territory. They also took place within the remit of various local authorities which is indicative of an administrative problem of a more general character

and such a situation can only be resolved by a change of policy at the level of central government (Court of Justice 2004).

The Advocate General therefore advised the Court to declare that by failing throughout its territory for a protracted period of time firstly to establish an adequate and fully operational licensing framework for the disposal and recovery of waste, secondly to ensure that holders of waste have it handled by a public or private waste collector, by an undertaking authorised to carry out waste disposal or recovery operations or that they recover or dispose of it themselves, thirdly to prevent the abandonment, dumping and uncontrolled disposal of waste, thereby endangering human health and causing environmental harm, and fourthly by failing to establish an adequate network of disposal installations Ireland has infringed its obligations under Articles 4, 5, 8, 9 and 10 of Council Directive 75/442/EEC on waste (Court of Justice 2004).

The Court shared the same opinion with the Advocate General in ruling that Ireland had persistently failed to fulfil its obligations with regards to all the measures necessary to ensure a correct implementation of the relevant provisions of the waste directive and its amendments.

It was the first time that a Member State has been found to have breached the Waste Manangement Directive in a widespread and structured manner thus winning a big plus for environmental protection.

In the important (particularly so, in a new and evolving area such as environmental law) field of enforcement and the then developing principles of equivalence and effectiveness, the Court ruled that Member States enjoy a wide discretion in ensuring effective implementation of the Waste Directive,and are thus entitled to impose criminal penalties if they consider that to be the most appropriate way of ensuring their effectiveness, provided that the penalties are analogous to those applicable to infringements of national law of a similar nature and importance, and are effective, dissuasive and proportionate (www.jel.oxfordjournals.org 2013).

It can therefore be seen that from the cases, that the Commission is committed to its supervisory role of ensuring that national measures comply with Community rules and that such national measures have a greater proportionate aim of protecting the environment and not disguised restrictions on competition. The rulings clarify on what is considered appropriate national measures and empowers Member States to take tough action, and that in the absence of Community Legislation Member States may adopt measures that result in a restriction on free movement in order to satisfy mandatory environmental requirements. The rulings from these cases have set precedents leading to the adoption and implementations of guidelines and directives that sought to strengthen Member States' ability to implement the waste management directive for the greater goal of environmental protection.

6 CONCLUSION

The first part of the thesis looked at environmental regulations in general, tracing the sources of the EU regulation on Environmental aid with particular emphasis on Article 107 (87), and environmental protection Article 191 of the Treaty which together constitue the primary source of the Community Law on the Environment. Secondary EU Law on the environment included conventions and agreements and unilateral acts. The case law sets precedents for further regulations and is mostly referenced when the Court is handling cases of a similar nature. This was followed by an examination of the various guidelines from the 1994 guidelines to the most recent 2014-2020 guidelines and the General Block Exemptions Regulations.

An examination of the Waste Management Directive which is crucial for this thesis was carried out. Effectiveness of the guidelines have been analysed drawing information from the 2005 and 2012 scoreboard for State aid in the community.

In the practical part, four cases related to waste management were examined and analysed.

In Commission v Belgium on the Wallonian Decree, the Court found the measure as justified based on the imperative requirements of environmental protection. Notwithstanding that, the Court defined waste and gave it a new perspective by declaring that waste, whether recyclable or not, is to be regarded as goods the movement of which, in accordance with Article 30 of the Treaty, must in principle not be prevented.

The implications of this ruling has been significant with regards to environmental protection in the sense that Member States can, with inferrence to this ruling, adopt measures to restrict tipping and dumping of waste so long as the said measure has an imperative requirement of environmental protection. One can argue that the ruling in this case contributed towards the drafting and subsequent adoption of the Waste Management Directive, which came into effect after the ruling. The Wallonian ruling has become one of the classic case law quoted and referenced in many rulings of the Court.

In Commission v Denmark, the Court admitted that it was undoubtedly true that the existing system for returning approved containers ensures a maximum rate of re-use and therefore a very considerable degree of protection of the environment since empty containers can be returned to any retailer of beverages. The Court noted however that non approved containers, on the other hand, can be returned only to the retailer who sold the beverages, since it is impossible to set up such a comprehensive system for those containers as well. In the opinion of the Court, the system for returning non approved containers is capable of protecting the environment and, as far as imports are concerned, affects only limited quantities of beverages compared with the quantity of beverages consumed in Denmark owing to the restrictive effect which the requirement that containers should be returnable has on imports. Consequently the Court declared that in those circumstances, a restriction of the quantity of

products which may be marketed by importers is disproportionate to the objective pursued.

It is interesting that the Court admitted that the Danish Measure led to a considerable degree of environmental protection but did not apply the imperative requirement of environmental protection. As explained by the Court, the restrictive effect on the requirement of returnable containers has a greater impact on competition for imports. Moreover by limiting the quantity of beer and soft drinks which may be marketed by a producer in non approved containers which is not commensurate with the quantity of beverages consumed in Denmark, the contested measure was deemed unjustified. It has to be noted that the imperative requirement of environmental protection could not apply as the measure was seen to be a disguised restriction on competition.

This ruling is important for the future as it might lead to Community wide measures and harmonisation of bottling of beer and soft drinks in the Community which are returnable to different retailers with a view to ensuring cohesion in the market for environmental protection. This ruling sets a precedent for future judgements in cases of a similar nature.

In the VerpackV case, the Court replied to the questions posed by the Administrative Court in Stuttgart for a preliminary ruling by declarating that Directive 94/62/EC does not preclude the Member States from introducing measures designed to promote systems for the reuse of packaging however the Court ruled that Article 28 EC precludes national rules, such as those laid down in Paragraphs 8(1) and 9(2) of the VerpackV, when they announce that a global packaging-waste collection system is to be replaced by a deposit and return system without the producers and distributors concerned having a reasonable transitional period to adapt thereto and being assured that, at the time when the packaging-waste management system changes, they can actually participate in an operational system.

The significance of this ruling cannot be overestimated. The ruling reinforced in Member States the freedom to take appropriate measures to promote systems for the reuse of packaging with a view to protecting the environment and in line with the waste management directive and other relevant provisions in EU law.

In Commission v Ireland, based on a number of complaints received by the Commission from the EPA allegging widespread and persistent infringement on the relevant provisions necessary for the implementation of the waste management directive, action was initiated against Ireland which led to Ireland having been found to have failed its obligations with regards to the various provisions of the waste management directive.

The implications of the ruling can be seen as a plus for environmental protection. Even before the end of proceedings, Ireland announced that it was considering legal proceedings against the operator responsible for the illegal depositing of waste in Cork County and promised that the removal of the waste on the site is imminent. The future implications is that having been found to have failed to fulfil its obligations, Ireland will not only pay the cost but initiate,

adopt and implement the contested directive to the fullest which is good news for environmental protection.

The EU Case law is evolving as different and emerging issues keep on taking on new forms and shaping further directives and regulations. From 1997 the Court's focus shifted from the application of general principles to providing essential guidance on the interpretation of concepts introduced in the new legislative framework as the cornerstone of the EU's waste legislation is the definition of what constitute waste. In a cascade of judgments in preliminary references asking for ever more detailed guidance, the Court fleshed out this concept in numerous contexts, while the case law continues to this day to evolve, it is instructive to review these early contributions which were invaluable in this unfolding area (www.jel.oxfordjournals.org 2013).

This thesis therefore examined some of those earlier cases which contributed to building an invaluable case law which has continued to shape the framework for waste management.

The research work looked at a part of this evolving case law and only four cases were examined in light of a vast body of case law on waste management. It is hoped that this research will inform further research in the field.

7 LIST OF REFERENCES

Bacon, Kelyn. *European Community Law of State Aid*. UK: Oxford University Press, 2009.

Court of Justice. "*www.curia.europa.eu*." *Judgement of the court (Grand Chamber)*. 2004. http://curia.europa.eu/juris/document/document_print.jsf;jsessionid=9ea7d2dc30d58d70f54e1d544f30b327fd564fb9efc5.e34KaxiLc3qMb40Rch0SaxuNbNz0?doclang=EN&text=&pageIndex=0&part=1&mode=DOC&docid=49763&occ=first&dir=&cid=462694 (accessed 26. 11., 2014).

Court of Justice ."*www.eur-lex.europa.eu*." *Judgment of the Court of 9 July 1992*. 1992. http://eur-lex.europa.eu/legal-content/EN/NOT/?uri=CELEX:61990CJ0002 (accessed 26. 11., 2014).

Court of Justice ."*www.eur-lex.europa.eu*." *Judgment of the Court of 20 September 1988* . 1988. http://eur-lex.europa.eu/legal-content/EN/NOT/?uri=CELEX:61986CJ0302 (accessed 26. 11., 2014).

Court of Justice ."*www.eur-lex.europa.eu*." *Judgment of the Court (Grand Chamber) of 14 December 2004.* . 2004. http://eur-lex.europa.eu/legal-content/EN/NOT/?uri=CELEX:62002CJ0309 (accessed 28. 11., 2014).

Court of Justice ."*www.eur-lex.europa.eu*." *Judgment of the Court (Grand Chamber) of 26 April 2005* . 2005. http://eur-lex.europa.eu/legal-content/EN/NOT/?uri=CELEX:62001CJ0494 (accessed 30. 11., 2014).

Court of Justice ."*www.eur-lex.europa.eu*." *Opinion of Mr Advocate General Ruiz-Jarabo Colomer delivered on 6 May 2004*. 2004. http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1418711654118&uri=CELEX:62002CC0309 (accessed 8. 12., 2014).

Court of Justice ."*www.eur-lex.europa.eu*." *Opinion of Mr Advocate General Geelhoed delivered on 23 September 2004*. 2004. http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1419843247750&uri=CELEX:62001CC0494 (accessed 10. 12., 2014).

European Commission. "*www.ec.europa.eu*." *Paper of the Services of DG Competition containing*. 2013. http://ec.europa.eu/competition/consultations/2013_state_aid_environment/draft_guidelines_en.docx (accessed 11. 11., 2014).

European Parliament, Committee on Industry, Research and Energy, Committee on Regional Development, Committee on the Environment, Public Health and Food Safety. "*www.eur-lex.europa.eu*." 28. 6., 2014. http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52014XC0628%2801%29 (accessed 23.10., 2014).

European Commission."*www.eur-lex.europa.eu*." *Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (General block exemption Regulation) (Text with EEA relevance).* 2008. http://eur-lex.europa.eu/legal-content/EN/NOT/?uri=CELEX:32008R0800 (accessed 26. 10., 2014).

European Commission."*www.eur-lex.europa.eu*." *Report - State Aid Scoreboard - Autumn 2005 update* . 2005. http://eur-lex.europa.eu/legal-content/EN/NOT/?uri=CELEX:52005DC0624 (accessed 26. 10., 2014).

European Commission."*www.eur-lex.europa.eu*." *Commission staff working documents- Facts and figures on State aid in the EU Member States - 2012 Update – Accompanying the document State aid Scoreboard 2012 Update Report on State aid granted by the EU Member States* . 2012. http://eur-lex.europa.eu/legal-content/EN/NOT/?uri=CELEX:52012SC0443 (accessed 13. 11., 2014).

European Parliament, Committee on Petitions. "*www.eur-lex.europa.eu*." *Application of waste management directive European Parliament resolution of 2 February 2012 on the issues raised by petitioners in relation to the application of the Waste Management Directive, and related directives, in the Member States of the European* . 2012. http://eur-lex.europa.eu/legal-content/EN/NOT/?uri=CELEX:52012IP0026 (accessed 11. 5., 2014).

European Parliament, Council of the European Union. "*www.eur-lex.europa.eu*." *Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide and amending Council Directive 85/337/EEC, European Parliament and Council Directives 2000/60/EC, 2001/80/EC, 2004/35/EC, 2006.* 2009. http://eur-lex.europa.eu/legal-content/EN/NOT/?uri=CELEX:32009L0031 (accessed 11. 11., 2014).

European Parliament, Council of the European Union."*www.eur-lex.europa.eu*." *European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste* . 1994. http://eur-lex.europa.eu/legal-content/EN/NOT/?uri=CELEX:31994L0062 (accessed 29. 11., 2014).

“ *www.hri.org*. “ 2012. http://www.hri.org/docs/Rome57/Part6.html (accessed 24. 10., 2014).

Mathew L. Schemmel, Bas de Regt. "*www.lawdigitalcommons.bc.edu*." *The European Court of Justice and the Environmental Protection Policy of the European Community*. 1994. http://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?article=1541&context=iclr (accessed 2. 12., 2014).

Publications Office. “ *www.eur-lex.europa.eu*. “ 2008. http://eur-lex.europa.eu/legal-content/EN/NOT/?uri=URISERV:ev0003 (accessed 30. 10., 2014).

Robert L. Hicks, Bradley C. Parks, J. Timmons Roberts, and Michael J. Tierney. *Greening Aid? Understanding the Environmental Impact of Development Assistance*. USA: Oxford University Press, 2008.

Sauter, W., and H.H. B (2012) State Aid and Selectivity in the context of Emission trading: an Examination of the ECJ's 2011 NOx case (C-279/08) TILEC Discussion Paper No. 2012-007 Vedder. "www.papers.ssrn.com." *Social Science Research Network*. 17. 2., 2012. http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2005755 (accessed 23. 10., 2014).

Council of the European Union. "*www.conventions.coe.int*. " 9. 4., 1998. http://conventions.coe.int/Treaty/en/Treaties/Html/172.htm (accessed 11. 11., 2014).

Court of Justice. "*www.curia.europa.eu*. " 2011. http://curia.europa.eu/juris/liste.jsf?language=en&num=C-279/08%20P (accessed 11. 11., 2014).

Court of Justice. "*www.curia.europa.eu*. " 2006. http://curia.europa.eu/juris/showPdf.jsf;jsessionid=9ea7d0f130de190f947d0a70465b8f31e2339aaf92e9.e34KaxiLc3eQc40LaxqMbN4NchuLe0?text=&docid=63397&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=324 (accessed 11. 11., 2014).

Court of Justice."*www.curia.europa.eu*." *Judgement of the court (Grand Chamber)*. 2005. http://curia.europa.eu/juris/document/document.jsf?text=&docid=58802&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=140941 (accessed 1. 12., 2014).

European Commission."*www.ec.europa.eu.* " 2000. http://ec.europa.eu/competition/state_aid/reform/archive_docs/difficulty/en.pdf (accessed 27. 10., 2014).

European Parliament, Committee on Industry, Research and Energy, Committee on Regional Development, Committee on the Environment, Public Health and Food Safety ."*www.eur-lex.europa.eu.* " 9. 7., 2013. http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1416315568496&uri=CELEX:52012IP0147 (accessed 22. 10., 2014).

European Commission."*www.eur-lex.europa.eu.* " 11. 22., 2007. http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1416315678622&uri=CELEX:52007DC0723 (accessed 22. 10., 2014).

The Member States.“ *www.eur-lex.europa.eu* "10. 26., 2012. http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1416315785585&uri=CELEX:C2010/083/01 (accessed 22. 10., 2014).

Council of the European Union. “*www.eur-lex.europa.eu.* “ 26. 10., 2012. http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1416315931789&uri=CELEX:C2012/326/01 (accessed 22.10., 2014).

Council of the European Union.“*www.eur-lex.europa.eu.* “ 5. 21. 1992. http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:31992L0043 (accessed 5. 11., 2014).

The Member States. “ *www.eur-lex.europa.eu.* “ 26. 10. 2012. http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:12012E/TXT (accessed 25. 10., 2014).
Council of the European Union, The European Parliament .“ *www.eur-lex.europa.eu.* “ 10. 2003. http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:275:0032:0046:en:PDF (accessed 26. 10., 2014).

European Commission.“ *www.eur-lex.europa.eu*“. 2005. http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52005DC0107 (accessed 25. 10., 2014).

Council of the European Union.“ *www.eur-lex.europa.eu.* "Council directive *of 15 July 1975.* 2003. http://eur-

lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1975L0442:20031120:EN:PDF (accessed 1. 12., 2014).

“ *www.europa.eu.* “ 2009. http://europa.eu/legislation_summaries/maritime_affairs_and_fisheries/fisheries_sector_organisation_and_financing/l26117_en.htm (accessed 25. 10., 2014).

"*www.jel.oxfordjournals.org*." *A Review of the Court of Justice's Case Law in Relation to Waste and Environmental Impact Assessment: 1992–2011*. 2013. http://jel.oxfordjournals.org/content/25/3/515.abstract (accessed 7. 12., 2014).

"*www.juris.de*." 1998. http://www.gesetze-im-internet.de/bundesrecht/verpackv_1998/gesamt.pdf (accessed 28. 11., 2014).

“ *www.unece.org*. “ 6. 1., 2011. http://www.unece.org/fileadmin/DAM/env/pp/documents/cep43e.pdf (accessed 30. 10., 2014).