

**Case C-277/02**

**EU-Wood-Trading GmbH**

**v**

**Sonderabfall-Management-Gesellschaft Rheinland-Pfalz mbH**

(Reference for a preliminary ruling from the Oberverwaltungsgericht Rheinland Pfalz)

(Environment – Waste – Regulation (EEC) No 259/93 on shipments of waste – Waste intended for recovery – Objections – Powers of the authority of dispatch – Recovery contravening the requirements of Article 4 of Directive 75/442/EEC or those of national provisions – Power of the authority of dispatch to raise such objections)

**Summary of the Judgment**

1. *Environment – Waste – Regulation No 259/93 on shipments of waste – Waste for recovery – Notification procedure applicable to shipments between Member States – System for objections raised against a shipment – Objections based on considerations connected both to the transport and to the recovery of the waste – Whether permissible*

*(Council Regulation No 259/93, Art. 7(4)(a), first indent; Council Directive 75/442, Art. 7)*

2. *Environment – Waste – Regulation No 259/93 on shipments of waste – Waste for recovery – Notification procedure applicable to shipments between Member States – System for objections raised against a shipment – Objections raised by the competent authority of dispatch – Assessment of the effects of the recovery on health and the environment in the State of destination – Taking into consideration of stricter criteria in force in the State of dispatch – Whether permissible – Conditions*

*(Council Regulation No 259/93, Art. 7(4)(a), first indent; Council Directive 75/442, Art. 7)*

3. *Environment – Waste – Regulation No 259/93 on shipments of waste – Waste for recovery – Notification procedure applicable to shipments between Member States – System for objections raised against a shipment – Objections of the competent authority of dispatch based on the non-compliance of the recovery of the waste with the legal provisions of the State of dispatch – Not permissible*

*(Council Regulation No 259/93, Art. 7(4)(a), second indent)*

1. The first indent of Article 7(4)(a) of Regulation No 259/93 on the supervision and control of shipments of waste within, into and out of the European Community, as amended by Decisions 98/368 and 1999/816, under which the competent authorities of dispatch and of destination are empowered to raise, pursuant to

Directive 75/442, reasoned objections to a shipment of waste for recovery, is to be interpreted as meaning that such objections may be based on considerations connected not only to the actual transport of the waste in each competent authority's area of jurisdiction but also on the recovery planned for that shipment.

(see para. 43, operative part 1)

2. The first indent of Article 7(4)(a) of Regulation No 259/93 on the supervision and control of shipments of waste within, into and out of the European Community, as amended by Decisions 98/368 and 1999/816, under which the competent authorities of dispatch and destination are empowered to raise, pursuant to Directive 75/442, reasoned objections to a shipment of waste for recovery, is to be interpreted as meaning that for the purposes 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.

(see para. 54, operative part 2)

3. The second indent of Article 7(4)(a) of Regulation No 259/93 on the supervision and control of shipments of waste within, into and out of the European Community, as amended by Decisions 98/368 and 1999/816, under which the competent authorities of dispatch and destination are empowered to raise reasoned objections to a shipment of waste for recovery if that shipment does not comply with the laws and regulations for protection of the environment, public order, public safety or health protection, is to be interpreted as meaning that a competent authority of dispatch may not raise an objection to a shipment of waste based on the fact that the planned recovery does not comply with those provisions.

(see para. 60, operative part 3)

JUDGMENT OF THE COURT (First Chamber)  
16 December 2004<sup>(1)</sup>

(Environment – Waste – Regulation (EEC) No 259/93 on shipments of waste – Waste intended for recovery – Objections – Powers of the authority of dispatch – Recovery contravening the requirements of Article 4 of Directive 75/442/EEC or those of national provisions – Power of the authority of dispatch to raise such objections)

In Case C-277/02,

REFERENCE for a preliminary ruling under Article 234 EC from the Oberverwaltungsgericht Rheinland-Pfalz (Germany), made by decision of 3 July 2002, received on 29 July 2002, in the proceedings:

**EU-Wood-Trading GmbH**

v

**Sonderabfall-Management-Gesellschaft Rheinland-Pfalz mbH,**

THE COURT (First Chamber),,

composed of: P. Jann, President of the Chamber, A. Rosas, R. Silva de Lapuerta, K. Lenaerts and K. Schiemann (Rapporteur), Judges,  
Advocate General: P. Léger,  
Registrar: L. Hewlett, Administrator,  
having regard to the written procedure and further to the hearing on 27 May 2004, after considering the observations submitted on behalf of:

—  
EU-Wood-Trading GmbH, by T. Pschera and B. Enderle, Rechtsanwälte,  
—  
Sonderabfall-Management-Gesellschaft Rheinland-Pfalz mbH, by C. v. der Lüche, Rechtsanwalt,  
—  
the Danish Government, by J. Molde, acting as Agent,  
—  
the Austrian Government, by E. Riedl, acting as Agent,  
—  
the Commission of the European Communities, by U. Wölker and M. Konstantinidis, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 23 September 2004,

gives the following

**Judgment**

The request for a preliminary ruling concerns the interpretation of the first and second indents 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 (OJ 1993 L 30, p. 1), as amended by Commission Decisions 98/368/EC of 18 May 1998 (OJ 1998 L 165, p. 20) and 1999/816/EC of 24 November 1999 (OJ 1999 L 316, p. 45), (hereinafter 'the Regulation').

2

That request was submitted in the course of an action between EU-Wood-Trading GmbH, established in Bürstadt (Germany) (hereinafter 'EU-Wood-Trading') against Sonderabfall-Management-Gesellschaft Rheinland-Pfalz mbH, regarding objections raised by the latter against the shipment of 3 500 tonnes of wood waste which EU-Wood-Trading was envisaging making to Italy.

### **Legal framework**

#### *Community legislation*

3

The essential objective 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), and by Commission Decision 96/350/EC of 24 May 1996 (OJ 1996 L 135, p. 32), (hereinafter 'the Directive') is the protection of human health and the environment against harmful effects caused by the collection, transport, treatment, storage and tipping of waste. In particular, the fourth recital in the preamble to that Directive states that the recovery of waste and the use of recovered materials should be encouraged in order to conserve natural resources.

4

Article 1(e) of the Directive defines 'disposal' as 'any of the operations provided for in Annex II A' and Article 1(f) defines 'recovery' as 'any of the operations provided for in Annex II B'.

5

The first subparagraph of Article 4 of the Directive 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.'

6

Under Article 7(1) of the Directive the competent authorities designated by the Member States must, in order to attain the objectives referred to in, among others, Article 4, draw up as soon as possible one or more waste management

plans. Under Article 7(3) Member States may take the measures necessary to prevent movements of waste which are not in accordance with their waste management plans.

7

The Regulation governs, in particular, the supervision and control of shipments of waste between Member States.

8

The ninth recital in the preamble to the Regulation states:

'... 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'.

9

Article 2 of the Regulation provides:

'For the purposes of this Regulation:

...

(b) competent authorities means the competent authorities designated by either the Member States in accordance with Article 36 or non-Member States;

(c) competent authority of dispatch means the competent authority, designated by the Member States in accordance with Article 36, for the area from which the shipment is dispatched ...;

(d) competent authority of destination means the competent authority, designated by the Member States in accordance with Article 36, for the area in which the shipment is received ...;

(e) competent authority of transit means the single authority designated by Member States in accordance with Article 36 for the State through which the shipment is in transit;

...

(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 ... who proposes to ship waste or have waste shipped ...;

(i) disposal is as defined in Article 1(e) of Directive 75/442/EEC;

...

(k) recovery is as defined in Article 1(f) of Directive 75/442/EEC;

...

10

Title II of the Regulation, entitled 'Shipments of waste between Member States', contains, among other things, two separate chapters, one dealing with the procedure which applies to shipments of waste for disposal (Chapter A, Articles 3 to 5) and the other dealing with the procedure which applies to shipments of waste for recovery (Chapter B, Articles 6 to 11).

11

Under the provisions of Article 6(1) of the Regulation, where the waste producer or holder intends to ship waste for recovery listed in Annex III to the Regulation (orange waste list) from one Member State to another 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.

12

Under Article 6(3) of the Regulation, notification is to be effected by means of the consignment note which is to be issued by the competent authority of dispatch. Article 6(5) specifies the information which the notifier must supply on the consignment note, among which is information concerning the operations involving recovery as contained in Annex II B to the Directive.

13

Under Article 6(6) of the Regulation, the notifier must conclude a contract with the consignee for the recovery of the waste and a copy of this contract must be supplied to the competent authority at its request.

14

Under Article 6(8) of the Regulation, a competent authority of dispatch may, in accordance with national legislation, decide to transmit the notification itself instead of the notifier to the competent authority of destination, with copies to the consignee and to the competent authority of transit.

15

Article 7(2) of the Regulation lays down the time-limit and the rules and procedures with which the competent authorities of destination, dispatch and transit must comply to object to notified planned shipments of waste for recovery. That provision provides, in particular, that objections must be based on Article 7(4).

16

Article 7(4) of the Regulation provides:

'(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, or

—

if the notifier or the consignee has previously been guilty of illegal trafficking. In this case, the competent authority of dispatch may refuse all shipments involving the person in question in accordance with national legislation, or

—

if the shipment conflicts with obligations resulting from international conventions concluded by the Member State or Member States concerned, or

—

if the ratio of the recoverable and non-recoverable waste, the estimated value of the materials to be finally recovered or the cost of the recovery and the cost of the disposal of the non-recoverable fraction do not justify the recovery under economic and environmental considerations.

(b)  
The competent authorities of transit may raise reasoned objections to the planned shipment based on the second, third and fourth indents of (a).'

17

Article 26 of the Regulation provides:

'1. Any shipment of waste effected:

...

(c) with consent obtained from the competent authorities concerned through falsification, misrepresentation or fraud; or

...

(e) which results in disposal or recovery in contravention of Community or international rules;

... shall be deemed to be illegal traffic.'

18

Under Article 30(1) of the Regulation:

'Member States shall take the measures needed to ensure that waste is shipped in accordance with the provisions of this Regulation. Such measures may include inspections of establishments and undertakings, in accordance with Article 13 of Directive 75/442/EEC, and spot checks of shipments.'

19

Article 34 of the Regulation provides:

'1. Without prejudice to the provisions of Article 26 and to Community and national provisions concerning civil liability and irrespective of the point of disposal or recovery of the waste, the producer of that waste shall take all the necessary steps to dispose of or recover or to arrange for disposal or recovery of the waste so as to protect the quality of the environment ...

2. Member States shall take all necessary steps to ensure that the obligations laid down in paragraph 1 are carried out.'

20

Article 36 of the Regulation provides:

'Member States shall designate the competent authority or authorities for the implementation of this Regulation. A single competent authority of transit shall be designated by each Member State.'

*National legislation*

21

Paragraph 5(3) of the Gesetz zur Förderung der Kreislaufwirtschaft und Sicherung der umweltverträglichen Beseitigung von Abfällen (Law to promote recycling and to ensure environmentally friendly waste disposal) of 27 September 1994 (BGBl.1994 I, p. 2705, hereinafter 'the Law of 27 September 1994') prohibits any recovery of waste which leads to an increase in the concentration of pollutants in the closed substance cycle.

22

For the Land Rhineland-Palatinate, Sonderabfall-Management-Gesellschaft Rheinland-Pfalz mbH is responsible for organising the disposal of toxic waste.

**The main proceedings and the questions referred for a preliminary ruling**

23

On 23 November 1999, EU-Wood-Trading notified Sonderabfall-Management-Gesellschaft Rheinland-Pfalz mbH, as competent authority of dispatch, of its intention to transport 3 500 tonnes of wood waste to the undertaking Frati Luigi de Pomponesco, established in Italy.

24

According to that notification, the waste in question consisted, particularly, of treated or painted wood from demolitions, from furniture or from joinery off-cuts. It was intended that it be recovered for the production of chipboard panels.

25

The documents annexed to the notification included a description of the recovery operation, statements certifying that the Italian authorities of destination had no objections to the import of that used wood and a laboratory report in which an analysis of the waste showed a lead content of 47 mg per kilogram of dry material.

26

By decision of 17 January 2000, the competent authority of dispatch objected to that shipment under the first and second indents of Article 7(4)(a) of the Regulation. The objection was based on the fact that, in view of the lead content of the waste in question, which exceeded a reference value fixed in a guideline of the Environment Ministry of the Land Rhineland-Palatinate, the recovery of that waste could not be carried out without endangering human health and harming the environment, contrary to the requirements both of the Directive and of the Law of 27 September 1994.

27

EU-Wood-Trading lodged an opposition with the competent authority of dispatch against those objections and produced another analysis of the waste showing, per kilogram of dry material, a lead content of 23 mg and an arsenic content of 3.4 mg. That opposition was rejected on 5 July 2000.

28

The action brought against that decision by EU-Wood-Trading before the Verwaltungsgericht (Administrative Court) Mainz (Germany) was dismissed by judgment of 16 October 2001. EU-Wood-Trading appealed against that judgment to the Oberverwaltungsgericht (Higher Administrative Court) Rheinland-Pfalz. It claimed, in essence, that the competent authority of dispatch could not raise, against a shipment of waste for recovery, objections which relate, not to the transport of that waste, but to its recovery in another Member State.

29

In those circumstances, the Oberverwaltungsgericht Rheinland-Pfalz, considering that the outcome of the action before it depended on an interpretation of Community law, decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'1. Under the first indent of Article 7(4)(a) of Council Regulation (EEC) No 259/93 ... can an objection to the shipment of waste for recovery be raised on the ground that the planned recovery contravenes the requirement arising from

the first paragraph of Article 4 of Directive 75/442 ... for waste to be recovered in a manner which is compatible with health and environmental imperatives?

2. If so, can such an objection be raised not only by the authority of destination but also by the authority of dispatch?

3. If so, is the authority of dispatch entitled to base its assessment of whether the planned recovery of the waste at the place of destination is compatible with health and environmental imperatives on the standards applicable in the State of dispatch even where they are higher than the standards applicable in the State of destination?

4. Under the second indent of Article 7(4)(a) of Regulation No 259/93, can an objection to the shipment of waste for recovery be raised on the ground that the planned recovery contravenes national laws and regulations relating to environmental protection, public order, public safety or health protection?

5. If so, can the authority of dispatch raise such an objection on the ground that the recovery contravenes national laws and regulations in force at the place of dispatch?

### **The questions referred for a preliminary ruling**

#### *The first and second questions*

30

By its first and second questions, which it is appropriate to consider together, the referring court is asking, in essence, whether the objections to a shipment of waste which the competent authorities of dispatch and destination are entitled to raise under the first indent of Article 7(4)(a) of the Regulation can be based on considerations connected not only to the actual transport of the waste in each competent authority's area of jurisdiction, but also to the recovery planned for that shipment.

31

It must be noted at the outset that the Regulation does not define the term 'shipment'. Since other provisions of the Regulation, particularly Article 7(3), use the expression 'transport of waste', the term 'shipment' in Article 7(4) of the Regulation cannot necessarily be confined to the transport of the waste.

32

It is appropriate, therefore, to place the term 'shipment' in its context and to interpret it according to the spirit and purpose of the provisions in question in order to determine whether they permit the raising of objections to a shipment of waste based on the recovery planned in the State of destination.

33

It must be observed, as a preliminary point, that the question of shipments of waste is regulated by harmonisation at Community level by the Regulation, in order to ensure the protection of the environment (Case C-324/99 *DaimlerChrysler* [2001] ECR I-9897, paragraph 42).

34

The conditions and procedures laid down by the Regulation were adopted with a view to ensuring the protection of the environment, taking account of objectives falling within the scope of environmental policy such as the principles of

proximity, priority for recovery and self-sufficiency at Community and national levels. In particular, they enable the Member States, for the purposes of implementing those principles, to take measures to prohibit generally or partially or to object systematically to and oppose shipments of waste which are not in conformity with the Directive. The Regulation falls within the framework of the environmental policy pursued by the Community and cannot be regarded as seeking to implement the free movement of waste within the Community (Case C-187/93 *Parliament v Council* [1994] ECR I-2857, paragraphs 22 and 23).

35

In the Community system thus established by the Regulation, it is clear that the objectives with which the Community legislature invested it seeking the protection of health and the environment could be compromised if, having regard to its purpose, the shipment of waste between Member States was not perceived in its entirety, that is to say from the point of departure of the waste in the State of dispatch to the end of its processing in the State of destination.

36

In that regard, it is clear from the ninth recital in the preamble that the Regulation establishes a procedure of prior notification of shipments of waste to the competent authorities enabling them to be duly informed not only of the type and movements of the waste but also of its disposal or recovery, so that those authorities may take all necessary measures for the protection of human health and the environment, including the possibility of raising reasoned objections.

37

For that purpose, the notifier must, under Article 6(5) of the Regulation, supply in the consignment note in support of the notification information relating not only to the composition and quantity of the waste for recovery and the details of its transport, but also to the conditions in which that waste is to be recovered. The Community legislature therefore 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.

38

Moreover, the Regulation contains provisions, other than those at issue in the main action, the implementation of which implies that the authorities with power to control the shipment of waste for recovery may take into account factors relating to its recovery. Thus, the fifth indent of Article 7(4)(a) of the Regulation gives lack of justification of the recovery by economic and environmental considerations as a ground of objection to such a shipment. Likewise, the combined provisions of Articles 26(1)(e) and 26(5) of the Regulation provide that the Member States are to take all appropriate legal action to prohibit and penalise the illegal traffic constituted by any waste shipment which results in disposal or recovery in contravention of Community or international rules.

39

From those considerations, it is clear that the Regulation, taken as a whole, permits all the competent authorities responsible for the control of shipments of waste to take account of matters connected not only to the transport of that waste but also to the conditions in which the waste is recovered.

40

As regards the first indent of Article 7(4)(a) of the Regulation, it is appropriate, first, to observe, as did the Advocate General in point 36 of his Opinion, that those provisions, which provide that the competent authorities of destination and of dispatch may raise reasoned objections to the planned shipment 'in accordance with Directive 75/442/EEC, in particular Article 7 thereof', must be interpreted as enabling those authorities to raise such objections on the basis of the Directive and, in particular, Article 7 thereof.

41

The use of the words 'in particular' before the mention of Article 7 of the Directive implies that the reference to that article is purely as an example, so that objections may also be raised on the basis of the Directive's other provisions. Therefore, the fact that Article 7(3) of the Directive provides that the Member States may take the measures necessary to prevent 'movements' of waste which are not in accordance with their waste management plans cannot limit to the transport alone of such waste the considerations on which the competent authorities may base objections which they raise under the first indent of Article 7(4)(a) of the Regulation.

42

Finally, since under Article 4 of the Directive 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 the Regulation must be interpreted as authorising the competent authorities of destination and 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 the Directive.

43

In view of the foregoing, the reply to the first and second questions must be that the first indent of Article 7(4)(a) of the Regulation is to 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 to the actual transport of the waste in each competent authority's area of jurisdiction but also on the recovery planned for that shipment.

*The third question*

44

By its third question, the referring court is asking, in essence, whether the first indent of Article 7(4)(a) of the Regulation must be interpreted as meaning that the competent authority of dispatch, for the purposes of an objection to a shipment of waste, may, in assessing the effects on health and the environment of the recovery envisaged at the destination, rely on the criteria to which, in order 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.

45

In that regard, as was stated in paragraph 33 of this judgment, the Regulation harmonised the question of shipments of waste in order to ensure the protection of the environment. On the other hand, as the Advocate General states in point 60 of his Opinion, the requirements governing the recovery of waste have not been the object of harmonisation measures. Therefore, under the first paragraph of Article 4 of the Directive, the Member States must take the necessary measures to ensure that waste is recovered without endangering human health and without using processes or methods which could harm the environment and, in particular, without risk to water, air, soil, plants and animals, without causing a nuisance through noise or odours, and without adversely affecting the countryside or places of special interest. Whilst that provision does not specify the actual content of the measures which must be taken, it is binding on the Member States as to the objective to be achieved, whilst leaving to the Member States a margin of discretion in assessing the need for such measures (Case C-365/97 *Commission v Italy* [1999] ECR I-7773, paragraphs 66 and 67).

46

In exercising that discretion, the Member States may, in setting their waste recovery standards, be led to adopt national measures whose requirement levels with regard to the objectives of protection of human health and the environment laid down by the Directive may differ substantially from one State to another. It is precisely in those circumstances that the questions referred by the national court arise and particularly the question whether, where the standards set by the Member State of dispatch to attain the abovementioned objectives are higher than those applicable in the State of destination, the competent authority of dispatch may, on the basis of the Regulation, raise an objection to the envisaged shipment by invoking the higher level of protection under its national standards. Since it must be accepted that the competent authorities of dispatch are empowered to raise objections to the shipment taking account of matters connected to the conditions in which the recovery of waste is carried out in the State of destination, the provisions of the first indent of Article 7(4)(a) of the Regulation imply that those authorities, in assessing the risks which such recovery 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.

47

That interpretation of the Regulation is evident, since it forms part of the environment policy of the Community, one of whose tasks is, according to Article 2 EC, to promote a high level of protection and improvement of the quality of the environment. That objective might be undermined if the competent authority of dispatch were prevented from relying on its own standards, representing a high level of environmental protection, and from opposing consequently a shipment of waste the conditions of recovery for which in the State of destination could harm human health or the environment.

48

It is true that such opposition may, as in the main proceedings, conflict with the position taken by the competent authority of destination where that authority, taking the view that the recovery meets the requirements of its own national standards, raises no objection to the envisaged shipment of waste. However, such a situation is inherent in the system established by the Regulation, which confers simultaneously on all the competent authorities the responsibility of ensuring that shipments are carried out in accordance with the Regulation (Case C-6/00 *ASA* [2002] ECR I-1961, paragraph 44). That divergence in the assessments of the different competent authorities cannot therefore be validly invoked, as being contrary to the principle of cooperation expressed in Article 10 EC, in order to require a different interpretation of the Regulation.

49

However, since the Community legislature stipulated that waste for recovery should be able to move freely between Member States for processing (Case C-203/96 *Dusseldorp and Others* [1998] ECR I-4075, paragraph 33), 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.

50

In that regard, the risks must be measured, not by the yardstick of general considerations, but on the basis of relevant scientific research (see to that effect, in particular, Case C-17/93 *Van der Veldt* [1994] ECR I-3537, paragraph 17).

51

Furthermore, the fact that one Member State imposes less strict rules than another Member State does not necessarily mean that the stricter rules are disproportionate and hence incompatible with Community law (see Case C-294/00 *Gräbner* [2002] ECR I-6515, paragraph 46).

52

The mere fact that a Member State has chosen a system of protection different from that adopted by another Member State cannot affect the appraisal as to the need for and proportionality of the provisions adopted (Case C-67/98 *Zenatti* [1999] ECR I-7289, paragraph 34, and *Gräbner*, paragraph 47).

53

It is for the national court seised of an action challenging the opposition of the competent authority of dispatch to assess whether those national standards have been used in circumstances contrary to the principle of proportionality (see to that effect Case C-314/98 *Snellers* [2000] ECR I-8633, paragraph 59).

54

In view of the foregoing, the reply to the third question must be that the first indent of Article 7(4)(a) of the Regulation is to be interpreted as meaning that for the purposes 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, in order 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.

*The fourth and fifth questions*

55

By its fourth and fifth questions, which it is appropriate to consider together, the referring court is asking, in essence, whether the second indent of Article 7(4)(a) of the Regulation, under which reasoned objections may be raised against a planned shipment if it is not in accordance with the national laws and regulations relating to environmental protection, public order, public safety or health protection, enables the competent authority of dispatch to raise an objection based on the fact that the recovery envisaged does not comply with the national provisions.

56

As was said in paragraph 39 of this judgment, the Regulation, taken as a whole, permits all the competent authorities responsible for the control of shipments of waste to take account of matters connected not only to the transport of that waste but also to the conditions in which the waste is recovered. However, consideration of all the provisions of Article 7(4) of the Regulation cannot lead to such a conclusion as regards the application of the second indent of Article 7(4) (a) of the Regulation without undermining the cohesion of that article.

57

It is important to note that Article 7(4)(b) of the Regulation enables competent authorities of transit to raise reasoned objections against the planned shipment based on the second, third and fourth indents of subparagraph (a) of that article, but not on the first and fifth indents thereof.

58

Thus the Regulation does not permit the competent authorities of transit, in contrast to the competent authorities of dispatch and of destination, to check that the waste will be processed in compliance with the Directive or that the recovery is properly justified from the economic and environmental point of view.

59

In that context, by providing in the second indent of Article 7(4)(a) of the Regulation that the competent authorities may raise objections to the planned shipment if it does not comply with national laws and regulations, the Community legislature sought to safeguard, at each stage of the shipment, the efficacy of each Member State's own provisions with regard to waste which is within the territory of that State. Thus, those provisions which govern shipment cover only operations relating to that shipment which occur during the time when it is within the respective territory of each of the competent authorities concerned. It follows that the competent authorities of dispatch cannot rely on those provisions to raise an objection to a recovery operation in the State of destination.

60

In those circumstances, the reply to the fourth and fifth questions must be that the second indent of Article 7(4)(a) of the Regulation is to be interpreted as meaning that a competent authority of dispatch cannot rely on those provisions to

raise an objection to a shipment of waste based on the fact that the planned recovery does not comply with the national laws and regulations for the protection of the environment, public order, public safety or health protection.

## **Costs**

61

Since these proceedings are, for the parties to the main action, a step in the proceedings before the referring court, it is for that court to decide as to the costs. Costs incurred in submitting observations to the Court, other than those of the said parties, cannot be recovered.

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

**1.**

**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, as amended by Commission Decisions 98/368/EC of 18 May 1998 and 1999/816/EC of 24 November 1999, is to 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 to the actual transport of the waste in each competent authority's area of jurisdiction but also on the recovery planned for that shipment.**

**2.**

**The first indent of Article 7(4)(a) of Regulation No 259/93, as amended by Decisions 98/368 and 1999/816, is to be interpreted as meaning that for the purposes 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.**

**3.**

**The second indent of Article 7(4)(a) of Regulation No 259/93, as amended by Decisions 98/368 and 1999/816, is to be interpreted as meaning that a competent authority of dispatch may not rely on those provisions to raise an objection to a shipment of waste based on the fact that the planned recovery does not comply with the national laws and regulations for protection of the environment, public order, public safety or health protection.**

Signatures.

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[1](#) –

Language of the case: German.

OPINION OF ADVOCATE GENERAL  
LÉGER  
delivered on 23 September 2004<sup>(1)</sup>

**Case C-277/02**

**EU-Wood-Trading GmbH**  
**v**  
**Sonderabfall-Management-Gesellschaft Rheinland-Pfalz mbH**

(Reference for a preliminary ruling from the Oberverwaltungsgericht Rheinland-Pfalz (Germany))

(Regulation (EEC) No 259/93 on shipments of waste – Waste for recovery – First and second indents of Article 7(4)(a) – Power of the national authorities to raise reasoned objections to a planned shipment based on the conditions in which the waste is to be recovered – Power of the authority of dispatch to raise such objections – Account to be taken by the authority of dispatch of the standards applicable in its State)

1. The present case is one that again concerns interpretation of Regulation (EEC) No 259/93, <sup>(2)</sup> which lays down the conditions and procedural rules to which shipments of waste between Member States are subject. The matter at issue is whether and to what extent the competent administrative authority of the country from which the shipment of waste is to be effected, called ‘the competent authority of dispatch’, is entitled to object to such a shipment where the conditions in which the waste in question is to be recovered in the country of destination do not satisfy the standards or national legislation applicable in its own State, which are more stringent than those applicable in the Member State of destination.
2. This case should therefore lead the Court to define the powers of the competent authority of dispatch in the context of the waste shipment procedure and, perhaps, whether the free movement of waste for recovery, provided for by the regulation, precludes that authority from applying the health and environmental protection standards in force in its own State where they are higher than those in force in the Member State of destination.
3. Before setting out the factual background to the dispute in the main proceedings, I will briefly summarise the development and principles of Community environmental policy and the provisions of secondary legislation which are most relevant for the purposes of answering the questions referred by the national court.

## **I – Community law**

### **A – Community environmental policy**

4. Environmental protection has recently been progressively enshrined in Community law. Indeed, that concept was absent, or largely so, from the original Treaties. (3) It was a judicial creation of the Court, which in its judgment in *ADBHU* of 7 February 1985 (4) held that it constituted ‘one of the Community’s essential objectives’, thereby conferring upon it the status of an imperative requirement that could justify national measures detrimental to the free movement of goods. In 1987, with the entry into force of the Single European Act, Community activity in the field of environmental protection was given a legal basis in primary law, when Articles 130r, 130s and 130t were inserted into the EC Treaty. (5) The Treaty on European Union, signed at Maastricht on 7 February 1992, elevated that activity to the status of a policy in its own right. The Treaty of Amsterdam, which entered into force on 1 May 1999, further strengthened the position of that policy as a priority by including in Article 6 EC the principle that environmental requirements should be integrated into other Community policies. That article was created for that purpose and was incorporated into the part of the Treaty containing the principles on which the Community is based.

5. Community policy on the environment must contribute to the pursuit of four objectives, which are listed in Article 174 EC. The first relates to the quality of the environment from three aspects: namely preserving, protecting and improving it. The second objective is the protection of human health. The third is the prudent and rational utilisation of natural resources. The fourth is the promotion of measures at international level to deal with regional or worldwide environmental problems.

6. The policy is based on the following four principles: the precautionary principle, which allows immediate measures to be adopted where there is a serious and irreversible threat of harm to the environment; the principle of preventive action, which recommends that the creation of pollution or damage should be prevented, from the outset, by the adoption of measures that will eradicate a known risk; the principle that environmental damage should as a priority be rectified at source, meaning that action must be taken in respect of the actual object that is having a direct or indirect impact on the environment, which is in Community legislation on shipments of waste expressed in the principles of ‘self-sufficiency and proximity’; and the polluter-pays principle, which requires the person who creates a pollution risk or causes pollution to bear the costs of prevention or compensation.

7. It should also be pointed out that Community activities in the environmental field must aim at a high level of protection. That requirement, contained in Article 2 EC since the Treaty of Amsterdam, is restated in several articles of the EC Treaty. (6)

8. Finally, Community powers in the environmental field are not exclusive. Firstly, they are subject to the subsidiarity principle. Secondly, the Member States and the Community have joint powers. Accordingly, under Article 176 EC, where the Community has adopted environmental protection measures, the Member States may maintain and even adopt more stringent protective measures. Those joint powers are also to be seen in the safeguard clauses, which allow a Member State, where the Community has adopted harmonisation measures relating to the establishment and functioning of the internal market, to maintain derogating national provisions justified by the requirements referred to in Article 30 EC or relating to environmental protection, or even to adopt

derogating national provisions, provided that the latter are based on new scientific evidence. (7)

9. In future, the principles framing environmental law could be accorded increased importance, since the draft Treaty establishing a Constitution for Europe, adopted by the Heads of State and Government of the Member States on 18 June 2004, lays down among the objectives of the European Union the sustainable development of Europe, and even of the earth, as well as a high level of protection and improvement of the quality of the environment. (8) The Charter of Fundamental Rights of the European Union, proclaimed on 7 December 2000 at Nice and reproduced in Part II of the aforementioned draft Treaty, provides, for its part, that '[a] high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development'. (9) It is also appropriate to point out that environmental protection is a feature of the constitutions of several Member States. (10)

#### B – Community legislation on shipments of waste

##### 1. The directive

10. Directive 75/442/EEC, (11) the applicable provisions of which were adopted on the basis of Article 130s of the Treaty, which enables the Council of the European Union to adopt measures to implement Community policy on the environment, seeks to ensure a high level of environmental protection. (12) It states that in order to achieve that aim the Member States must, in addition to taking action to ensure the responsible removal and recovery of waste, take measures to restrict the production of waste particularly by promoting clean technologies and products which can be recycled and reused. (13) It is also designed to reduce movements of waste by establishing an integrated and adequate disposal network to enable the Community to become self-sufficient in disposing of the waste it produces and the Member States to move towards that aim too.

11. The first paragraph of Article 4 provides that '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 ...'.

12. Article 7 states that in order to attain the objectives referred to in Article 4 in particular the Member States are to be required to draw up as soon as possible one or more waste management plans.

13. It also provides that the undertakings which carry out waste disposal and recovery must be authorised and inspected. (14)

##### 2. The regulation

14. The regulation was also adopted on the basis of Article 130s of the Treaty. It replaces Directive 84/631/EEC (15) in order to implement within the Community, in particular, the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal of 22 March 1989. (16) **Its purpose is to establish a harmonised set of procedures whereby movements of waste can be limited in order to secure protection of the environment.** (17)

15. Title II of the regulation lays down the procedure applicable to shipments of waste between Member States. Chapter A of Title II, containing Articles 3 to 5, covers waste for disposal and Chapter B of the same title, containing Articles 6 to 11, deals

with waste for recovery. The rules applicable to shipments for the purposes of recovery are less restrictive than those relating to shipments for the purposes of disposal. That difference in the rules governing waste for disposal and waste for recovery is explained by the Community legislature's wish to ensure priority for recovery. (18) Moreover, the control procedures relating to waste for recovery are not applicable, in principle, to waste falling within the scope of the green list, included as Annex II to the regulation, which is regarded as not presenting a risk to the environment. The concepts of waste disposal and recovery are defined by the directive, to which the regulation expressly refers. (19)

16. The regulation requires any natural or legal person who wishes to ship waste from one Member State to another for the purposes of disposing of or recovering it, called 'the notifier', to give notice of his planned shipment to the competent authority of destination, the competent authorities of dispatch and of transit, and the consignee of the waste. (20) However, each Member State may provide that it is for the competent authority of dispatch to make that notification in the place of the notifier. (21)

17. According to the ninth recital in the preamble to the regulation, the purpose of such notification is to enable the various competent authorities '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'. To that effect, Article 7(4) of the regulation, which, it should be borne in mind, is one of the provisions relating to shipments for the purposes of recovery, provides that:

'(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, or
- if the notifier or the consignee has previously been guilty of illegal trafficking ... or
- if the shipment conflicts with obligations resulting from international conventions concluded by the Member State or Member States concerned, or
- if the ratio of the recoverable and non-recoverable waste, the estimated value of the materials to be finally recovered or the cost of the recovery and the cost of the disposal of the non-recoverable fraction do not justify the recovery under economic and environmental considerations.

(b) The competent authorities of transit may raise reasoned objections to the planned shipment based on the second, third and fourth indents of (a).'

## **II – Facts and procedure in the main proceedings**

18. On 23 November 1999, EU-Wood-Trading GmbH, (22) established in Frankfurt am Main (Germany), notified the Sonderabfall-Management-Gesellschaft Rheinland-Pfalz mbH, the competent authority of dispatch, of its plan to ship 3 500 tonnes of wood waste to Italy: in particular, painted and treated wood from demolitions, furniture wood

and carpenters' waste. The planned shipment of the waste was for the purposes of recovery, and the waste was to be transformed into chipboard. According to an analysis carried out in mid-November 1999, the lead-content of the wood waste was 47 mg per kilogram of dry material. (23)

19. The competent authority of dispatch, which was required under its national law to forward notifications of planned shipments, notified the competent authority of destination of the plan at issue on 1 February 2000. The latter raised no objection to that plan. However, the competent authority of dispatch itself raised an objection to it on 17 January 2000. That objection was based on the provisions of the first indent of Article 7(4)(a) of the regulation, on the one hand, and the second indent thereof, on the other.

20. On the basis, initially, of that first indent, the competent authority of dispatch took the view that the planned shipment contravened Article 4 of the directive, which states that waste must be recovered or eliminated without endangering human health, on the ground that the lead-content of that waste exceeded the guide-value laid down in the guidelines issued by the Rheinland-Pfalz Ministry of the Environment relating to operations involving recovery. The use of such wood waste in the manufacture of chipboard would thus lead to an increase of lead in the closed substance cycle and endanger the health of workers responsible for carrying out operations involving recovery and users of that chipboard.

21. Then on the basis of the second indent of Article 7(4)(a) of the regulation, the competent authority of dispatch took the view that the planned shipment contravened a provision of national law relating to environmental and health protection, (24) which prohibits any recovery of waste which leads to an increase in the concentration of pollutants in the closed substance cycle.

22. Wood Trading formally opposed that objection, relying on its submission of another analysis of the waste in question in which the lead-content was calculated to be 23 mg per kilogram of dry material and the arsenic-content to be 3.4 mg per kilogram of dry material. The competent authority of dispatch stood by its objection, taking the view that the two grounds for refusal of the shipment of wood waste at issue still applied on account of the arsenic-content of the waste.

23. Following dismissal of the action by the Verwaltungsgericht (Administrative Court) Mainz, Wood Trading appealed to the referring court, seeking a declaration that the objection raised by the competent authority of dispatch was unlawful. It argued that Article 7(4)(a) of the regulation allows that authority to raise objections only on grounds based on the conditions of transportation of the waste and not on the conditions of its recovery in the State of destination. According to Wood Trading, to accept the contrary would be to allow one Member State to assume the position of guardian of the environment in another Member State, thereby contravening the principle of mutual trust among Member States. Only the competent authority of destination is therefore entitled to raise objections based on the part of the shipment which affects its State.

Furthermore, such an objection by the competent authority of dispatch, in so far as it goes beyond the exhaustive provisions of the regulation, constitutes an unlawful restriction on the free movement of goods. Wood Trading also argued that neither may such an objection be based on the provisions of Article 176 EC, under which measures adopted by the Council pursuant to Article 175 EC are not to prevent any Member State

from maintaining or introducing more stringent protective measures, since such measures may be adopted only in order to protect national interests.

24. The competent authority of dispatch contends in defence that the term 'shipment' referred to in Article 7(4)(a) of the regulation covers not only the transportation of the waste but also each stage in its shipment until its final destination, so that all the relevant authorities have the power to ensure that the recovery poses no risk for health or the environment. It also argues that the transformation of such waste into chipboard poses a health and environmental risk in Germany on the ground that the chipboard could be imported into that country. Furthermore, that authority argues that it follows from case-law, in particular the judgment in *ASA*, (25) that the procedure for recovery is also subject to control by the competent authorities of dispatch.

### **III – The questions referred**

25. It is in the light of the above considerations that the Oberverwaltungsgericht (Higher Administrative Court) Rheinland-Pfalz (Germany) decided to stay proceedings and refer the following five questions to the Court:

'(1)

Under the first indent of Article 7(4)(a) of [the r]egulation ... , can an objection to the shipment of waste for recovery be raised on the ground that the planned recovery contravenes the requirement arising from the first paragraph of Article 4 of [the d]irective ... for waste to be recovered in a manner which is compatible with health and environmental imperatives?

(2)

If so, can such an objection be raised not only by the [competent] authority of destination but also by the [competent] authority of dispatch?

(3)

If so, is the [competent] authority of dispatch entitled to base its assessment of whether the planned recovery of the waste at the place of destination is compatible with health and environmental imperatives on the standards applicable in the State of dispatch even where they are higher than the standards applicable in the State of destination?

(4)

Under the second indent of Article 7(4)(a) of [the r]egulation ... , can an objection to the shipment of waste for recovery be raised on the ground that the planned recovery contravenes national laws and regulations relating to environmental protection, public order, public safety or health protection?

(5)

If so, can the [competent] authority of dispatch raise such an objection on the ground that the recovery contravenes national laws and regulations in force at the place of dispatch?'

### **IV – Assessment**

26. Three questions are encompassed by the five referred by the national court, which all relate to the interpretation of the provisions of the first and second indents of Article 7(4)(a). They are, firstly, whether those provisions allow objections to be raised to a shipment of waste based on the planned recovery in the State of destination (first and second questions referred), secondly, whether the competent authority of dispatch is entitled to raise such objections (second question and first part of the fifth question

referred) and, thirdly, whether that authority is entitled to raise such objections under the rules applicable in its own State, even where they are stricter than those applicable in the State of destination (third question and last part of the fifth question referred).

27. I shall begin by considering the first and fourth questions referred, which relate to whether it is possible to raise objections based on the recovery.

*A – Whether it is possible to raise objections based on the recovery*

28. By its first and fourth questions, the national court asks essentially whether Article 7(4)(a) of the regulation is to be interpreted as meaning that objections to a shipment of waste for recovery relating to the conditions in which that recovery is to be effected may be based, on the one hand, on the first indent of that provision, on the ground that the planned recovery contravenes the requirement arising from the first sentence of Article 4 of the directive, which states that waste must be recovered without endangering human health and without harming the environment and, on the other hand, on the second indent of that provision, on the ground that the planned recovery contravenes national laws and regulations relating to environmental protection, public order, public safety or health protection.

29. With regard to the first indent of Article 7(4)(a) of the regulation, the national court raises that question because that provision refers specifically only to Article 7 of the directive, which requires the Member States to draw up waste management plans and which itself refers to movements of waste.

30. With regard to the second indent of Article 7(4)(a) of the regulation, it explains that its doubts are based on the wording of that provision, from which it may be inferred that objections may be based only on the transportation of waste. It also points out that Article 7(4)(b) of the regulation authorises the competent authorities of transit to raise objections only on the basis of the second, third and fourth indents of Article 7(4)(a). That could mean that the second indent does not allow objections to be raised on the basis of the conditions of recovery of waste, since those authorities would on the face of it have no interest in raising such objections.

31. The national court also points out that, in *Dusseldorp and Others*, (26) cited above, the Court held, with regard to a shipment of waste for the purposes of recovery, that '[i]t was in order to encourage such recovery in the Community as a whole, in particular by eliciting the best technologies, that the Community legislature stipulated that waste of that type should be able to move freely between Member States for processing, *provided that transport poses no threat to the environment*'. (27)

32. First of all, it seems appropriate to state my position on the interpretation of that paragraph of the judgment in *Dusseldorp and Others*, cited above. I do not take the view that in that paragraph the Court meant to state that an objection to a shipment of waste for recovery could be raised only on grounds relating to the conditions in which that waste is to be transported. The case in the main proceedings which gave rise to that judgment was concerned with a provision in a Netherlands waste management plan stipulating that exports of oil filters to another Member State for recovery there were prohibited if the processing of those filters abroad was not of a higher quality than that performed in the Netherlands. For the purposes of ascertaining whether such a rule was compatible with Community law, the Raad van State (Council of State) (Netherlands) asked the Court whether the principles of self-sufficiency and proximity, as contained in that waste management plan, could be applied to shipments of waste for recovery.

Following an examination of the relevant provisions of the directive and the regulation, the Court held that those principles were applicable only to shipments of waste for the purposes of disposal. It explained the grounds for that difference in the rules governing waste for disposal and waste for recovery, pointing out in particular that the principle of priority for recovery applies only to the latter. It is in that context that it made the point referred to by the national court with regard to the Community legislature's reason for wishing to encourage the movement of waste for recovery.

33. It seems to me that by adding the sentence stating that such movement could be encouraged only 'provided that transport poses no threat to the environment' the Court simply wished to point out that such free movement was not unconditional and that it was subject to safety requirements. It would not be justified, in my view, to infer from the fact that that sentence mentions only the safety of 'transport' that the relevant competent authorities are precluded from raising objections to a planned shipment of waste on the basis of the conditions in which its recovery is planned, although that was not the question referred by the Raad van State.

34. I shall now consider the two provisions at issue.

1. First indent of Article 7(4)(a)

35. Like all the interveners, with the exception of Wood Trading, I take the view that the first indent of Article 7(4)(a) of the regulation must be interpreted as meaning that that provision allows objections to be raised relating to the conditions in which the recovery is to be effected in the State of destination. That interpretation follows, in my view, from the wording of that provision and is supported by both the structure and the objectives of the regulation of which it forms a part.

36. With regard to the wording of that provision, it must be borne in mind that the first indent of Article 7(4)(a) of the regulation states that the competent authorities of destination and dispatch may raise reasoned objections to the planned shipment 'in accordance with [the d]irective ... , in particular Article 7 thereof'. Admittedly, the expression 'in accordance with [the d]irective' is not, in the present case, very explicit and it is true that only Article 7 of the directive is referred to specifically. Nevertheless, it seems to me that the most logical interpretation of that provision is that objections may be raised 'on the basis of the directive'. Moreover, use of the adverbial phrase 'in particular' before referring to Article 7 means that the reference to that article is purely for guidance and that such objections may also be based on the other provisions of the directive. In other words, the provision to be interpreted ought to be understood, in my view, as meaning that objections to a planned shipment may be raised if such a shipment does not comply with the requirements of the directive. That analysis is also supported by most of the other language versions of that provision. [\(28\)](#)

37. Moreover, we have seen that Article 4 of the directive provides that '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 ...'. The inference to be drawn from a reading of that article of the directive in conjunction with the first indent of Article 7(4)(a) of the regulation is therefore that the latter provision allows objections to be raised to a planned shipment if the conditions in which the waste is to be recovered are capable of harming human health or the environment.

38. That interpretation is supported by the structure of the regulation. For example, we have seen that any planned shipment of waste for recovery, with the exception, in principle, of waste falling within the scope of the green list included as Annex II to the regulation, must be the subject-matter of a notification to the competent authorities of dispatch, destination and transit. We also know that it is on the basis of that notification that those authorities may raise an objection to such a shipment on the grounds exhaustively listed in Article 7(4) of the regulation. (29) Consideration of Article 6 of the regulation, paragraph 5 of which sets out the information which must be contained in the consignment note supporting that notification, shows that, in addition to information relating to the composition and amount of waste to be recovered, (30) and the arrangements for transporting it, (31) the notifier must furnish certain details relating to the conditions in which that waste is to be recovered. (32) That information therefore covers the entire waste treatment process planned by the notifier until such time as the waste no longer poses a threat to health or to the environment. The Community legislature therefore intended that prior to carrying out the planned shipment all the competent authorities should be informed of the planned recovery process up until its completion. (33) I can see no use for such information other than to allow the competent authorities to assess the conditions in which the recovery is to be effected and, where necessary, to object to such a shipment if they take the view that the conditions of its recovery could harm human health or the environment.

39. In support of that analysis, it must also be pointed out that the regulation contains several provisions which unambiguously confirm that the competent authorities are entitled to review the conditions in which waste is to be recovered and to object to a planned shipment on grounds relating to the planned recovery. (34) Accordingly, the fifth indent of Article 7(4)(a) itself contains a ground for objection which expressly relates to the recovery of waste. (35) Similarly, Article 26(1)(e) provides that any shipment of waste which results in disposal or recovery in contravention of Community or international rules constitutes illegal traffic. (36)

40. Finally, it is appropriate to refer to the objectives of the regulation, set out in the ninth recital in the preamble thereof. According to that recital, the purpose of notification of a planned shipment is to inform the competent authorities not only of movements of waste, but also of the disposal and recovery of it, so that those authorities may take all necessary measures for the protection of human health and the environment. That recital thereby confirms that the Community legislature, by harmonising the conditions and procedural rules to which transboundary movements of waste in the Community are subject, did not aim to ensure the protection of health and the environment solely in the context of the transportation of waste, but also aimed to attain that objective in the context of the treatment of waste by disposal or recovery. Pursuit of that objective would thus be compromised if the competent authorities were precluded from raising an objection to a shipment of waste for recovery where they establish, following notification of a planned shipment, that the planned recovery may harm human health or the environment.

2. Second indent of Article 7(4)(a)

41. Interpretation of this provision raises more difficulties. Like Wood Trading, the Commission of the European Communities shares the doubts expressed by the national court and takes the view that, in the light of the wording of the second indent of Article

7(4)(a) and the content of Article 7(4)(b) of the regulation, the second indent of Article 7(4)(a) cannot serve as the legal basis for an objection to the planned recovery in the State of destination. That is not my view. Like the Danish and Austrian Governments and Sonderabfall-Management-Gesellschaft Rheinland-Pfalz mbH, I consider that the second indent of Article 7(4)(a) of the regulation also allows the competent authorities to raise an objection to a shipment of waste for recovery, that is to say, where the planned recovery contravenes national laws and regulations relating to environmental protection, public order, public safety or health protection.

42. Firstly, in my view there is nothing in the wording of that provision which makes it possible to exclude that interpretation. It should be borne in mind that the second indent of Article 7(4)(a) of the regulation states that '[t]he competent authorities of destination and dispatch may raise reasoned objections to the planned shipment ... if it is not in accordance with national laws and regulations relating to environmental protection, public order, public safety or health protection'. With regard, firstly, to the term 'shipment', I have already pointed out, in my assessment of the first indent of Article 7(4)(a) of the regulation, why, in my view, that provision must not be interpreted as meaning that the objections listed in that article should relate solely to the transportation of waste. I then pointed out that the second indent of Article 7(4)(a) of the regulation refers in very general terms to national laws and regulations relating to environmental protection, public order, public safety or health protection, without specifying that those national laws and regulations could be applied only to the transportation of waste and not to its recovery.

43. Secondly, it seems to me that the argument based on Article 7(4)(b) of the regulation, which, it should be borne in mind, states that the competent authorities of destination and dispatch may raise reasoned objections to a planned shipment of waste only on the basis of the provisions of the second, third and fourth indents of Article 7(4)(a), and therefore not the first and fifth indents thereof, is not conclusive. Admittedly, we have seen that the fifth indent includes a ground for objection expressly relating to the recovery of waste and I have pointed out how the first indent also allowed an objection to be raised based on the planned recovery. Nevertheless, for the following reasons I am not convinced that Article 7(4)(b) of the regulation demonstrates that the provisions of the second indent of Article 7(4)(a) of the regulation do not also allow objections to be raised to the planned recovery.

44. Firstly, I do not concur with the view that the competent authorities of transit do not have the same interest as the other competent authorities in raising objections based on the conditions of recovery. Pollution recognises no frontiers. Any air or water pollution resulting from the recovery of waste effected in the State of destination in conditions harmful to the environment could therefore affect the State or States through which the waste is to be transported as much as the State of dispatch, possibly more so in view of their closer geographical proximity to the State of destination. That is why I take the view that limiting, in Article 7(4)(b) of the regulation, the grounds for objection which may be raised by the competent authorities of transit may be the result not of the fact that those authorities have less interest in the recovery being effected in a way which is not harmful to human health or the environment, but rather of the Community legislature's aim to give those authorities less responsibility for monitoring the carrying out of that recovery.

45. In other words, under Article 7(4)(b) of the regulation the States of transit should have less responsibility for monitoring shipments of waste for recovery than the competent authorities of dispatch and destination. (37) The fact that the grounds for objection which may be raised by the authorities of transit do not include those referred to in the first and fifth indents of Article 7(4) could therefore mean that the authorities of transit, unlike the competent authorities of dispatch and destination, are not bound to ensure that the waste will be treated in accordance with the directive in the State of destination (first indent) or that the recovery is actually justified under economic and environmental considerations (fifth indent). Nevertheless, that does not necessarily mean that the States of transit are precluded from raising an objection to a shipment of waste for recovery if the planned recovery is not in accordance with national laws and regulations relating to environmental protection, public order, public safety or health protection. To that extent, the second indent of Article 7(4)(a) of the regulation thus allows the competent authorities of dispatch, destination and transit to raise objections to a shipment of waste on the basis of the planned recovery.

46. Moreover, it is common ground that the system established by the regulation provides that before any planned shipment of waste for recovery falling within its scope is carried out all the competent authorities of the relevant States, including the competent authorities of transit, must be notified thereof and that all those authorities must receive the same information. (38) By establishing such a system, the Community legislature intended to enable each of those authorities to assess the entire operation and not only that part which takes place within their own States. In other words, it is for each authority to ensure that the planned shipment of waste, taken as a whole, that is to say from the point of departure of the waste in the State of dispatch until the completion of its treatment in the State of destination, will not harm health or the environment. Therefore, it is only logical that the competent authorities of transit also should be able to raise an objection to a shipment of waste relating to the planned recovery on the basis of the second indent of Article 7(4)(a).

47. For that reason, I take the view that an objection to a planned shipment of waste relating to its recovery may also be raised on the basis of the second indent of Article 7(4)(a) of the regulation.

48. In the light of the foregoing, I propose that the Court should answer the first and fourth questions referred to the effect that Article 7(4)(a) of the regulation must be interpreted as meaning that objections to a shipment of waste for recovery relating to the conditions in which that recovery is to be effected may be based, on the one hand, on the first indent of that provision, on the ground that the planned recovery contravenes the requirement arising from Article 4 of the directive that waste must be recovered without endangering human health and without harming the environment and, on the other hand, on the second indent of that provision, on the ground that the planned recovery contravenes national laws and regulations relating to environmental protection, public order, public safety or health protection.

*B – Whether it is possible for the competent authority of dispatch to raise objections relating to the planned recovery*

49. By its second question and the first part of the fifth question referred, the national court asks whether the provisions of the first and second indents of Article 7(4)(a) of the regulation are to be interpreted as meaning that the competent authority of

dispatch may raise an objection to a shipment of waste relating to the conditions in which that recovery is to be effected.

50. In contrast to Wood Trading, but like the other interveners, I take the view that the competent authority of dispatch has the power to raise an objection relating to the planned recovery in the State of destination. That view is supported, firstly, by the wording of Article 7(4)(a) of the regulation which expressly provides that '[t]he competent authorities of destination and dispatch may raise reasoned objections to the planned shipment' on the grounds set out in that provision. The above wording thus confers on those two authorities, without drawing any distinction between them and in unequivocal terms, the power to raise objections to a planned shipment of waste on the grounds set out in that provision and, in particular, on those provided for in the first and second indents thereof.

51. That literal interpretation is also supported by the system established by the regulation. We have seen that the regulation lays down that all the relevant competent authorities must assess each planned shipment as a whole, from the departure of the waste from the State of dispatch to the completion of its treatment in the State of destination. In order to ensure the protection of human health and the environment, the Community legislature preferred to establish a system in which all the competent authorities are involved in the supervision of the planned shipment, thereby running the risk that those authorities may make different assessments of the same planned shipment, (39) rather than to limit the control to be effected by each of them to the part of the shipment which is to take place in its own national territory. According to the logic underlying the system established by the regulation, any transboundary movement of waste within the Community which falls within its scope is a matter for all of the relevant competent authorities. It is therefore inherent in that system that the competent authority of a Member State must assess whether the planned shipment could harm health and the environment in the territory of another Member State. The competent authority of dispatch is therefore entitled to object to a shipment of waste where the planned recovery is capable of adversely affecting the protection of health or the environment, even though that recovery is to take place in the territory of the Member State of destination.

52. The competent authority of dispatch's power is also supported within the system established by the regulation, if support were needed, by the fact that the State in whose territory the waste is generated has special responsibility with regard to its treatment. That special responsibility may be the corollary of the obligation imposed on the Member States both by international conventions and by Community rules designed to reduce the generation of waste to a minimum. (40) That responsibility is, for example, reflected in the principle of self-sufficiency with regard to waste for disposal. It is not discharged until the waste has been treated in accordance with the requirements for protecting human health and the environment. Accordingly, the State dispatching the waste is required to take the waste back where it cannot be disposed of or recovered in the State of destination in accordance with the prescribed conditions. (41) Responsibility is also expressly laid down by the regulation in respect of shipments of waste to destinations outside the Community for the purposes of disposal or recovery there. (42)

53. Furthermore, I am inclined to consider that the competent authority of dispatch is not merely able but rather obliged to raise such an objection where it takes the view that

the planned recovery in the State of destination could harm human health or the environment. Indeed, I do not take the view that, by stating in Article 7(4)(a) of the regulation that the competent authorities of destination and dispatch 'may raise reasoned objections' to the planned shipment as provided for by that provision, the legislature intended to confer on those authorities power merely to be exercised by them at their discretion in particular cases in which the planned shipment may harm human health or the environment. I must say that it would be difficult to justify the obligatory nature of a refusal in some of the situations set out in the five indents of that provision in the light of the objectives of the regulation. (43)

54. However, the regulation includes other provisions which make it possible to take the view that the obligation for the competent authorities to object to a shipment of waste which could harm human health or the environment is mandatory in nature. For example, leaving aside Article 26 of the regulation, Article 30 thereof provides that 'Member States shall take the measures needed to ensure that waste is shipped in accordance with the provisions of this regulation'. Similarly, Article 34(1) provides that irrespective of the point of disposal or recovery of the waste, the producer of that waste is to take all the necessary steps to dispose of or recover or to arrange for disposal or recovery of the waste so as to protect the environment, and Article 34(2) provides that it is for the Member States to take all necessary steps to ensure that the obligations laid down in paragraph 1 are carried out. It therefore seems logical to me, in the light of those provisions, which are drafted in mandatory terms, to take the view that the competent authorities of dispatch and destination are actually required to object to a shipment of waste on the basis of the provisions of the first and second indents of Article 7(4)(a) where they take the view that the planned shipment could harm human health or the environment.

55. That interpretation is also supported by the objective of the regulation. We have seen that, as follows from the ninth recital in its preamble and as the Court has stated several times, the fundamental objective of the regulation is to ensure compliance with the requirements for protecting human health and the environment. (44) The Court did not adopt a different position in the judgment in *Dusseldorp and Others*, cited above, since it held that waste for recovery should be able to move within the Community provided that it poses no threat to the environment. (45) The regulation therefore seeks to ensure that no shipment of waste is carried out which might jeopardise the pursuit of those objectives. The obligation thereby imposed on the competent authorities to object to a shipment of waste which could harm human health or the environment also corresponds to that laid down in Article 4 of the directive, which is binding on the Member States as to that same objective. (46) It is not logical, in my view, in the light of the fact that Article 4 of the directive requires the Member States to take the necessary measures to ensure that waste is recovered or disposed of without harming human health or the environment, to interpret the contested provisions of the regulation as granting the competent authorities of dispatch and destination a mere power, free of any obligation.

56. Moreover, as we shall see under heading C of this Opinion, national rules which may legitimately serve as the basis for an objection by the competent authority of dispatch to a planned shipment of waste for recovery must, in my view, respect the principle of proportionality, and must therefore not go beyond what is necessary for the

protection of human health and the environment. Furthermore, any risk assessment should be made on a scientific rather than an arbitrary basis. It is also in the light of those conditions that I take the view that a competent authority of dispatch which establishes on the basis of such rules that a planned recovery could harm human health or the environment should be required to object to it under the provisions of the first and second indents of Article 7(4)(a) of the regulation.

57. Requiring the competent authority of dispatch and the competent authority of destination to do so would also be in line with the Court's body of case-law relating to compliance with the requirements of the regulation. Indeed, it follows from that case-law that, where the general scheme of the regulation is infringed because the classification of the planned shipment is incorrectly classified, it falls to each competent authority, in particular the competent authority of dispatch, to object to that shipment. (47) Similarly, the Court has held that where a shipment of waste results in disposal or recovery in contravention of specific Community rules laying down the conditions of disposal of a hazardous product, the Member States have circumscribed powers, that is to say they are required under Article 26 of the regulation to take any appropriate legal action to prohibit and punish such traffic. (48)

58. I therefore propose that the answer to the second question and the first part of the fifth question referred for a preliminary ruling should be that the provisions of the first and second indents of Article 7(4)(a) of the regulation must be interpreted as meaning that the competent authority of dispatch must raise an objection to a shipment of waste relating to the conditions in which that recovery is to be effected where it takes the view that the planned recovery in the State of destination could harm human health or the environment.

*C – The right of the competent authority of dispatch to base such objections on the rules applicable in its own State*

59. By its third question and the last part of the fifth question referred, the national court essentially asks whether the first and second indents of Article 7(4)(a) of the regulation are to be interpreted as meaning that the competent authority of dispatch may base its objection to the planned recovery in the State of destination on the standards or on the national laws and regulations applicable in its own State, even where they are stricter than those applicable in the State of destination.

60. As the starting point for my reasoning, I shall work on the assumption that, as in the circumstances of this case, the conditions of recovery of the waste in question have not been harmonised at Community level. In such a situation, each Member State must, under Article 4 of the directive, take the necessary measures under national law to ensure that waste is recovered without endangering human health and without using processes or methods which could harm the environment. Although it is binding on the Member States as to the objective to be achieved, that article does not specify the actual content of the measures which must be taken and it leaves to the Member States a margin of discretion in assessing the need for such measures. (49) Furthermore, under their original powers in the field of environmental protection, Member States may have adopted rules or legislation concerning the conditions in which particular kinds of waste are to be recovered. The questions referred by the national court therefore seek to ascertain whether the competent authority of dispatch is entitled to base an objection

to a planned shipment on its national rules, even where they are stricter than those applicable in the State of destination.

61. In the light of the arguments put forward in the context of examining the preceding questions and the answers which I have proposed to the Court, I take the view that it is in fact where the standards of protection applicable in the Member State of dispatch are higher than those applicable in the State of destination that the competent authority of dispatch must be able to raise an objection to the planned shipment on the basis of its national rules. It is actually in such circumstances that the power thus granted to the competent authority of dispatch is most useful, since if the planned recovery also proved to be contrary to the rules applicable in the State of destination, the competent authority of that State would itself have to object to it. It is therefore where, as in the present case, the recovery of the waste at issue would be authorised under the rules of the State of destination but is prohibited by those applicable in the State of dispatch that the regulation should allow the highest standards of protection to prevail.

62. Such an interpretation of the provisions of Article 7(4)(a) of the regulation is also supported by the objectives of Community environmental policy, of which the regulation forms part. (50) We have seen that that policy aims to achieve a high level of protection. The importance of that objective is reflected, on the one hand, by the fact that it is set out in Article 2 EC, and in later articles of the Treaty, as well as in the directive which constitutes the basic text relating to waste management, and even in the fifth recital in the preamble to the regulation. It is also included in the provisions of Article 176 EC, which confers on the Member States, even following the adoption of Community measures, the right to adopt more stringent protective measures, and measures providing for a safeguard clause. The fact that the planned recovery is authorised in the State of destination cannot therefore prevent the competent authority of dispatch from objecting to it where the latter takes the view that such recovery is contrary to its national rules. The fact that the regulation seeks to attain a high level of protection justifies, on the contrary, allowing the competent authority of dispatch to rely on its stricter national rules for the purposes of assessing whether the planned recovery could harm human health or the environment. I concur, in that respect, with the position of the Danish and Austrian Governments that were this not so it would encourage shipments of waste to be made the treatment centres subject to the least stringent rules, thereby leading to a downward trend in the conditions of recovery of the waste in question.

63. Nevertheless, as I have pointed out, that right of the competent authority of dispatch cannot be unconditional. It must be taken into account that the regulation provides that waste must be able to move freely within the Community. (51) Such freedom of movement is intended to give effect to the principle laid down in the regulation of giving priority to the recovery of waste. The difference in arrangements thus established in the regulation between waste for disposal, which in principle must be disposed of near to where it is produced, and waste for recovery is justified by the fact that the latter serves a useful purpose. It may replace other materials and provide, for example, the raw material for certain industries, thereby making it possible to conserve natural resources. (52)

64. Moreover, as the national court points out, the Court has held that the regulation lays down all the conditions and the procedural rules to which shipments of waste in the

Community are subject, so that any national measure relating to such shipments must be assessed in the light of the provisions of the regulation and not the provisions of Articles 28 EC to 30 EC. (53) Under the general principle of proportionality, it is therefore important that national measures adopted on the basis of the provisions of the first and second indents of Article 7(4)(a) of the regulation are appropriate to achieve the objectives of protection pursued and do not go beyond what is necessary to achieve them. (54) It follows that that condition would not be satisfied if the protection of human health and the environment could be as effectively ensured by less restrictive measures. It is for the national court before which the action to challenge the objection raised by the competent authority of dispatch is heard to ascertain whether the principle of proportionality is respected. (55)

65. In the present case, the national court has not raised any question on that point. Nor has it supplied a great deal of information on the provisions of national law on the basis of which the competent authority of dispatch objected to the shipment at issue or on the reasons leading to the adoption of those provisions. None the less, I take the view that providing the following information will also help to resolve the dispute in the main proceedings.

66. Firstly, as the Commission has stated, it would seem to be essential that the rules applied by the competent authority of dispatch should be based on a scientific assessment of the risk. It would be contrary to the regulation for the competent authority of dispatch to prevent a shipment of waste which could be effectively recovered in the State of destination in accordance with its law on the basis of general considerations or a purely hypothetical risk assessment. (56) With regard to the recovery of waste, whether there is any risk to human health or the environment should be assessed, as in matters relating to the free movement of foodstuffs, (57) in the light of international scientific research and the work of the Community's scientific committees. (58) Nevertheless, that requirement cannot preclude the application of the precautionary principle, which also constitutes one of the principles upon which environmental law is based. Accordingly, in the event that such an assessment reveals that there remains scientific uncertainty as to the existence or extent of genuine risks to public health, a Member State must be able, in accordance with the precautionary principle, to take protective measures without having to wait until the reality and seriousness of those risks become fully apparent. (59)

67. Secondly, in order to check compliance with the principle of proportionality, the competent authority of dispatch must assess, in every case, whether the planned recovery in the State of destination, although regulated by more flexible rules, is none the less capable of providing protection comparable to that pursued by its national rules. That could be so, in the circumstances at issue, if, for example, the methods of producing chipboard used by the undertaking which was to be the consignee of the waste in Italy were as effective in protecting the workers responsible for that recovery and removing the arsenic from that chipboard or reducing the arsenic-content below the threshold set by the German rules.

68. Unlike Wood Trading, I do not take the view that such an assessment is unfeasible in practice. We have seen that the consignment note which supports the notification and which must be forwarded to the competent authority of dispatch and the other competent authorities must contain a number of details relating to the recovery

arrangements. Furthermore, under Article 6(4) and (6) of the regulation, the competent authority of dispatch may ask the notifier for additional information and documents, and the contract concluded with the undertaking which is to be the consignee for recovery of the waste. Moreover, the notifier, who must have concluded that contract, should logically be able to demonstrate that the planned recovery fulfils the requirements laid down by the rules applicable in the State of dispatch. In that regard, it should be possible, where necessary, for an exchange of views to take place between the competent authority of dispatch and the notifier. Such checks and an exchange of views could take place all the more easily where, as in the present case, the State of dispatch has provided, under Articles 3(8) and 6(8) of the regulation, that notification of the planned shipment to the other relevant authorities and the consignee is to be made by the competent authority of dispatch, since in that case the authority would have an additional period of time in which to forward it. [\(60\)](#)

69. At the end of this analysis, it is again appropriate to add that the answer which I propose to provide to the questions examined would not, on the face of it, be any different if the recovery of the waste in question had been the subject-matter of a harmonisation measure at Community level and if, under Article 176 EC, the Member State of dispatch had maintained or adopted more stringent protective measures. In such a situation, the competent authority of dispatch could also, in my view, raise an objection to a planned shipment which contravened its national rules provided, in that case too, that it respected the principle of proportionality.

70. In the light of all those considerations, I propose that the answer to the third question and the last part of the fifth question referred should be that the first and second indents of Article 7(4)(a) of the regulation must be interpreted as meaning that the competent authority of dispatch may base its objection to the planned recovery in the State of destination on the standards or on the national laws and regulations applicable in its own State, even where they are stricter than those applicable in the State of destination, provided that it respects the principle of proportionality.

## **V – Conclusion**

71. In the light of the foregoing considerations, I propose that the Court should give the following answers to the questions referred by the Oberverwaltungsgericht Rheinland-Pfalz:

'(1) 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, as amended by Commission Decision 98/368/EC of 18 May 1998, must be interpreted as meaning that objections to a shipment of waste for recovery relating to the conditions in which that recovery is to be effected may be based, on the one hand, on the first indent of that provision, on the ground that the planned recovery contravenes the requirement arising from Article 4 of Council Directive 75/442/EEC on waste of 15 July 1975, as amended by Council Directive 91/156/EEC of 18 March 1991, and by Commission Decision 96/350/EC of 24 May 1996, that waste must be recovered without endangering human health and without harming the environment and, on the other hand, on the second indent of that provision, on the ground that the planned recovery contravenes national laws and regulations relating to environmental protection, public order, public safety or health protection.

(2) The competent authority of dispatch must raise an objection to a shipment of waste relating to the conditions in which that recovery is to be effected where it takes the view that the planned recovery in the State of destination could harm human health or the environment.

(3) The competent authority of dispatch may base that objection on the standards or on the national laws and regulations applicable in its own State, even where they are stricter than those applicable in the State of destination, provided that it respects the principle of proportionality.'

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[1](#) –

Original Language: French.

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[2](#) –

Council Regulation 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), as amended by Commission Decision 98/368/EC of 18 May 1998 (OJ 1998 L 165, p. 20) ('the regulation').

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[3](#) –

Of the Treaties of Rome, the EC Treaty included no provision specific to the environment and the Euratom Treaty contained a chapter on the protection of the health of workers and the general public against the dangers arising from ionising radiations. The ECSC Treaty included, for its part, Article 55 relating to occupational safety.

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[4](#) –

Case 240/83 [1985] ECR 531, paragraph 13.

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[5](#) –

Articles 130r and 130s of the EC Treaty became, after amendment, Articles 174 EC and 175 EC respectively, and Article 130t of the EC Treaty became Article 176 EC.

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[6](#) –

Article 2 EC, Article 95(3) EC, and Article 174(2) EC.

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[7](#) –

Article 95(4) and (5) EC. See also the safeguard clause provided for in the second paragraph of Article 174(2) EC.

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[8](#) –

Articles 3 and 4.

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[9](#) –

Article 37.

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[10](#) –

See, in particular, the Kingdom of Belgium, the Hellenic Republic, the Kingdom of Spain, the Republic of Finland and the Republic of Hungary. I would also add that the French National Assembly has just approved the attachment of a charter for the environment to its Constitution.

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[11](#) –

Council Directive 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), and by

Commission Decision 96/350/EC of 24 May 1996 (OJ 1996 L 135, p. 32) ('the directive').

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[12](#) –

First and fourth recitals in the preamble to Directive 91/156.

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[13](#) –

Fourth recital in the preamble to Directive 91/156.

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[14](#) –

Ninth recital in the preamble to, and Articles 9 to 14 of, Directive 91/156.

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[15](#) –

Council Directive of 6 December 1984 on the supervision and control within the European Community of the transfrontier shipment of hazardous waste (OJ 1984 L 326, p. 31).

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[16](#) –

Hereinafter 'the Basel Convention'. That convention, to which the Member States are also parties, was drawn up in the context of the United Nations Environment Programme. It was approved on behalf of the Community by Council Decision 93/98/EEC of 1 February 1993 (OJ 1993 L 39, p. 1). The text of that convention is attached to the decision. The Basel Convention is based on the following principles: firstly, reducing the generation of wastes to a minimum [Article 4(2)(a)], secondly, reducing transboundary movement of wastes to a minimum [Article 4(2)(d)], thirdly, self-sufficiency, each party undertaking to dispose of wastes in the State in which they were generated [Article 4(2)(b)], and, fourthly, the sound management of wastes, that is to say ensuring the protection of human health and the environment (Article 2(8)).

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[17](#) –

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

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[18](#) –

Judgment of the Court in Case C-203/96 *Dusseldorp and Others* [1998] ECR I-4075, paragraph 33.

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[19](#) –

Article 2(i) and (k).

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[20](#) –

Articles 3(1) and 6(1).

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[21](#) –

Articles 3(8) and 6(8).

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[22](#) –

Hereinafter 'Wood Trading'.

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[23](#) –

At the material time, that type of waste was included in the amber list, attached as Annex III to the regulation, under the heading AC 170, with the result that its shipment for the purposes of recovery was subject to the mandatory control procedure provided for by the regulation.

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[24](#) –

That is, according to the decision for reference, Article 5(3) of the Gesetz zur Förderung der Kreislaufwirtschaft und Sicherung der umweltverträglichen Beseitigung von Abfällen of 27 September 1994 (BGB1. I, p. 2705).

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[25](#) –

Case C-6/00 [2002] ECR I-1961.

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[26](#) –

Paragraph 33.

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[27](#) –

National court's emphasis.

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[28](#) –

For example, 'conformément à la directive 75/442/CEE et notamment à son article 7' in French; 'gemäß der Richtlinie 75/442/EWG, insbesondere auf Artikel 7' in German; 'con arreglo a lo dispuesto en la Directiva [75]/442/CEE, en particular su artículo 7' in Spanish; 'conformemente alla direttiva 75/442/CEE, in particolare all'articolo 7, oppure' in Italian, etc.

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[29](#) –

Judgment of the Court in Case C-324/99 *DaimlerChrysler* [2001] ECR I-9897, paragraph 50.

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[30](#) –

First indent of Article 6(5).

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[31](#) –

*Ibid.*, second and third indents.

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[32](#) –

Those details are set out in the fourth to the eighth indents of Article 6(5) of the regulation. The notifier must state the identity of the consignee of the waste, the location of the recovery centre and the type and duration of the authorisation under which the centre operates; the recovery operations in Annex II B to the directive; the planned method of disposal for the residual waste after recycling has taken place, and the amount of the recycled material in relation to the residual waste, as well as the estimated value of the recycled material. Moreover, the fourth indent states that '[t]he centre must have adequate technical capacity for the recovery of the waste in question under conditions presenting no danger to human health or to the environment'.

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[33](#) –

For the purposes of ensuring that the waste treatment process will be completed without harming health or the environment, Article 27 of the regulation provides that all shipments of waste falling within the scope of that regulation are to be subject to the provision of a financial guarantee or insurance covering costs for disposal and recovery, that guarantee being returned when proof has been furnished that the waste has reached its destination and has been disposed of or recovered in an environmentally sound manner.

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[34](#) –

For example, Article 9 of the regulation provides that the competent authorities having jurisdiction over specific recovery facilities may decide, notwithstanding

Article 7, that they will not raise objections concerning shipments of certain types of waste to a specific recovery facility. See also Article 34 of the regulation.

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[35](#) –

According to that provision, an objection may be raised ‘if the ratio of the recoverable and non-recoverable waste, the estimated value of the materials to be finally recovered or the cost of the recovery and the cost of the disposal of the non-recoverable fraction do not justify the recovery under economic and environmental considerations’.

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[36](#) –

At the hearing, the parties were invited to give their views on the issue of whether the provisions of Article 26(1)(e) of the regulation are also applicable in circumstances such as those in the main proceedings. Like the majority of them, with the exception of Sonderabfall-Management-Gesellschaft Rheinland-Pfalz mbH, I take the view that that is not so. In the judgment in *ASA*, cited above, the Court held that Article 26 of the regulation is one basis on which the competent authorities may be required to raise an objection to a planned shipment on the ground of an incorrect classification (paragraph 41). In the light of the Order of 27 February 2003 in Joined Cases C-307/00 to C-311/00 *Oliehandel Koeweit and Others* [2003] ECR I-1821, the same Article 26 must also be applied where the treatment of waste at issue was covered by a measure of secondary legislation. However, where the objection of the competent authority of dispatch is based on the grounds for refusal expressly referred to by Article 7(4) of the regulation, as in the present case, or on Article 4(3) thereof, I take the view that the provisions of Article 26 of the regulation are irrelevant.

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[37](#) –

The responsibility of the competent authority of destination stems logically from the fact that recovery takes place within its territorial jurisdiction. That of the competent authority of dispatch stems from the fact that the waste was produced within its jurisdiction. I will return to that point under heading B of this Opinion.

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[38](#) –

Article 6 of the regulation.

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[39](#) –

The Court held that the risk of different assessments regarding classification of the planned shipment is inherent in the system established by the regulation [judgment in *ASA*, cited above, paragraph 44, and the Order in *Oliehandel Koeweit and Others*, cited above, paragraph 102].

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[40](#) –

See Article 4(2)(a) of the Basel Convention and the fourth recital in the preamble to the directive.

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[41](#) –

Article 25 of the regulation.

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[42](#) –

Articles 14(2)(b) and 16(3)(b) of the regulation.

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[43](#) –

For example, the third indent refers to cases where the notifier or the consignee has previously been found guilty of illegal trafficking; similarly, the fifth indent refers to cases where the planned recovery is not justified under economic and environmental considerations.

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- [44](#) – Judgments in *Parliament v Council*, cited above, paragraph 18, and in Case C-389/00 *Commission v Germany* [2003] ECR I-2001, paragraph 34.
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- [45](#) – Paragraph 33.
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- [46](#) – Judgment in Case C-365/97 *Commission v Italy* [1999] ECR I-7773, paragraph 67.
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- [47](#) – Judgments in *ASA*, cited above, paragraph 40; Case C-228/00 *Commission v Germany* [2003] ECR I-1439, paragraph 33; and in Case C-458/00 *Commission v Luxembourg* [2003] ECR I-1553, paragraph 21.
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- [48](#) – Order in *Oliehandel Koeweit and Others*, cited above, paragraph 117.
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- [49](#) – Judgment in *Commission v Italy*, cited above, paragraph 67.
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- [50](#) – Judgment in *Parliament v Council*, cited above, paragraph 23.
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- [51](#) – Judgment in *Dusseldorf and Others*, cited above, paragraph 33.
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- [52](#) – Order in *Oliehandel Koeweit and Others*, cited above, paragraph 97.
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- [53](#) – Judgment in *DaimlerChrysler*, cited above, paragraphs 41 to 43.
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- [54](#) – See, to that effect, the judgments in Case 137/85 *Maizena and Others* [1987] ECR 4587, paragraph 15; Case C-339/92 *ADM Ölmühlen* [1993] ECR I-6473, paragraph 15; Case C-210/00 *Käserei Champignon Hofmeister* [2002] ECR I-6453, paragraph 59; and Case C-491/01 *British American Tobacco (Investments) and Imperial Tobacco* [2002] ECR I-11453, paragraph 122.
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- [55](#) – Judgment in Case C-314/98 *Snellers* [2000] ECR I-8633, paragraph 59.
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- [56](#) – See, to that effect, the judgment in Case C-192/01 *Commission v Denmark* [2003] ECR I-9693, paragraph 48.
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- [57](#) – See the judgment in Case C-121/00 *Hahn* [2002] ECR I-9193, paragraph 40.
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- [58](#) – In that regard, it is appropriate to point out that the conditions governing the use of arsenic for preserving wood are, following a risk assessment referred to the Scientific Committee on Toxicity, Ecotoxicity and the Environment, the subject-

matter of very restrictive measures in Commission Directive 2003/2/EC of 6 January 2003 relating to restrictions on the marketing and use of arsenic (tenth adaptation to technical progress of Council Directive 76/769/EEC) (OJ 2003 L 4, p. 9).

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[59](#) –

See, to that effect, the judgments in Case C-157/96 *National Farmers' Union and Others* [1998] ECR I-2211, paragraph 63, and *Commission v Denmark*, cited above, paragraph 49.

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[60](#) –

In the present case, the competent authority of dispatch received the consignment note on 23 November 1999 but did not forward it to the competent authority of destination until 1 February 2000. I have not found in the order for reference any explanation for the delay by the competent authority of dispatch in making that notification. As stated in my Opinion of 15 July 2004 in Case C-472/02 *Siomab*, pending before the Court, the period within which the competent authority of dispatch must forward the notification to the other competent authorities and the consignee should not exceed the period allotted to the competent authority of destination by Article 7(2) of the regulation.