JUDGMENT OF THE COURT (First Chamber)

16 February 2006 (*)

(Waste – Transfer of waste – Waste intended for recovery operations – Concept of 'notifier' – Notifier's obligations)

In Case C-215/04,

REFERENCE for a preliminary ruling under Article 234 EC, by the l'Østre Landsret (Denmark), made by decision of 14 May 2004, received at the Court on 21 May 2004, in the proceedings

Marius Pedersen A/S

v

Miljøstyrelsen,

THE COURT (First Chamber),

composed of P. Jann, President of the Chamber, K. Schiemann (Rapporteur), N. Colneric, J.N. Cunha Rodrigues and E. Levits, Judges,

Advocate General: P. Léger,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 26 May 2005,

after considering the observations submitted on behalf of:

– Marius Pedersen A/S, by H. Banke, advokat,

– the Miljøstyrelse, by P. Biering, advokat,

– the Danish Government, by J. Molde and P. Biering, acting as Agents,

– the Belgian Government, by D. Haven, acting as Agent,

– the Austrian Government, by E. Riedl, acting as Agent,

– the Polish Government, by J. Pietras, acting as Agent,

– the Commission of the European Communities, by M. Konstantinidis and H. Støvlbæk, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 14 July 2005,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Articles 2(g), 6(5) and 7(1), (2) and (4)(a) of Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community (OJ 1993 L 30, p. 1).

2 The reference has been made in the course of proceedings between Marius Pedersen A/S ('Pedersen'), an undertaking authorised to collect electronic scrap, established in Denmark, and the Miljøstyrelse (Environment Agency), concerning transport to Germany of that waste for recovery.

Legal context

3 Pursuant to the ninth recital in the preamble to Regulation No 259/93:

'... shipments of waste must be subject to prior notification to the competent authorities enabling them to be duly informed in particular of the type, movement and disposal or recovery of the waste, so that these authorities may take all necessary measures for the protection of human health and the environment, including the possibility of raising reasoned objections to the shipment'.

4 Article 2(g) of that regulation defines 'notifier' as follows:

'… any natural person or corporate body to whom or to which the duty to notify is assigned, that is to say the person referred to hereinafter who proposes to ship waste or have waste shipped:

(i) the person whose activities produced the waste (original producer); or

(ii) where this is not possible, a collector licensed to this effect by a Member State or a registered or licensed dealer or broker who arranges for the disposal or the recovery of waste

…'

5 Article 6 of the same regulation provides:

'1. Where the notifier intends to ship waste for recovery listed in Annex III from one Member State to another …, he shall notify the competent authority of destination and send copies of the notification to the competent authorities of dispatch and transit and to the consignee.

…

4. In making notification, the notifier shall complete the consignment note and shall, if requested by competent authorities, supply additional information and documentation.

5. The notifier shall supply on the consignment note information with particular regard to:

– the source, composition and quantity of the waste for recovery, including the producer's identity and, in the case of waste from various sources, a detailed inventory of the waste and, if known, the identity of the original producer,

…'

6 Pursuant to Article 7 of Regulation No 259/93:

'1. On receipt of the notification the competent authority of destination shall send, within three working days, an acknowledgement to the notifier and copies thereof to the other competent authorities and to the consignee.

2. The competent authorities of destination, dispatch and transit shall have 30 days following dispatch of the acknowledgement to object to the shipment. Such objection shall be based on paragraph 4. Any objection must be provided in writing to the notifier and to other competent authorities concerned within the 30-day period.

…

4. (a) The competent authorities of destination and dispatch may raise reasoned objections to the planned shipment:

– in accordance with Directive 75/442/EEC, in particular Article 7 thereof, or

– if it is not in accordance with national laws and regulations relating to environmental protection, public order, public safety or health protection,

…

…'

5. If within the time limit laid down in paragraph 2 the competent authorities are satisfied that the problems giving rise to their objections have been solved and that the conditions in respect of the transport will be met, they shall immediately inform the notifier in writing, with copies to the consignee and to the other competent authorities concerned.

If there is subsequently any essential change in the conditions of the shipment, a new notification must be made.'

7 Article 4 of Council Directive 75/442/EEC of 15 July 1975 on waste (OJ 1975 L 194, p. 39), as amended by Council Directive 91/156/EEC of 18 March 1991 (OJ 1991 L 78, p. 32, hereinafter 'Directive 75/442'), provides:

'Member States shall take the necessary measures to ensure that waste is recovered or disposed of without endangering human health and without using processes or methods which could harm the environment, and in particular:

– without risk to water, air, soil and plants and animals,

– without causing a nuisance through noise or odours,

– without adversely affecting the countryside or places of special interest.

Member States shall also take the necessary measures to prohibit the abandonment, dumping or uncontrolled disposal of waste.'

The main proceedings and the questions referred for a preliminary ruling

8 By its notification of 21 February 2000, Pedersen asked the Miljøstyrelse for authorisation to transport 2 000 tonnes of electronic scrap to its partner undertaking established in Germany, for the purposes of recovery. The Agency refused to authorise the transport on the ground that Pedersen had failed to supply it with the information necessary for it to consider the request for authorisation, particularly:

(1) letters of authorisation from the original producers of the waste stating that Pedersen represented them for the purposes of exporting the waste collected;

(2) proof that the installation established in Germany would treat the waste in a manner giving a level of environmental protection corresponding to that required under the Danish rules;

(3) sufficient information regarding the composition of the waste, Pedersen having stated merely, in the notification form relating to cross-border transport, that the transport was of 'electronic scrap'.

9 Furthermore, in the light of the alleged incompleteness of the notification, the Miljøstyrelse took the view that the 30-day period laid down in Article 7 of Regulation No 259/93 for the competent authority to give its consent or to raise objections could not begin to run.

10 On 22 May 2001, Pedersen brought an action before the Østre Landsret (Eastern Regional Court), taking the view that it had provided sufficient material to enable the Miljøstyrelse to issue the authorisation requested and considering that the period within which objections could be raised had expired and that, consequently, it was entitled to proceed with the transports at issue in the main proceedings.

11 In those circumstances, the Østre Landsret decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

'1. Must the expression "where this is not possible" in Article 2(g)(ii) of Regulation … No 259/93 … be understood as meaning that an approved collection undertaking cannot automatically be the notifier of exports of waste for recycling?

If the answer is in the affirmative: which criteria determine whether an approved collection undertaking can be the notifier of exports of waste for recycling?

May the criterion be that the waste producer is unknown or that there are so many waste producers, the individual contribution of each of which is so modest, that it would be unreasonable for each individually to be required to notify the exportation of the waste?

2. Does Article 7(2) of Regulation … No 259/93 …, in conjunction with Article 7(4)(a), first and second indents in particular, provide a possibility for the competent authorities of the country of dispatch to raise an objection against a specific request for authorisation to export waste for the purpose of recycling if there is no information from the notifier that the recipient plant's treatment of the waste in question will, from the environmental point of view, be of the same standard as is required under national rules in the country of dispatch?

3. Must the first indent of Article 6(5) of Regulation … No 259/93 … be construed as meaning that the requirement as to information on the composition of the waste may be regarded as being satisfied if the notifier indicates that the waste in question is of only one specific kind, for example, "electronic scrap"?

4. Must Article 7(1) and (2) of Regulation … No 259/93 … be construed as meaning that the period in Article 7(2) begins to run when the competent authority of destination has sent the acknowledgement, irrespective of the fact that the competent authority of dispatch does not consider that it has received all of the information set out in Article 6(5)?

   If the answer is in the negative: what information must a notification contain before the 30-day period indicated in Article 7(2) can begin to run?

   Does the fact of having exceeded the 30-day period for reply have the effect in law that the authority cannot raise further objections or request further information?'

The first question

12 By its first question, the national court asks, essentially, whether Article 2(g)(ii) of Regulation No 259/93 is to be interpreted as meaning that the licensed waste collector is not automatically authorised to give notification of the transport thereof for recovery.

13 It is apparent from the actual wording of Article 2(g)(ii) that, where the person whose activity has produced the waste in question, in this case the original producer, is unable to give notification of the transport, a licensed collector may fulfil the role of notifier, but solely in such a case.

14 Thus that article expressly precludes the licensed collector being automatically considered the sole notifier of the transport of waste.

15 In addition, the national court seeks determination of the criteria on the basis of which the licensed collector may be the notifier of a shipment of waste for recovery.

16 Although the obligation to notify the transport of waste falls firstly on the original producer, the phrase 'where this is not possible' means that, where the original producer cannot give the notification, the licensed collector may do so. In the light of one of the objectives of

Regulation No 259/93, as set out in the ninth recital in the preamble thereto, namely the prior notification to the competent authorities of shipments of waste enabling them to be duly informed, so that they may take all necessary measures for the protection of human health and the environment, it is necessary to give a wide interpretation of the phrase 'where this is not possible' in order to ensure that, where it is impossible for the notification of the transport to the competent authorities to be given by the original producer, it may be given by the licensed collector.

17 In that context, the situations referred to by the national court, such as the fact that the producer of the waste is unknown or that there are so many waste producers, the individual contribution of each of which is so modest that it would be unreasonable for each individually to be required to notify the transport of the waste, constitute criteria which allow the licensed collector to notify the competent authorities of the transport and which fall within the scope of the phrase 'where this is not possible'.

18 In particular, where the identity of the original producer is unknown, it is entirely justified and even desirable that it be the licensed collector who notifies the competent authorities. Furthermore, as the Advocate General noted in point 26 of his Opinion, the multiplication of notifications resulting from the large number of producers each producing small amounts of waste would be incompatible with the obligation on the competent authorities pursuant to Regulation No 259/93 to examine those notifications within a relatively short time.

19 The answer to the first question must therefore be that the phrase 'where this is not possible' in Article 2(g)(ii) of Regulation No 259/93 must be interpreted as meaning that the simple fact that a person is a licensed collector does not confer on him the status of notifier of a shipment of waste for recovery. However, the situation that the producer of the waste is unknown or that the number of waste producers is so great and the individual contribution of each of them so small that it would be unreasonable for each individually to be required to notify the transport of the waste may justify the licensed collector being considered as the notifier of a shipment of waste for recovery.

The second question

20 By its second question, the national court asks essentially whether the competent authorities of the State of dispatch are entitled to raise an objection against a request for authorisation to export waste for the purpose of recovery to a State of destination for the sole reason that the information supplied by the notifier does not indicate that the legislation of the State of destination requires the same level of environmental protection as that of the State of dispatch.

21 It must be observed, as a preliminary point, that the question of shipments of waste is regulated in a harmonised manner at Community level by Regulation No 259/93, in order to ensure the protection of the environment (Case C-324/99 *DaimlerChrysler* [2001] ECR I-9897, paragraph 42, and Case C-6/00 *ASA* [2002] ECR I-1961, paragraph 35).

22 The cases in which Member States may object to a shipment of waste between Member States are, for shipments of waste for recovery, those exhaustively listed in Article 7(4) of that regulation as provided by Article 7(2) thereof (*ASA*, paragraph 36).

23 Application of Article 7(4), which defines the cases in which the competent authorities of dispatch, transit and destination may raise objections to transports of waste for recovery, assumes that the competent authority has the information necessary in order to check whether or not a shipment falls within one of those cases.

24 In that regard, Article 6(5) of Regulation No 259/93 provides that the notifier must supply certain information.

25 Furthermore, it is clear from Article 6(4) of that regulation that the competent authorities may request additional information and documentation from the notifier.

26 Since Regulation No 259/93 does not provide for a specific procedure where such a request for additional information or documents is not complied with, the competent authority may raise an 'objection', provided for in Article 7(2) of that regulation, if it does not have the information necessary in order to check whether a shipment raises problems in the light of Article 7(4) of the regulation.

27 In that context, the level of information which is to be considered necessary and which the competent authority may consequently request varies according to the situation referred to in Article 7(4) of Regulation No 259/93.

28 Thus, with regard to the situation referred to in the first indent of Article 7(4)(a) of Regulation No 259/93, the Court has held, in paragraph 43 of the judgment in Case C-277/02 *EU-Wood-Trading* [2004] ECR I-11957, that the competent authorities may base an objection on considerations relating not only to the transport operation itself but also to the recovery operation planned for that shipment.

29 Since under Article 4 of Directive 75/442 the Member States are to take the measures necessary to ensure that waste is recovered or disposed of without endangering human health and without the use of processes or methods capable of harming the environment, the provisions of the first indent of Article 7(4)(a) of Regulation No 259/93 must be interpreted as authorising the competent authorities of dispatch to raise objections to a shipment of waste for recovery on the ground that the planned recovery disregards the requirements arising from Article 4 of that directive (*EU-Wood-Trading*, paragraph 42).

30 In the judgment in *EU-Wood-Trading*, the Court held that the provisions of the first indent of Article 7(4)(a) of Regulation No 259/93 imply that the competent authorities, in assessing the risks which recovery of waste carried out in the State of destination would entail for human health and the environment, may take account of all relevant criteria in that regard, including those which are in force in the State of dispatch, even if they are stricter than those of the State of destination, and provided they are intended to avoid those risks. The competent authorities of dispatch cannot, however, be bound by the criteria of their State if such criteria are no more apt to avoid those risks than those of the State of destination (*EU-Wood-Trading*, paragraph 46).

31 Moreover, opposition by the competent authority of dispatch on the basis of its national waste recovery standards to a shipment can only be lawful in so far as those standards, in compliance with the principle of proportionality, are apt to attain the objectives pursued which are intended to prevent risks for human health and the environment, and do not go beyond what is necessary to attain them (*EU-Wood-Trading*, paragraph 49). Those risks

must be measured, not by the yardstick of general considerations, but on the basis of relevant scientific research (*EU-Wood-Trading*, paragraph 50).

32 Thus, in the context of the prior notification put into place by Article 6 of Regulation No 259/93, the notifier must, in accordance with Article 6(5) thereof, supply on the consignment note supplementing the notification information concerning not only the composition and quantity of waste for recovery and the method of transport but also the conditions under which the waste will be recovered.

33 However, the notifier cannot be required to prove that the recovery in the State of destination will be equivalent to that required by the rules in the State of dispatch. On the contrary, if the competent authority of dispatch wishes, pursuant to the first indent of Article 7(4)(a) of Regulation No 259/93, to object to a shipment on the basis of its national standards for recovery, it is for it to show the risks to human health and the environment which recovery in the State of destination would entail.

34 In the light of the foregoing, the answer to the second question must be that the competent authority of dispatch is entitled, pursuant to Article 7(2) and the first indent of Article 7(4)(a) of Regulation No 259/93, to object to a shipment of waste in the absence of information on the conditions of recovery of that waste in the State of destination. However, the notifier cannot be required to prove that the recovery in the State of destination will be equivalent to that required by the rules in the State of dispatch.

The third question

35 By its third question, the national court asks whether the mention, in the context of the notification of a shipment, of a category of waste such as ‘electronic scrap’ satisfies the obligation to supply information concerning the composition of waste under the first indent of Article 6(5) of Regulation No 259/93.

36 As has already been noted in paragraph 16 of the present judgment, one of the objectives of Regulation No 259/93 is to ensure prior notification is given to the competent authorities of shipments of waste enabling them to be duly informed, so that they may take all necessary measures for the protection of human health and the environment.

37 Only a complete notification, giving detailed information regarding the source, composition and quantity of the waste for recovery and, in the case of waste from various sources, a detailed inventory of the waste, can ensure that that objective is achieved.

38 The mention of ‘electronic scrap’ does not meet that condition, given its abstract and imprecise nature and because of the lack of details giving the competent authority information on the specific characteristics of the waste in question.

39 In the light of the foregoing, the answer to the third question must be that the first indent of Article 6(5) of Regulation No 259/93 must be interpreted as meaning that the obligation to supply information relating to the composition of the waste is not satisfied by the notifier declaring a category of waste under the heading ‘electronic scrap’.

The fourth question

40 By its fourth question, the national court asks whether the fact that the competent authority of dispatch considers that it does not have all the information necessary concerning the shipment of waste for recovery affects the date from which the period of 30 days laid down in Article 7(2) of Regulation No 259/93 starts to run. In addition, that court asks whether the expiry of that period precludes the competent authorities' objecting to the shipment or requesting additional information from the notifier.

41 To answer the question referred, it is appropriate to consider the machinery for notification of shipments of waste as provided for by Regulation No 259/93.

42 According to Article 6(1) of that regulation, where the notifier intends to ship waste for recovery from one Member State to another Member State, he is to notify the competent authority of destination and send copies of the notification to the competent authorities of dispatch and transit and to the consignee.

43 Article 7(1) of the regulation provides that, on receipt of the notification, the competent authority of destination is to send, within three working days, an acknowledgement to the notifier and copies thereof to the other competent authorities and to the consignee.

44 Pursuant to the first subparagraph of Article 7(2), the competent authorities of destination, dispatch and transit are to have 30 days following dispatch of the acknowledgement to object to the shipment.

45 It is therefore apparent from the actual wording of Article 7 of Regulation No 259/93 that the period of 30 days begins to run when the competent authority of destination has sent an acknowledgement of receipt. The fact that the competent authority of dispatch, as is the case in the main proceedings, considers that it has not received all the information necessary should not cause that period not to start to run. The period of 30 days laid down by that regulation provides the notifier with a guarantee that the shipment will be examined within the periods prescribed by the regulation and that he will be informed, upon the expiry of those periods at the latest, whether, and on what conditions, if any, the shipment can be carried out (see to that effect, with regard to an objection raised by the competent authority of dispatch concerning the erroneous classification of a shipment, *ASA*, paragraph 49).

46 For that reason, having regard to considerations of legal certainty, Article 7(2) of Regulation No 259/93 should be interpreted strictly. Since the period of 30 days laid down in that article constitutes a guarantee of sound administration, the competent authorities may raise objections only if they comply with that time-limit.

47 Thus, the lack of certain information which the competent authority, in the present case the competent authority of dispatch, considers it useful, or indeed necessary, to request must not prevent the period of 30 days laid down in Article 7(2) of Regulation No 259/93 from starting to run.

48 In their written observations, the Danish, Austrian and Polish Governments made known their fears with regard to that interpretation, submitting that the fact of accepting that the period of 30 days starts to run when the acknowledgement of receipt has been sent by the

competent authority of destination, without taking into account the fact that the notification is incomplete, would lead to a situation where the competent authorities were not in a position to object to the shipment.

49 In that regard, taking account of the fact that the competent authorities must be duly informed, by way of prior notification, of the type, movement and disposal or recovery of the waste, so that they may take all necessary measures for the protection of human health and the environment, including the possibility of raising reasoned objections to the shipment, it is necessary to maintain the rights of those authorities to request additional information when they consider that the notification is incomplete, rights conferred on them by Article 6(4) of Regulation No 259/93.

50 However, the interpretation given in paragraphs 46 and 47 of the present judgment do not prejudice those rights. Since Regulation No 259/93 does not lay down any specific procedure for the introduction by the competent authorities of requests for additional information and documents pursuant to Article 6(4) of that regulation, such requests may be formulated by the competent authorities, in the present case the authority of dispatch, within the 30-day period, in the form of an 'objection' provided for in Article 7(2) of the regulation. Such a solution allows strict interpretation of Article 7(2) to be reconciled with maintaining the rights of the competent authorities to request additional information.

51 Should the additional information requested by the competent authority of dispatch be received within the 30-day period and that authority be satisfied that the problems giving rise to their objections have been solved, it will, in accordance with Article 7(5) of Regulation No 259/93, immediately inform the notifier in writing, with a copy to the consignee and the other competent authorities involved. If subsequently there is an essential change to the transport arrangements, a new notification must be given.

52 In those circumstances, the answer to the fourth question must be that the period in Article 7(2) begins to run when the competent authorities of the State of destination have sent the acknowledgement of receipt of the notification, irrespective of the fact that the competent authorities of the State of dispatch do not consider that they have received all of the information set out in Article 6(5) of that regulation. The effect of the expiry of that time-limit is that the competent authorities can no longer raise objections to the shipment or request additional information from the notifier.

Costs

53 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) hereby rules:

1. **The phrase 'where this is not possible' in Article 2(g)(ii) of Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community must be**

interpreted as meaning that the simple fact that a person is a licensed collector does not confer on him the status of notifier of a shipment of waste for recovery. However, the situation that the producer of the waste is unknown or that the number of waste producers is so great and the individual contribution of each of them so small that it would be unreasonable for each individually to be required to notify the transport of the waste may justify the licensed collector being considered as the notifier of a shipment of waste for recovery;

2. **The competent authority of dispatch is entitled, pursuant to Article 7(2) and the first indent of Article 7(4)(a) of Regulation No 259/93, to object to a shipment of waste in the absence of information on the conditions of recovery of that waste in the State of destination. However, the notifier cannot be required to prove that the recovery in the State of destination will be equivalent to that required by the rules in the State of dispatch;**

3. **The first indent of Article 6(5) of Regulation No 259/93 must be interpreted as meaning that the obligation to supply information relating to the composition of the waste is not satisfied by the notifier declaring a category of waste under the heading 'electronic scrap';**

4. **The period in Article 7(2) of Regulation No 259/93 begins to run when the competent authorities of the State of destination have sent the acknowledgement of receipt of the notification, irrespective of the fact that the competent authorities of the State of dispatch do not consider that they have received all of the information set out in Article 6(5) of that regulation. The effect of the expiry of that time-limit is that the competent authorities can no longer raise objections to the shipment or request additional information from the notifier.**

[Signatures]

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* Language of the case: Danish.

LÉGER
delivered on 14 July 2005 [1](1)

Case C-215/04

Marius Pedersen A/S
v
Miljøstyrelsen

(Reference for a preliminary ruling from the Østre Landsret (Denmark))

(Regulation (CEE) No 259/93 on the shipment of waste – Waste for recovery – Definition of 'notifier' – Notifier's obligations – Procedural time limits)

1. In this reference for a preliminary ruling the Østre Landsret (Eastern Regional Court) (Denmark) has asked the Court to interpret several provisions of Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community. (2)

2. In particular, the questions put by the national court seek the clarification of certain important parts of the procedure for the shipment between Member States of waste for recovery.

I – The Community law background

3. As the Court has observed, (3) the object of Regulation No 259/93 (4) is to provide a harmonised set of procedures whereby movements of waste can be limited in order to secure protection of the environment.

4. Title II of the Regulation lays down the procedure applying to shipments of waste between Member States. Chapter A of Title II, comprising Articles 3 to 5, covers waste for disposal and Chapter B, comprising Articles 6 to 11, relates to waste for recovery. The rules applying to waste for recovery are less stringent than those relating to waste for disposal. This difference in the system arises from the Community legislature's aim of giving priority to recovery. (5) The terms 'disposal' and 'recovery' of waste are defined in Council Directive 75/442/EEC of 15 July 1975 on waste, (6) to which the Regulation expressly refers. (7)

5. The Regulation requires any natural or legal person who wishes to ship waste from one Member State to another for disposal or recovery, called 'the notifier', to inform the competent authorities and the consignee of the waste of his proposal.

6. Article 2(g) of the Regulation defines 'notifier' as follows:

'g) "notifier" means any natural person or corporate body to whom or to which the duty to notify is assigned, that is to say the person referred to hereinafter who proposes to ship waste or have waste shipped:

(i) the person whose activities produced the waste (original producer);

or

(ii) where this is not possible, a collector licensed to this effect by a Member State or a registered or licensed dealer or broker who arranges for the disposal or the recovery of waste;

or

(iii) where these persons are unknown or are not licensed, the person having possession or legal control of the waste (holder);

[…]'

7. In the words of the ninth recital of the preamble to the Regulation, the object of prior notification of shipments of waste to the competent authorities is to enable them 'to be duly informed in particular of the type, movement and disposal or recovery of the waste, so that these authorities may take all necessary measures for the protection of human health and the environment, including the possibility of raising reasoned objections to the shipment'.

8. In relation to the procedure for the notification of waste for recovery, Article 6 of the Regulation provides as follows:

'1. Where the notifier intends to ship waste for recovery […] from one Member State to another Member State and/or pass it in transit through one or several other Member States […] he shall notify the competent authority of destination and send copies of the notification to the competent authorities of dispatch and transit and to the consignee.

[…]

3. Notification shall be effected by means of the consignment note which shall be issued by the competent authority of dispatch.

4. In making notification, the notifier shall complete the consignment note and shall, if requested by competent authorities, supply additional information and documentation.

5. The notifier shall supply on the consignment note information with particular regard to:

– the source, composition and quantity of the waste for recovery, including the producer's identity and, in the case of waste from various sources, a detailed inventory of the waste and, if known, the identity of the original producers,

[…]'

9. In addition, under Article 7 of the Regulation:

'1.. On receipt of the notification the competent authority of destination shall send, within three working days, an acknowledgement to the notifier and copies thereof to the other competent authorities and to the consignee.

2. The competent authorities of destination, dispatch and transit shall have 30 days following dispatch of the acknowledgement to object to the shipment. Such objection shall be based on paragraph 4. Any objection must be provided in writing to the notifier and to other competent authorities concerned within the 30-day period.

The competent authorities concerned may decide to provide written consent in a period less than the 30 days.

[…]

4. (a) The competent authorities of destination and dispatch may raise reasoned objections to the planned shipment:

– in accordance with Directive 75/442/EEC, in particular Article 7 thereof,

or

– if it is not in accordance with national laws and regulations relating to environmental protection, public order, public safety or health protection

[…]'.

10. Article 8(1) of the Regulation provides that

'1. The shipment may be effected after the 30-day period has passed if no objection has been lodged. Tacit consent, however, expires within one year from that date.

Where the competent authorities decide to provide written consent, the shipment may be effected immediately after all necessary consents have been received.'

11. Furthermore, Article 10 of the Regulation contains special provisions relating to waste for recovery which are not yet listed in one of Annexes II, III or IV. It provides that such waste is subject to the same procedures as those referred to in Articles 6 to 8 except that 'the consent of the competent authorities concerned must be provided in writing prior to commencement of shipment'. It appears from the file that this procedure applies in connection with the shipment of waste electronic equipment at issue in the main proceedings.

12. Finally, I note that on 30 June 2003 the Commission presented a proposal for a regulation of the European Parliament and the Council on the shipment of waste (8) and then, on 8 March 2004, an amended proposal (9) which has still not been adopted by the two institutions. I shall refer later to some of the proposed modifications concerning the notification procedure relating to waste for recovery

II – The main proceedings

13. The company Marius Pedersen A/S ('Pedersen') asked the Miljøstyrelse, which is the national environment agency and the competent authority in Denmark for receiving import notifications and copies of export notifications for waste, (10) for authorisation to ship 2 000 tonnes of waste electronic equipment to its partner undertaking in Germany with a view to recovery.

14. The notification provided for by Article 6 of the Regulation was received on 25 February 2000 by the competent authorities of the destination State. They sent an acknowledgement of receipt to Pedersen and the Miljøstyrelse on 2 March 2000.

15. By letter of 14 March 2000 the Miljøstyrelse informed Pedersen that it required a more detailed description of the waste to be exported. This request was followed by an exchange of correspondence between the two parties to the main proceedings, a meeting on 18 October 2000 and two other letters from the Miljøstyrelse dated 31 October 2000 and 9 July 2001 respectively informing Pedersen of the particulars it deemed necessary to be able to grant authorisation.

16. The Miljøstryrelse refused to authorise the export on the ground that Pedersen had not provided the following information necessary for considering the request:

– a list of the original producers of the waste, and the power of attorney given by them, showing that Pedersen represented them for the purposes of exporting the waste collected. Consequently, Pedersen could not act as the notifier of the shipment;

– proof that the German plant would treat the waste in a manner giving a level of environmental protection corresponding to that required under the Danish rules;

– sufficient information regarding the composition of the waste; Pedersen having stated merely, in the notification form relating to cross-border transport, that the transport was of 'electronic scrap'

In addition, as the notification was said to be incomplete, the Miljøstyrelse took the view that the 30-day period laid down by Article 7(2) of the Regulation for the competent authority of dispatch to give consent or to raise objections could not begin to run.

Pedersen has brought an action before the Østre Landsret taking the view that it has provided sufficient documentation for the Miljøstyrelse to be able to grant the authorisation requested, that the time limits for raising objections have expired and that therefore it has a right to carry out the exports.

III – The reference for a preliminary ruling

17. As the Østre Landsret was uncertain as to the interpretation of several provisions of the Regulation, it decided to refer the following questions to the Court for a preliminary ruling:

‘1) a) Must the expression “where this is not possible” in Article 2(g)(ii) of Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community be understood as meaning that an approved collection undertaking cannot automatically be the notifier of exports of waste for recycling?

b) If the answer is in the affirmative: which criteria determine whether an approved collection undertaking can be the notifier of exports of waste for recycling?

c) May the criterion be that the waste producer is unknown or that there are so many waste producers, the individual contribution of each of which is so modest that it would be unreasonable for each individually to be required to notify the exportation of the waste?

2) Does Article 7(2) of Regulation No 259/93, in conjunction with Article 7(4)(a), first and second indents in particular, provide a possibility for the competent authorities of the country of dispatch to raise an objection against a specific request for authorisation to export waste for the purpose of recycling if there is no information from the notifier that the recipient plant’s treatment of the waste in question will, from the environmental point of view, be of the same standard as is required under national rules in the country of dispatch?

3) Must the first indent of Article 6(5) of Regulation No 259/93 be construed as meaning that the requirement concerning information on the composition of the waste in question is only one specific kind, for example, ‘electronic scrap’.

4) a) Must Article 7(1) and (2) of Regulation No 259/93 be construed as meaning that the period in Article 7(2) begins to run when the competent authority of destination has sent the acknowledgement, irrespective of the fact that the competent authority of dispatch does not consider that it has received all of the information set out in Article 6(5)?

b) If the answer is in the negative: what information must a notification contain before the 30-day period indicated in Article 7(2) can begin to run?

c) Does the fact of having exceeded the 30-day period for reply have the effect in law that the authority cannot raise further objections or request further information?’

IV – Discussion

A – *The first question*

18. With the first question the national court asks in essence whether the phrase ‘where this is not possible’ in Article 2(g)(ii) of the Regulation must be construed as

meaning that an approved collection undertaking cannot automatically be the notifier of exports of waste for recovery. If the answer is in the affirmative, the national court then asks what criteria could permit the said undertaking to become a notifier. On this point the national court is uncertain as to whether two criteria are relevant, namely whether the waste producer is unknown and whether, in view of the number of waste producers, the waste production of each is so small that it would be unreasonable to require each of them to give notice of a waste shipment.

19. Like the Commission and the Austrian, Danish and Polish Governments, I think the phrase in question must be interpreted as meaning that an approved collector cannot automatically, that is to say, in every case, become the notifier of an export of waste for recovery.

20. It is clear from the wording of Article 2(g)(i) and (ii) of the Regulation that the Community legislature wished to establish a specific order of priority with respect to the appropriate persons for notifying the competent authorities of the export of waste. Accordingly a reading of the provision shows that it is primarily, and principally, 'the person whose activity produced the waste', that is to say, the original producer, who acts as the notifier.

21. 'Where this is not possible', and only in that case, can a collector licensed by a Member State act as the notifier in so far as he takes second place in the order laid down by Article 2(g)(i) and (ii). Consequently a licensed collector becomes a notifier only as an alternative to the original producer of the waste, and not automatically.

22. The question under consideration asks the Court in particular to determine the circumstances in which it is not possible for the original producer to be regarded as the only authorised notifier under the Regulation.

23. On this point the national court submits two tests for the Court's assessment. The first is whether the producer of the waste is unknown and the second is whether there are so many producers and the waste production of each is so small that it would be unreasonable to require each to give notice of the shipment of waste.

24. I think the tests suggested by the national court to enable a licensed collector to become a notifier within the meaning of the Regulation are relevant.

25. With regard to the first test, it seems to me clear that where no-one knows the identity of the original producer of the waste to be shipped, as may be the case, for example, in relation to abandoned waste without any labelling to show who produced it, (11) it is impossible in practice to recognise the producer of the waste as the notifier. In that situation, since a licensed collector takes second place in the list of persons who may legally act as notifier, he will be authorised under the Regulation himself to notify the competent authorities of the waste shipment concerned. (12)

26. With regard to the second test, namely a large number of producers each producing a small quantity of waste, it seems to me difficult to interpret the Regulation as imposing an absolute obligation on the small producers alone to give notice of proposed waste shipments. On this point I think the phrase 'where this is not possible' must be construed broadly in order to ensure that the notification procedure is effective. In my

opinion, multiple notifications from producers of small quantities of waste would be inconsistent with the obligation imposed by the Regulation on the competent authorities to examine notifications within a relatively short period.

27. Furthermore, to refuse to recognise a licensed collector as a notifier in such circumstances would not contribute to encouraging the separate collection of waste electrical and electronic equipment. Although Directive 2002/96 was not in force at the material time, it is interesting to note that it expressly mentions the aim of achieving 'a high level of separate collection' of such waste. (13)

28. This aim is justified by the fact that dangerous components are present in electrical and electronic equipment, which necessitates special treatment of the resulting waste. Separate collection is therefore the precondition for ensuring such special treatment and the recycling of waste electrical and electronic equipment in a way which is safe for the environment. (14)

29. From that point of view, I consider that to interpret Article 2(g) of the Regulation as meaning that, where there is a large number of producers each producing a small quantity of waste, a licensed collector must be recognised as a notifier within the meaning of Article 2(g) fulfils the Regulation's purpose of protecting the environment. In this connection it must be observed that, according to the sixth recital of the Regulation, 'it is important to organise the supervision and control of shipments of waste in a way which takes account of the need to preserve, protect and improve the quality of the environment'.

30. Consequently I propose that the Court's reply to the question from the national court should be that the phrase 'where this it not possible' in Article 2(g)(ii) of the Regulation must be interpreted as meaning that a licensed collector of waste cannot automatically become a notifier of a shipment of waste for recovery. On the other hand, a licensed collector may, by virtue of the Regulation, be deemed the notifier of such a shipment in particular where either the waste producer is unknown or there is a large number of producers, each producing a small quantity of waste.

B – *The second question*

31. With this question, the national court asks whether Article 7(2) and the first and second indents of Article (4)(a) of the Regulation must be interpreted as meaning that the competent authority of dispatch may object to a shipment of waste for recovery if the authority has no information from the notifier which is capable of showing that the waste will be processed in the Member State of destination in accordance with methods which are of the same standard, from the environmental point of view, as those required by the legislation of the State of dispatch.

32. To reply to this question, some guidance is given by the recent judgment in the case of *EU-Wood-Trading* v *Sonderabfall-Management Gesellschaft Rheinland-Pfalz,* (15) in which the Court held that the first indent of Article 7(4)(a) of the Regulation must be interpreted as meaning that the objections to a shipment of waste for recovery which the competent authorities of dispatch and of destination are empowered to raise may be based on considerations connected not only with the actual transport of the waste in each competent authority's area of jurisdiction *but also with the recovery operation planned for*

that shipment. Secondly, the Court held that, for the purpose of an objection to a shipment of waste, the competent authority of dispatch may, in assessing the effects on health and the environment of the recovery envisaged at the destination, provided it complies with the principle of proportionality, *rely on the criteria to which, to avoid such effects, the recovery of waste is subject in the State of dispatch, even where those criteria are stricter than those in force in the State of destination.*

33. In my view, the premises of the Court's reasoning in reaching this conclusion provide the reply to the question from the national court.

34. It must be observed that the Court clearly emphasised the need, in order to attain the aims of protecting health and the environment, to take account of every shipment of waste between Member States in its entirety, that is to say, from the point of departure of the waste in the State of dispatch to the completion of processing in the destination State. The examination of a shipment of waste in its entirety would be compromised if the competent authorities were not duly informed of the details of the shipment operation. In this connection, Article 6(5) of the Regulation requires the notifier to provide various particulars, such as the source, composition and quantity of waste for recovery and the transport arrangements.

35. The Court interpreted that article of the Regulation as meaning that the notifier must also provide information *on the conditions under which the waste is to be recovered*. On this point the Court finds that the Community legislature 'intended that all the competent authorities be informed of the whole process of treatment of the waste up to the point when it no longer poses a risk to health or the environment'. (16)

Complete information for the competent authorities is the essential prerequisite for them to take all necessary measures for the protection of human health and the environment, such as the possibility of raising reasoned objections.

36. This approach consequently enabled the Court to find that the competent authority has a right to be informed of the conditions under which waste will be recycled in the Member State of destination. The right to be informed implies power for the authority in question to object to a shipment on the basis of the first indent of Article 7(4)(a) of the Regulation where it considers that, in view of the information which it must have, the proposed recovery at the destination may have adverse effects on human health and the environment. (17) On this basis, the competent authority of dispatch may also determine whether, in each particular case and subject to compliance with the principle of proportionality, the recovery planned in the State of destination, although governed by more flexible rules, may nevertheless ensure protection comparable with that aimed at by its national rules.

37. This specific assessment of risks by the competent authority of dispatch, which must be made on the basis of relevant scientific research and not on that of general considerations, is impossible without information from the notifier concerning the conditions under which recovery will be carried out in the destination State. (18)

38. However, as we have seen, the obligation to provide information is imposed directly on the notifier by Article 6(5) of the Regulation, as interpreted by the Court.

39. It follows, in my view, that the first indent of Article 7(4)(a), read in conjunction with Article 6(5) of the Regulation, must be interpreted as meaning that it enables the competent authority of dispatch to object to a shipment of waste for recovery if that authority does not possess sufficient information from the notifier to show that the processing of the waste in the Member State of destination will be carried out in accordance with methods which, from the environmental point of view, are of the same standard as those required by the legislation of the country of dispatch.

C – *The third question*

40. This question from the national court seeks to establish whether the first indent of Article 6(5) of the Regulation must be interpreted as meaning that the obligation to provide information on the composition of the waste is fulfilled if the notifier merely refers, in the notification, to one kind of waste, in this case 'electronic scrap'

41. Like the Commission and the Austrian, Belgian, Danish and Polish Governments, I think this provision of the Regulation requires the notifier to submit complete, detailed information on the composition of the waste for recovery, so as to enable the competent authorities to check the type of waste transported and to assess the hazards it creates for the environment.

42. In my view, it follows that merely stating the type of waste in question is not sufficient to fulfil the obligation to provide information. So far as the type of waste at issue in the main proceedings is concerned, a mere reference to the type of waste is too general and vague, bearing in mind the many different types of waste arising from electronic equipment, both from the viewpoint of size and of content of in specific substances. Stating the type of waste alone gives the competent authorities no information as to the chemical composition or the physical characteristics of the waste, so that that the authorities are not in a position to determine whether the proposed recovery is appropriate.

43. It is clear from the wording of the first indent of Article 6(5) that the notifier has a duty to provide detailed information going beyond merely stating the type of waste. In the words of the said provision, the notifier must supply on the consignment note, which is the medium for the notification formality, information with particular regard to 'the source, *composition* and quantity of the waste for recovery' (19) Furthermore, if the waste is from different sources, the same provision requires the notifier to provide 'a detailed inventory of the waste'.

44. Therefore, in a situation such as that at issue in the main proceedings, that is to say, the collection of waste from electronic equipment, regardless of whether the waste is from different sources or not, the first indent of Article 6(5) of the Regulation still, in my view, requires the notifier to give the competent authorities information on the nature of the components, materials and substances contained in the waste.

45. The need for such detailed information is greater where the waste in question is waste from electrical and electronic equipment ('WEEE'). In this connection I refer merely, by way of illustration only, since it was not in force at the material time, to Directive 2002/96, which, having regard to the special treatment required by this type of waste and the need to encourage separate collection, states that 'information on component and

material identification to be provided by producers is important to facilitate the management, and in particular the treatment and recovery/recycling, of WEEE'. (20) It must also be observed that the presence of hazardous components in electrical and electronic equipment is 'a major concern during the waste management phase'. (21)

46. Consequently I think the reply to be given to the national court is that the first indent of Article 6(5) of the Regulation must be interpreted as meaning that the obligation of the notifier of a shipment of waste for recovery to provide information is not fulfilled if the notification merely states the type of the waste in question.

D – *The fourth question*

47. With this last question the national court asks, in essence, whether Article 7(1) and (2) of the Regulation must be interpreted as meaning that the 30-day period within which the competent authorities must raise objections to a shipment begins to run when the competent authority of destination sends the acknowledgement of receipt of the notification, even where the competent authority of dispatch considers that it has not received all the information prescribed by Article 6(5) of the Regulation. The national court also wishes to know whether the fact of exceeding the 30-day period has the effect that the competent authorities can no longer object to the shipment or request further information from the notifier.

48. With regard to the first part of the question, the Commission, the Belgian Government and Pedersen take the view that the 30-day period begins to run when the competent authority of destination sends the acknowledgement of receipt of the notification, irrespective of the fact that the information provided by the notifier is insufficient. According to the Commission, if the competent authority of dispatch considers that the notification is incomplete, it may object to the shipment before the end of the 30-day period. Furthermore, Pedersen considers that the said period is a safeguard against arbitrary treatment of notifications and that the rights of defence and legal certainty for the notifier call for strict interpretation of the 30-day period.

49. The Austrian, Danish and Polish Governments do not agree with this reasoning and consider that the 30-day period does not begin to run until the date when the notification is complete. Otherwise, according to them, the competent authorities would not be able to raise objections to the shipment within that period.

50. In addition, the Austrian Government submits that the Regulation does not specifically deal with the situation where the competent authority of dispatch makes a request pursuant to Article 6(4) for information or documents in addition to the notification even though the competent authority of destination has already sent an acknowledgement of receipt of the notification. The Austrian Government considers that, taking account of the general scheme of the Regulation, the 30-day period should be suspended until all the documents required have been provided by the notifier.

51. Like the Austrian Government, I find that the Regulation makes no provision for the effect of a request for additional information and documents by a competent authority under Article 6(4) of the Regulation on the 30-day period referred to in Article 7(2). Furthermore, it must be observed that Article 7(1), which provides that the competent

authority of dispatch is to send an acknowledgement *on receipt of the notification*, does not contain an express requirement as to the completeness of the notification.

52. It is important to add that the case before the national court on the basis of which it has requested a preliminary ruling from the Court is not the same as the situation where the authority of destination considers that it should not send an acknowledgment of receipt of the notification while it is incomplete. (22)

53. Therefore it is necessary to establish exactly the situation to which the questions from the national court relate: it is the situation where the acknowledgement of receipt has already been sent by the competent authority of destination and, at the same time, the competent authority of dispatch considers that it does not have the information necessary for taking a decision. In that situation, has the thirty-day period nevertheless begun to run? I think the reply must be in the affirmative.

54. The problems encountered by the national court in this connection necessitate the reconciliation of two requirements: on the one hand, the guarantee, which the notifier has in the framework of the procedure laid down by the Regulation, that his proposed shipment will be examined within the time limits laid down by the Regulation and, on the other, the power of the competent authorities to raise objections to a shipment of waste for recovery.

55. With regard, first, to the notifier's guarantee that the proposed shipment will be examined within the specified time limits, it is necessary to bear in mind the procedure for the examination of the notification by the competent authorities.

56. Article 7(1) of the Regulation provides that, on receipt of the notification, the competent authority of destination is to send, within three working days, an acknowledgement to the notifier and copies thereof to the other competent authorities and to the consignee. Article 7(2) provides that the sending of the acknowledgment is the starting point of the 30-day period within which the competent authorities of destination, dispatch and transit must raise objections to the shipment. (23)

57. Nothing in the wording of Article 7(1) and (2) indicates that, exceptionally, the 30-day period would not begin to run if the notification were incomplete. On the contrary, a reading of these provisions shows that the decisive factor for fixing the starting point of the said period appears to be the completion of the mere formality of sending the acknowledgment by the competent authority of destination.

58. Furthermore, it is clear from the Court's case law that 'the procedure thus defined by the Regulation provides the notifier with a guarantee that his proposed shipment will be examined within the periods prescribed by the Regulation and that he will be informed, upon the expiry of those periods at the latest, whether, and on what conditions, if any, the shipment can be carried out.' (24) This reasoning has the effect of establishing an important procedural safeguard for the notifier, who is thus given the assurance that his request will be examined as soon as possible and that he will be informed of the outcome before the 30-day period expires. This appears to conflict with the argument that the competent authority of dispatch may, on the basis of the Regulation, take the view that the 30-day period has not begun to run in so far as the authority considers that the notification is incomplete.

59. With regard, secondly, to the power of the competent authorities of dispatch and of destination to raise objections pursuant to Article 7(4)(a) of the Regulation, it is clear that effective application of the provisions of the said Article, which specifies the cases where the authorities may object to a shipment of waste for recovery, presupposes that those authorities already have the information necessary for a detailed examination of the arrangements for the proposed shipment.

60. In this connection I would mention the non-exhaustive list of information which must be provided by the notifier in Article 6(5) of the Regulation. Moreover, it follows from the system set up by the Regulation that the competent authorities receiving the notification must verify that it contains the information necessary for assessing whether the planned shipment conforms with the Regulation. In doing this, the authorities satisfy themselves that they have the means of overseeing the arrangements for the proposed shipment. It follows, in my view, that each of the competent authorities may object to a shipment of waste for recovery by raising an objection precisely when they do not have the information necessary for a detailed examination of the planned shipment.

61. In that situation, I consider, with reference to the Court's decision in the *ASA* judgment cited above, concerning an error as to the notifier's classification of the shipment operation (disposal or recovery), (25) that the competent authority must be able to base its objection to the shipment on the ground that the information in the notification is incomplete, and there is no need to refer to any of the special provisions of the Regulation specifying the objections which may be raised by Member States to shipments of waste. However, I would add that an objection that the notification is incomplete must be raised within the 30-day period of Article 7(2) of the Regulation. Otherwise the notifier would have no guarantee that his matter would be examined within the 30-day period.

62. Consequently, where a notification is incomplete, that is to say, does not include all the information necessary for ensuring that the planned shipment conforms with the Regulation, it seems to me that the competent authority of dispatch is justified in objecting to the shipment and this must be done within the 30-day period which begins to run, even in this case, when the competent authority of destination sends the acknowledgment of receipt.

63. Having said this, I wish however to point out that it seems to me that sound administration requires the competent authority, before it raises an objection to the shipment, to ask the notifier to complete his notification.

64. In this connection, it must be observed that Article 6(4) of the Regulation provides that 'in making notification, the notifier shall complete the consignment note and shall, if requested by the competent authorities, supply additional information and documentation'.

65. This provision of the Regulation is intended to govern the situation where the competent authority of dispatch receives an incomplete notification. In my opinion, it should exercise the power given by that Article and request additional information and documentation from the notifier.

66. As I have already said, the Regulation does not provide for the effect of such a request on the procedural time limits. No doubt the view could be taken that the notifier's reply to the request must be given within the 30-day period, without any other adjustment.

However, this seems to me unrealistic in practice in so far as, allowing for the period, if only a short one, needed by the notifier to put together and send the information and documentation in question to the competent authority of dispatch, the latter would probably have only a few days remaining in which to examine in detail the arrangements for the planned shipment before the 30-day period expires.

67. That is why I think that safeguarding the practical effect of Article 6(4) of the Regulation and the need to include the substance of that Article in the procedural framework mapped out by the Community legislature justify a different interpretation, namely, that the sending by the competent authority of dispatch of a request for additional information and documents to the notifier has the effect of suspending the 30-day period until the authority receives the information and documents in question.

68. By 'suspension of the time limit' I mean the situation where an act, such as a request for information, 'stops the running of the time limit without wiping out retrospectively the time already elapsed', so that the period which has already elapsed is taken into account when the time limit begins to run again. (26)

69. Furthermore, to ensure the effectiveness of the notification procedure while preserving the procedural guarantees for the notifier, the request for information and documentation should, in my opinion, be made only once by the competent authority of dispatch and should be sent to the notifier speedily after the beginning of the 30-day period. The request should also impose a time limit for the notifier to provide the additional information and documentation, such time limit to be set by the Member States taking account of the Community legislature's aim of promptitude. Accordingly the 30-day period would begin to run again either when the competent authority receives the additional information and documentation or, at the latest, on the expiry of the brief period within which the notifier ought to have provided the additional information and documentation. It follows that the suspension of the 30-day period should not in any case exceed the duration of the relatively short period set by the competent authority of dispatch for the notifier to provide the additional information and documentation.

70. This result has, in my view, the advantage of reconciling the guarantee that the notifier's notification will be examined as soon as possible with the competent authorities' power, when examining the notification in detail, to raise objections to the arrangements for the shipment of waste.

71. With regard to the last part of the question referred, in which the national court asks whether the fact of exceeding the 30-day period has the effect that the competent authorities can no longer raise objections to the shipment or request additional information from the notifier, I think the reply must be in the affirmative.

72. First of all, the procedural guarantee established by the Court, namely, that the notifier is assured that his plan for shipment will be examined within the time limits prescribed by the Regulation and that he will be informed of the outcome of his notification at the latest on the expiry of those time limits, would disappear if it were decided that the competent authorities may raise objections after the 30-day period expires. Furthermore, this conclusion would be directly contrary to the wording of Article 7(2) of the Regulation, which states that 'the competent authorities of destination, dispatch and transit shall have 30 days following dispatch of the acknowledgement to object to the shipment […]'.

73. Secondly, as to whether the competent authorities may ask the notifier for additional information and documentation after the 30-day period has expired, Articles 6(4) and 7(2) of the Regulation give no express reply. However, the general scheme of those two provisions suggests that such a request must be made within the said period which is, as we have seen, in principle the period which can be devoted by the authorities to the examination of each notification.

74. To give the national court a complete reply, in so far as it appears from the file that the particular procedure laid down by Article 10 of the Regulation is applicable to the shipment of electronic scrap, it is necessary to end by verifying that the interpretation I propose applies also to a transfer of waste covered by that Article.

75. In that connection I would point out that Article 10 of the Regulation contains special provisions applying to waste for recovery which has not yet been assigned to one of Annexes II, III or IV. Article 10 provides that such waste is subject to the same procedures as those referred to in Articles 6 to 8 of the Regulation, 'except that the consent of the competent authorities concerned must be provided in writing prior to commencement of shipment'.

76. The wording of Article 10 expressly provides that the procedures, including the respective time limits, referred to in Articles 6 to 8 remain applicable to that specific type of waste. The only special feature is the requirement for the written consent of the competent authorities before the commencement of shipment. Consequently the shipment of waste covered by Article 10 will not be deemed to be authorised, and therefore cannot be carried out, by virtue of a tacit agreement of the authorities on the expiry of the 30-day period.

77. As the special feature of the procedure applying to waste referred to by Article 10 is clearly stated, it seems to me that there is nothing that would prevent the reply which I propose to give the national court from applying to the situations covered by that Article.

78. In other words, even if the Regulation requires the written consent of the competent authorities before shipment begins, they remain bound to observe the 30-day period prescribed by Article 7(2) of the Regulation for raising objections and/or requesting additional information and documentation.

79. Accordingly I propose to reply to the national court that Article 7(1) and (2) of the Regulation must be interpreted as meaning that the 30-day period within which the competent authorities must raise objections to a shipment begins to run when the competent authority of destination sends the acknowledgement of receipt of the notification, even where the competent authority of dispatch considers that it has not received all the information prescribed by Article 6(5) of the Regulation. In that case, however, a request by the competent authority of dispatch for additional information and documentation from the notifier pursuant to Article 6(4) of the Regulation has the effect of suspending the 30-day period for a period which in any case cannot exceed the short period allowed by that authority for providing the additional information and documentation. Finally, if the 30-day period is exceeded, this has the effect that the competent authorities can no longer raise objections to the shipment or ask the notifier for additional information and documentation.

V – Conclusion

80. I therefore propose to reply to the questions from the Østre Landsret as follows:

‘1) The phrase “where this it not possible” in Article 2(g)(ii) of Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community must be interpreted as meaning that a licensed collector of waste cannot automatically become a notifier of a shipment of waste for recovery. On the other hand, a licensed collector may, by virtue of the Regulation, be deemed the notifier of such a shipment in particular where either the waste producer is unknown or there is a large number of producers, each producing a small quantity of waste.

2) The first indent of Article 7(4)(a) of Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community, read in conjunction with Article 6(5) of the Regulation, must be interpreted as meaning that it enables the competent authority of dispatch to object to a shipment of waste for recovery if that authority does not possess sufficient information from the notifier to show that the processing of the waste in Member State of destination will be carried out in accordance with methods which, from the environmental point of view, are of the same standard as those required by the legislation of the country of dispatch.

3) The first indent of Article 6(5) of Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community must be interpreted as meaning that the obligation of the notifier of a shipment of waste for recovery to provide information is not fulfilled if the notification merely states the type of the waste in question.

4) Article 7(1) and (2) of Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community must be interpreted as meaning that the 30-day period within which the competent authorities must raise objections to a shipment begins to run when the competent authority of destination sends the acknowledgement of receipt of the notification, even where the competent authority of dispatch considers that it has not received all the information prescribed by Article 6(5) of the Regulation. In that case, however, a request by the competent authority of dispatch for additional information and documentation from the notifier pursuant to Article 6(4) of the Regulation has the effect of suspending the 30-day period for a period which in any case cannot exceed the short period allowed by that authority for providing the additional information and documentation. Finally, if the 30-day period is exceeded, this has the effect that the competent authorities can no longer raise objections to the shipment or ask the notifier for additional information and documentation.’

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1 – Original language: French.

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2 – OJ 1993 L 30, p. 1. Regulation as amended by Commission Decision 1999/816/EC of 24 November 1999 (OJ 1999 L 316, p. 45).

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3 – Case C-187/93 *Parliament* v *Council* [1994] ECR I-2857, paragraph 26.

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4 – ‘The Regulation’.

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5 – Case C-203/96 *Dusseldorp and Others* [1998] ECR I-4075, paragraph 33.

6 – OJ 1975 L 194, p. 39. Directive as amended by Council Directive 91/156/EEC of 18 March 1991 (OJ 1991 L 78, p. 32) and by Commission Decision 96/350/ EC of 24 May 1996 (OJ 1996 L 135, p. 32).

7 – See Article 2(i) and (k)

8 – COM(2003) 379 final.

9 – COM(2004) 172 final.

10 – See Article 2 of Danish Decree No 971/1996 of 9 November 1996, on imports and exports of waste.

11 – Directive 2002/96/EC of the European Parliament and of the Council, of 27 January 2003, on waste electrical and electronic equipment (WEEE) (OJ 2003) L 378, p. 24) uses the term 'orphan products' in recital 20 of the preamble to denote products whose producer has ceased trading or cannot be identified.

12 – It should be observed that the amended proposal for a regulation of the European Parliament and of the Council on shipments of waste uses the same concept and amplifies it. Under Article 2(7)(i)(d) of the amended proposal, where persons belonging to the three categories mentioned first in the new hierarchy laid down 'are unknown, insolvent or unavailable for any reason whatever, a licensed collector or dealer or registered broker may legally be deemed a notifier».

13 – See recital 16.

14 – See recital 15

15 – Case C-277/02, [2004] ECR, I-000.

16 – Case C-277/02, paragraph 37.

17 – In this situation the ground of the objection is that the shipment does not meet the requirements arising from Directive 75/662, in particular Article 4, which requires the Member States 'to take the measures necessary to ensure that waste is recovered or disposed of without endangering human health and without the use of processes or methods capable of harming the environment […].' See Case 277/02, cited above, paragraph 42.

18 – In this connection I would add that, as I said in my opinion in Case 277/02, cited above, (paragraph 68), the notifier, who must have concluded a contract with the recipient undertaking for the recovery of the waste, must logically be in a position to show that the planned recovery meets the requirements of the legislation in force in the State of dispatch. In addition, there ought to be an opportunity for questions to be asked and replies to be given on this point by the competent authority of dispatch and the notifier, so far as necessary and within the time limits laid down by the Regulation.

19 – Emphasis added.

20 – See recital 22 and also Article 11(1) of Directive 2002/96.

21 – See recital 7 of Directive 2002/96.

22 – This situation, which is not expressly provided for by the Regulation, is envisaged in Article 9 of the amended proposal for a regulation on waste. This article provides that the authority of destination is to send the acknowledgement of receipt when it receives a notification in due

form. In this connection Article 5(3) of the proposal states that a notification is deemed to be in due form when the notifier has provided the information and documents listed therein, as well as the additional information and documents which may have been requested. An acknowledgement of receipt of a notification in due form must in principle be sent within three working days of receipt of the notification by the competent authority of destination. However, if it is found that the notification is not in due form, Article 9(2) provides that the said authority must request the missing information and documents. In that case, the 3-day period 'shall be suspended until the competent authority of destination has obtained the information and documents requested'.

– - Some indication is given by the fact that, under Article 7(3) of the Regulation,

23 – Some indication is given by the fact that, under Article 7(3) of the Regulation, the same authorities have 20 days from sending the acknowledgment within which to lay down conditions in respect of the transport of waste within their jurisdiction.

24 – Case C-324/99 *Daimler Chrysler* [2001] ECR I-9897, paragraph 70. See also Case C-6/00 ASA [2002] ECR I-1961, paragraph 49, and Case C-472/02 *Siomab* [2004] not yet published in ECR I-000, paragraph 29.

25 – Paragraph 47. See also the order of 27 February 2003 in Joined Cases C-307/00 to C-311/00 *Oliehandel Koeweit and Others* [2003] ECR I-1821, paragraph 107, and the *Siomab* judgment, cited above, paragraph 28.

26 – See the definition of 'suspension' in French law in Lexique de termes juridiques, Dalloz, Paris, 1981.