

Case C-66/04 United Kingdom v Parliament [2005]

Facts: The United Kingdom sought the annulment of a Regulation on food smoke flavourings, adopted on the basis of Article 95 EC. The United Kingdom submitted that this regulation did not harmonise national laws, but set up a centralised procedure at Community level for the authorisation of smoke flavourings for foods, establishing Community bodies and conferring tasks on them, and therefore the appropriate basis for its adoption would be Article 308 EC.

Held: The expression 'measures for the approximation' in Article 95 EC confers on the Community legislature a discretion as regards the harmonisation technique most appropriate for achieving the desired result, in particular in fields which are characterised by complex technical features. Where the Community legislature provides for a harmonisation which comprises several stages two conditions must be satisfied. First, the Community legislature must determine in the basic act the essential elements of the harmonising measure. Second, the mechanism for implementing those elements must be designed in such a way that it leads to a harmonisation within the meaning of Article 95 EC. That is the case where the Community legislature establishes the detailed rules for making decisions at each stage of such an authorisation procedure, and determines and circumscribes precisely the powers of the Commission as the body which has to take the final decision. The contested regulation defines the parameters for evaluation and authorisation, and it therefore contains the essential elements typifying a harmonisation measure, and the tasks conferred on the relevant Authority and the Commission within the procedure for a primary product to be included in the positive list authorised through the Community are clearly defined.