

Case-Law by the ECJ on Nature Protection

- the wild bird directive 79/409
- the habitat directive 92/43
- CITES regulation on trade with endangered species
- extraterritorial protection
- fauna-falsification
- bio-diversity convention

Commission v. Netherlands, C 236/85, ECR (1987) 3989

Bird-directive: the exception for »serious damage« in the bird directive article 9(1)(a) demand some major damages but not precise; the prohibited method of hunting under Annex IV must be repeated in national binding legislation

Commission v. Belgium, C 247/85, ECR (1987) 3029;

Bird-directive: wild birds allowed to be captured under national law according to article 7 of the directive must be regulated and can not be based on the discretion of national authorities; the listed reasons for derogation on ban of hunting in article 9 is exhaustive

Commission v. France, C 252/85, ECR (1988) 2243;

Bird-directive: the ban of deliberate destruction of or damage to nests and eggs in article 5 can not be limited to the period of breeding;

Commission v. Italy, C 262/85, ECR (1987) 3073;

Bird-directive: hunting: the exception in article 6 of the bird directive governs only listed species in Annex III. Annex III is exhaustive

Commission v. Germany, C 412/85, ECR (1987) 3503;

Bird-directive: the ban on hunting in article 5 of the bird directive could not be deviated for activities connected to normal farming, forestry or fishing

Commission v. the Netherlands, C 339/87, ECR (1990-I) 851;

Bird-directive: exceptions in article 9 of the bird directive are exhaustive

Commission v. Germany, C 288/88, ECR (1990-I) 2721;

Bird-directive: not complying with the decision by the ECJ

Commission v Germany, (Leybucht), C 57/89, ECR (1989) 2489 preliminary ruling; ECR (1991-I) p. 883 (final ruling).

Bird-directive - SPA: interference in a designated special protected bird area is not permitted for economic or recreational reasons

Van den Burg, C 169/89, ECR (1990-I) 2143

Bird-directive - extraterritorial protection: ban on marketing of birds covered by Annex III/2 was not in accordance with EU-law, when the species does not exist on Dutch territory

Commission v. Italy, C 157/89, ECR (1991-I) 57;

Bird-directive: the ban on hunting in the period of reproduction under article 7(4) must be interpreted as complete protection. National legislation which accept hunting from the time when birds can fly is not in accordance with the bird directive

Commission v. France, C 182/89, ECR (1990-I) 4337

Regulation 3626/82 on implementation of the CITES-Convention on trade with endangered species: France import-license of skins from endangered species from Bolivia (wild cats) was not in accordance with the regulation

Commission v. Italy, C 334/89, ECR (1991-I) 93;

Bird-directive - SPA: Member States obliged to designated bird protected areas

Commission v Spain (Marimas De Santona) C 355/90, ECR (1993-I) 4221;

Bird-directive - SPA: the obligation to designate special protected bird areas. The lack of designation does not imply that the Member State can escape it's obligation. The not-designated area is protected as is was designated.

Commission v. Netherlands, C 75/91, ECR (1992-I) 549

Bird-directive: not complying with the decision by the ECJ

Commission v. Germany, C 345/92, ECR (1993-I) 1115;

Bird-directive: not complying with the decision by the ECJ

Association pour la protection des animaux sauvages, C 435/92, ECR (1994-I) 67;

Bird-directive - hunting: the period of hunting could not be fixed to start the date the major part of the birds are migrating

Didier Vergy, C 149/94, ECR (1996-I), 299

Bird-directive - scope: birds covered by the directive - captured birds

Van der Feesten, C 202/94, ECR (1996-I) 355;

Bird-directive - scope: birds covered by the directive - subdivision of species

WWF v. Veneto, C 118/94, ECR (1996-I), 1223

Bird-directive - hunting: period of time for hunting must be sufficient for complete protection

Regina v. Secretary State of Environment, C 44/95, ECR (1996-I) 3805

Bird-directive - SPA: Member States precluded from taking into account economic or recreational considerations in designation of SPA

ASBL Ligue royale belge pour la protection des oiseaux and ASBL Société d'études ornithologiques EVES v. Region Wallon, C 10/96, ECR (1996-I) 6775:

Bird-directive - hunting: The derogation of ban of hunting in article 9 permits hunting to prevent endogenous mating, when there are no alternative satisfactory solution to prevent inbreeding - but the requirement in »small numbers« must be respected.

Commission v. Greece, C 329/96, ECR (1997-I) 3749;

Habitat-directive: Greece did not implemented the habitat directive 92/43 in time

Commission v. Germany, C 83/97, ECR (1997-I) 7191;

Habitat-directive: Germany did not implemented the habitat directive 92/43 in time

Commission v the Netherlands, C 3/96, ECR (1998-I) 3031;

Bird-directive - SPA: the obligation to designate special protected area - only scientific ornithological criteria are legal

Commission v France, C 166/97, ECR (1999-I) 1719;

Bird-directive - SPA: the obligation to designate special protected bird area and to protect the area.

Commission v. France, C 96/98, ECR (1999-I) 8531;

Bird-directive - SPA: the obligation to designate special protected area and to protect the area.

Commission v. France, C 256/98, ECR (2000-I) 2487

Habitat and bird-directive - SPA: the obligation to protect special protected bird areas under the habitats directive (92/43) and to implement the procedure for projects and plans likely to have significant effect on the designated area. No definitions on “plans”.

Secretary of State v. First Corporate Shipping Ltd. - interveners: WWF

C 371/98, ECR (2000-I) 9235

Habitat-directive - SCA: Member States are precluded from taking economic, social and cultural requirements or regional and local characteristics when proposing the Commission designation of protected area under the habitat directive

Commission v. France, C 38/99, ECR (2000-I) 10941

Bird-directive - hunting: regarding the choice of opening and closing dates for the hunting of certain species of waterfowl and of migratory birds, the French implementation did not provide the complete protection required by the bird directive, artikel 7

Commission v. France, C 374/98, ECR (2000-I) 10799

Habitat-directive - SCA: the obligation to protect bird protected areas and habitat areas and to implement the protective procedures required by habitats directive article 6(2)-(4): Not designated bird areas are not protected under the directive 92/43, article 6(2)-(4) - but might be protected under the Bird Directive article 4(4)

Commission v. Italy, C 159/99, ECR (2001-I) 4007

Bird-directive - protection against hunting and capturing birds: The Italian legislation established a system of rules authorizing the capture and keeping of the three bird species was not in accordance with the Bird directive article 5 and 7

Commission v. Germany, C 71/99, ECR (2001-I) 5811

Habitat-directive - SCA: Designation of special areas of conservation (SACs): Germany has failed to send a complete list of designated areas of SAC's within the period prescribed and failed to send the information on those sites required by the habitat directive

Commission v. Ireland, C 67/99, ECR (2001-I) 5757

Habitat-directive - SCA: Designation of special areas of conservation (SACs): Ireland has failed to send a complete list of designated areas of SAC's within the period prescribed and failed to send the information on those sites required by the habitat directive. The failure could not be justified by public hearing.

Commission v. France, C 220/99, ECR (2001-I) 5831

Habitat-directive - SCA: Designation of special areas of conservation (SACs): France has failed to send a complete list of designated areas of SAC's within the period prescribed and failed to send the information on those sites required by the habitat directive

Tridon, C 510/99, ECR (2001-I) 7777

CITES-regulation: Neither the former regulation 3626/82 nor the new regulation 338/97 on CITES-Convention on trade with endangered species prevent a general national ban on commercial use of species covered by the regulation or of captive born and bred specimens, unless it applies to species imported from other Member States, if it is apparent that the objective of the protection may not be achieved just as effectively by measures which are less restrictive of intra-Community trade.

Commission v. Greece, C 103/00, ECR (2002-I) 1147

Habitat-directive: Greece has not implemented the required protection of sea turtles habitat under the Habitat Directive 92/43, article 12

Commission v. Ireland, C 117/00, ECR (2002-I) 5335

Bird and habitat-directive - SPO: Ireland has failed to meet the obligations under the Bird Directive article 3, because Ireland has failed to take the measures necessary to safeguard a sufficient diversity and area of habitats for the Red Grouse. Overgrazing of sheep in a designated bird protected area (Owenduff-Nephin Beg Complex) was in conflict with the obligations under the Habitat Directive 92/43, article 6(2) - and not sufficient that the State has taken over a big part of the designated area.

Commission v. Finland, C 240/00, ECR (2003-I) 2187

Bird-directive - SCA: Finland didn't designated sufficiently special protected areas as required under the bird directive article 4(1) and 4(2).

Commission v. Luxembourg, C 75/01, ECR (2003-I) 1585

Habitat-directive: Luxembourg did not sufficiently implement the habitat directive article 1 on legal definitions, article 4(5) on protection of proposed sites, article 5(4) on protection of negotiated sites, article 6(1) on management plans, article 6(2) on general protection against damaging and disturbance of designated sites, article 6(3) and 6(4) on projects and plans which might effect designated sites, article 12-16 on protection of endangered species and article 22 b on introducing not genuine species.

Commission v. France, C 202/01, ECR (2002-I) 11019 - *Plaine des Maures*

Bird -directive - SPA: France failed to comply with the obligation to designate bird protected areas under the Bird Directive, article 4(1) and (2) by not classifying a sufficiently large area of the Plaine des Maures as a special protected area;

Commission v. Belgium, C 324/01, ECR (2002-I) 11197

Habitat-directive: Member States are obliged to include in the implementation notification of the Commission of compensatory measures taken under the habitat directive article 6(4). Belgium did not comply with this obligation and failed to implement the habitat directive articles 1, 4(5), 5(4), 6, 7, 12, 13, 14, 15, 16(1), 22(b).

Commission v. Italy, C 378/01, ECR (2003-I) 2857

Bird-directive - SPA: Designation of special areas for protection of birds (SPAs): Italy failed to classify as special protection areas the most suitable territories, in number and size for endangered birds covered by annex I of the bird directive and therefore violates the directive article 4(1). Moreover Italy failed to send to the Commission all necessary information relevant to most of the said areas classified by it and thereby violates article 4(3) of the directive

Commission v. Belgium, C 415/01, ECR (2003-I) 2081

Bird-directive - SPA: Member States are obliged to implement the protection of Special protected Areas under the Bird directive in a way which is directly binding on citizens.

Commission v. United Kingdom, C 434/01, ECR (2003-I) ____ (6/11)

Habitat directive - protection of endangered species: The Commission claimed that the protection of Great in UK did not comply with the obligations under the habitat directive article 12 and 16. The action was dismissed because of lack of evidence.

Commission v. Ireland, C 494/01, ECR (2005-I) ____ (26/4)

Habitat and Bird directive - protection os SPA and SCA: In conflict with EC Law to dump waste at a landfill in operation since 1930'ties within an SPA - but the case concerned permits under the waste directive 75/442.

Commission v. Portugal, C 72/02, ECR (2003-I) 6597

Habitat and Bird directive: Portugal failed to implement the general protection under the Bird Directive article 7 and 8 and under the Habitat Directive article 12(4). The implementation of the protection of habitat areas under the habitat directive article 6 and under the Bird Directive article 3 was insufficient. The obligation of notifying the Commission every three year on the implementation measures taking was not an

obligation which needed to be formally implemented in the national legal system.

Commission v. Italy, C 143/02, ECR (2003-I) 2877

Habitat-directive - SPO & SCA: Italy failed to implement the protection of habitat areas under the habitat directive article 6, because [1] the implementation of article 6(3) did not in scope regarding projects complied with the projects covered by the habitat directive; [2] Italy failed to impose obligation on the competent authorities to take appropriate steps in respect of special protection areas to avoid the deterioration of natural habitats and of the habitats of species or disturbance of the species for which the areas were designated, in so far as such disturbance could be significant in relation to the objectives of the habitat directive; and [3] Italy failed to provide that the conservation measures referred to in Article 6(2) of that directive apply to the sites referred to in Article 5(1) of the directive.

Ligue pour la protection des oiseaux, C 182/02, ECR (2003-I) ____ (16/10)

Bird directive - hunting restrictions: The case concerns interpretation of the bird directive article 9(1)(c). The court stated that Member States can derogate from the opening and closing date for hunting for the reasons listed in article 7(4). But that requires there are no other satisfactory solution and that certain obligations are met.

Commission v. Austria, C 209/02, ECR (2004-I) ____ (29/1)

Habitat-directive - SPA protection: Austrian authorization of the extension of a golf course despite a negative assessment of its implications for the special protection area situated in the district and classified found to be a violation of the habitat directive article 6(3) and (4).

Landelijke Vereniging tot Behoud van de Waddenzee and Nederlandse Vereniging tot Bescherming van Vogels, C 127/02, ECR (2004-I) ____ (7/9)

Habitat-directive - SPA protection: (1) the concept of “project” within the meaning of article 6(3) includes mechanical cockle fishing which has been carried on for many years but for which a licence is granted annually for a limited period, with each licence entailing a new assessment both of the possibility of carrying on that activity and of the site where it may be carried on. (2) Article 6(3) establishes a procedure intended to ensure, by means of a preliminary examination, that a plan or project which is not directly connected with or necessary to the management of the site concerned but likely to have a significant effect on it is authorised only to the extent that it will not adversely affect the integrity of that site, while Article 6(2) establishes an obligation of general protection consisting in avoiding deterioration and disturbances which could have significant effects in the light of the Directive’s objectives, and cannot be applicable concomitantly with Article 6(3). (3.1) The first sentence of article 6(3) must be interpreted as meaning that any plan or project not directly connected with or necessary to the management of the site is to be subject to an appropriate assessment of its implications for the site in view of the site’s conservation objectives if it cannot be excluded, on the basis of objective information, that it will have a significant effect on that site, either individually or in combination with other plans or projects. (3.2) Pursuant to the first sentence of Article 6(3), where a plan or project not directly connected with or necessary to the management of a site is likely to undermine the site’s conservation objectives, it must be considered likely to have a

significant effect on that site. The assessment of that risk must be made in the light inter alia of the characteristics and specific environmental conditions of the site concerned by such a plan or project. (4) Under Article 6(3), an appropriate assessment of the implications for the site concerned of the plan or project implies that, prior to its approval, all the aspects of the plan or project which can, by themselves or in combination with other plans or projects, affect the site's conservation objectives must be identified in the light of the best scientific knowledge in the field. The competent national authorities, taking account of the appropriate assessment of the implications of mechanical cockle fishing for the site concerned in the light of the site's conservation objectives, are to authorise such an activity only if they have made certain that it will not adversely affect the integrity of that site. That is the case where no reasonable scientific doubt remains as to the absence of such effects. (5) If a national court is ascertain the lawfulness of an authorization for a plan or project within the meaning of Article 6(3), it can determine whether the limits on the discretion of the competent national authorities set by that provision have been complied with, even though it has not been transposed into the legal order of the Member State concerned despite the expiry of the time-limit laid down for that purpose.

IFAW Internationaler Tierschutz-Fonds supported by the Netherland, Sweden and Denmark v. the Commission supported by UK, T-168/02 ECR-II (2004) ____ (30/11)

Access do documents regarding complains on the habitat-directive: After the Commission issued an opinion authorising the Federal Republic of Germany to declassify the Mühlenberger Loch site (located nearby Daimler Chrysler Aerospace Airbus GmbH factory) as an area protected under Directive 92/43, IFAW asked for the access to certain documents relating to the decision. Certain documents were submitted to IFAW but the Commission rejected access to documents from the German Government. the Court finds that the denial was in accordance with Regulation 1049/2001 regarding public access to European Parliament, Council and Commission documents, because the German Government has rejected public access to the correspondence.

Commission v. Spain, C 79/03, ECR (2004-I) ____ (12/9)

Bird-directive - hunting: Regarding the interpretation of article 8 and 9: by allowing hunting using limed twigs in the Community of Valencia by means of the method known as 'parany', Spain has offended article 8(1) and 9(1) of Directive 79/409.

Commission v. Italy, C 83/03, ECR (2005-I) ____ (2/6)

Habitat-directive - SCI protection and EIA: A permit to a project for the construction of a marina at Fossacesia within within an area designated as SCI the Italian authorities failed to made an adequate assessment on whether an EIA under the EIA Directive was necessary

Commission v. Germany, C 98/03, ECR (2006-I) ____ (10/1)

Habitat-directive : Germany failed to implement legislation protecting designated sites and protected species (*) by authorizing emissions in a special area of conservation, irrespective of whether they are likely to have a significant effect on that area; (*) by derogating from the scope of the provisions concerning the protection of species in the case of certain non-deliberate effects on protected animals; (*) by failing to ensure

compliance with the criteria for derogation set out in Article 16 of the habitat directive; (*) by retaining provisions on the application of pesticides which do not take sufficient account of the protection of species; (*) by failing to ensure that legislation on fishing contains adequate bans on catches,

Società Italiana Dragaggi SpA and Others, C 117/03, ECR (2005-I) ____ (13/1)

Habitat-directive - SCA protection - when: Regarding whether the protection under article 6 must be applied before the Commission has decided the list of sites of Community importance. The ECJ concluded that based on article 4(5), the protection under article 6 is required only as regards sites which are on the list decided by the Commission in accordance with article 4(2). But when a site is included in the list submitted by Member States to the Commission, the Member States are, by virtue of Directive 92/43, required to take protective measures that are appropriate, from the point of view of the directive's conservation objective, for the purpose of safeguarding the relevant ecological interest which those sites have at national level.

Commission v. Finland, C 344/03, ECR (2005-I) ____ (15/12)

Bird-directive - hunting: Derogation from the ban of hunting within the spring season requires that the sufficient status of the species isn't treat and that the hunting don't exceed more than 1% of the yearly death of that species

Commission v. Finland, C 407/03, ECR (2004-I) ____ (15/7)

Habitat-directive - SPA & SCA: Finland didn't sufficiently implement the requirement for assessment under Article 6(3) .

Commission v. Netherland, C 441/03, ECR (2005-I) ____ (14/4)

Habitat-directive - SPA: Regarding the relation between article 6(3) and 6(4). The ECJ concluded that the assessment under article 6(3) must not necessary take into account all the demands under article 6(4) into account based on the following reasoning: "it is only where the assessment required under Article 6(3) is negative and in the absence of alternative solutions that, where the plan or project must nevertheless be carried out for imperative reasons of overriding public interest, the examination laid down in Article 6(4) must be undertaken. [.]. As to the examination which must be carried out within the framework of Article 6(4), it should be noted that the complex factors to which it relates, such as the absence of alternative solutions and the existence of imperative reasons of overriding public interest, are intended to enable a Member State to take all compensatory measures to ensure that the overall coherence of Natura 2000 is preserved. Furthermore, where the site concerned hosts a priority natural habitat type and/or a priority species, only a limited number of such imperative reasons may be relied on in order to justify a plan or project nevertheless being carried out."

Hugo Clerens, C 480/03, ECR (2004-I) ____ (1/10)

Bird-directive - scope: birds covered by the directive - captured birds

Commission v. U.K., C 6/04, ECR (2005-I) ____ (20/10)

Habitat-directive: Regarding the scope of protection territorial, formal and substantial. The implementation of the habitat directive cannot be limit to territorial waters, the

protection under article 6(3) includes water abstract plans and projects, and the protection of species under article 12-16 must be fully implemented.

Commission v. Spain, C 135/04, ECR (2005-I) ____ (9/6)

Bird-directive - hunting: Regarding the interpretation of article 7 and 9: by allowing the practice of “a contrapasa” hunting of woodpigeons in Guipúzcoa without documentation there was no other sufficient solution, Spain failed to comply with the Bird directive

Commission v. Greece, C 166/04, ECR (2005-I) ____ (27/10)

Bird directive SPA designation: Greece didn't designate and protect SPA in accordance with the bird directive article 4

Commission v. Austria, C-209/04 (2006-I) ____ (23/3)

Habitat-directive - SCA: Member States may not take account of economic, social and cultural requirements or regional and local characteristics when selecting and defining the boundaries of the sites to be proposed to the Commission as eligible for identification as sites of Community importance under the habitat directive article 4(1). The protection of designated sites under the habitat directive article 6(4) does not apply for projects initiated before the habitat directive was in force, why the directive didn't apply for decision of a highway in Austria initiated before this directive should have been implemented.

Commission v. Spain, C.221/04, ECR (2006-I) ____ (18/5)

Habitat-directive - hunting restrictions: Permission to none selective methods for fox hunting not in conflict with the habitat directive, because fox is not a protected species.

Commission v. Portugal, C 239/04, ECR (2006-I) ____ (26/10)

Habitat-directive - SCA and SPA protection: Portugal has offended the habitat directive article 6(4) by permitting a motorway through an area of Cape Verde designated as SPA and SCA because the assessment indicates a negative impact and no alternatives were considered seriously

Commission v. Austria, C-508/04, ECR (2007-I) ____ (10/5)

Habitat directive - legal definitions, conservation plans and species protection: Infringement of EC law that the habitat directive definition of ‘conservation status of natural habitat’ and other definitions of the directive wasn't formally implemented in Austrian legislation. Austrian legislation on “country side management” plans could not found the basis or be used to implement plans to protect Natura 2000 sites because the content on country side management plans could be influenced by economic interests of region. The protection of endangered species in two Austrian regions didn't comply with the habitat directive article 12, 13 and 16

Commission v. Greece, C 518/04, ECR (2006-I) ____ (16/3)

Habitat-directive - species protection: Greece failed comply with the habitat directive article 12 by not taken the necessary measures til ensure an effective system of strict protection for the viper *Vipera schweizeri* on the island of Milos prohibiting deliberate disturbance of that species, particularly during the period of breeding, rearing and

hibernation and deterioration or destruction of breeding sites or resting places of that species.

WWF Italia v. Lombardia, C-60/05, ECR (2006-I) ____ (8/6)

Bird-directive - hunting restrictions: Derogation from the ban of hunting in the Bird Directive requires that the administrative procedures provided for are organised in such a way that both the decisions of the competent authorities authorising hunting derogations and the manner in which those decisions are applied are subject to effective control exercised in a timely manner

Commission v. U.K., C-131/05, ECR (2005-I) ____ (17/11)

Habitat and bird-directive: U.K: didn't in time implement the measures to protect species.

Commission v. Ireland, C-183/05, ECR (2007-I) ____ (11/1)

Habitat directive - species protection: Ireland didn't take all the requisite specific measures for the effective implementation of the system of strict protection laid down in article 12(1) of the habitat directive. In conflict with the strict protection of species under the habitat directive that Ireland didn't sanction damage or disturbance caused by negligence

Commission v. Portugal, C-191/05, ECR (2006-I) ____ (13/7)

Bird-directive - designation of SPA: Portugal offended the Bird Directive article 4(1) by altering the demarcation of the 'Moura, Mourão, Barrancos' Special Protection Area, and thereby excluding from it areas providing a habitat for species of wild birds for whose protection that area was designated

Bund Naturschutz in Bayern and others, C-244/05, ECR (2006-I) ____ (14/9)

Habitat-directive - before SCA has been decided by Commission: the appropriate protection regime applicable to sites which appear on a national list transmitted to the Commission, under Article 4(2) of the habitat, requires Member States not to authorize interventions which incur the risk of seriously compromising the ecological characteristics of those sites. Member States must, in accordance with the provisions of national law, take all the measures necessary to avoid interventions which incur the risk of seriously compromising the ecological characteristics of the sites which appear on the national list transmitted to the Commission. It is for the national court to assess whether that is the case.

Rodenbröker v. Commission, T-117/05 ECR (2006) II ____ (19/9)

Habitat-directive - SCA, expropriation and locus standy: Request for suspension of the Commission decision on designating SCA areas in Germany dismissed - the case is a legal action from landowners in Germany claiming that the habitat-protection must be considered expropriation and therefore requires compensation - and since the protection depends on the decision of the Commission - the Commission is the target of the legal action. ECJ: Landowners didn't have standing to challenge the decision of the Commission under habitatdirective article 4 on designating areas. The case dismissed.

Benkö and others v. Commission, T-122/05 (2006) II ____ (19/9)

Habitat-directive - SCA, expropriation and locus standy: Neither landowners nor municipalities did have standing to challenge the decision of the Commission under habitatdirective article 4on designating areas. The case dismissed.

Extraterritorial species protection

S. Lehrfreund Ltd v Council, T-228/95 R ECR (1996) II, 111

Leghold traps: S. Lehrfreund Ltd claim the Council Regulation 3254/91 prohibiting the use of leghold traps in the Community and the introduction into the Community of pelts and manufactured goods of certain wild animal species originating in countries which catch them by means of leghold traps or trapping methods which do not meet international humane trapping standards was invalid and ask for interim measures. The court found the complain wasn't admissible and dismissed the case.

Annie Pansard and others, C 265/01, ECR (2003-I) 683

Fishing policy - extraterritorial protection: Community fisheries law precludes national prohibition of landing of scallops legally caught within the territorial waters of another Member State even if the fishers landing are of the same nationality and are carrying the same flag as the Member State prohibiting such an activity.

Free trade v. fauna falsification:

Commission v. Germany, C 131/93 ECR (1994-I) 3303

German crayfish: German ban of import of crayfish to protect against fauna-falsification did not meet the test of proportionality because the ban could be replaced by monitoring requirements

Bluhme, C 67/97, ECR (1998-I) 8033

Danish bees: Danish ban of import of yellow bees to a small island to protect against fauna falsification considered an obstacle to free trade covered by the Treaty article 28 but justified by the protection of biodiversity and did not violate the proportionality test

The Rio Convention on Biodiversity

Ratification of the protocol on bio-safety under the Biodiversity Convention U 2/00

ECR(2001-I) 9713

The protocol should not be ratified under the Treaty article 133 (external trade) - but under the Treaty article 175. The EC legislation on living modified organism is not exhaustive, therefore the EC has not exclusive competence to ratify the protocol