

## Case C-444/00

The Queen on the application of

Mayer Parry Recycling Ltd

v

Environment Agency

and

Secretary of State for the Environment, Transport and the Regions

(Reference for a preliminary ruling from the High Court of Justice of England and Wales, Queen's Bench Division (Administrative Court))

«(Directive 75/442/EEC, as amended by Directive 91/156/EEC and Decision 96/350/EC – Directive 94/62/EC – Concept of waste – Concept of recycling – Processing of metal packaging waste)»

Opinion of Advocate General Alber delivered on 4 July 2002

I - 0000

Judgment of the Court (Fifth Chamber), 19 June 2003

I - 0000

### Summary of the Judgment

1..

*Environment – Waste – Packaging and packaging waste – Directives 75/442 and 94/62 – Link (European Parliament and Council Directive 94/62; Council Directive 75/442, as amended by Directive 91/156)*

2..

*Environment – Packaging and packaging waste – Directive 94/62 – Recycling – Meaning – Reprocessing of metal packaging waste by transformation into a secondary raw material – Not covered – Reprocessing rendering such waste useable for the production of ingots, sheets or coils of steel – Covered – Concepts of recycling and waste under Directive 75/442 – No effect (Art. 174(1) and (2) EC; European Parliament and Council Directive 94/62, Art. 3(7); Council Directive 75/442, as amended by Directive 91/156)*

1.

Directive 94/62, inasmuch as it contains specific rules or rules supplementing Directive 75/442 on waste, within the meaning of Article 2(2) of the latter as introduced by Directive 91/156, which are for the management of a particular category of waste, namely packaging waste, must be considered to be special legislation (a *lex specialis*) vis-à-vis Directive 75/442, so that its provisions prevail over those of Directive 75/442 in situations which it specifically seeks to regulate. Nevertheless, Directive 75/442 remains very important for the interpretation and application of Directive 94/62. First, as stated in the seventh recital in its preamble, Directive 94/62 forms part of the Community strategy for waste management set out, *inter alia*, in Directive 75/442, second, Directive

94/62 contains provisions which expressly refer to Directive 75/442 and, third, since packaging waste is waste within the meaning of Directive 75/442, the latter remains applicable to such waste in so far as Directive 94/62 does not otherwise provide. see paras 51-57

2.

Recycling within the meaning of Article 3(7) of Directive 94/62 on packaging and packaging waste, defined as the reprocessing of waste materials in a production process for the original purpose or for other purposes excluding energy recovery, is to be interpreted as meaning that the packaging waste must be worked in order to produce new material or make a new product possessing characteristics comparable to those of the material of which the waste was composed, in order to be able to be used again for the production of packaging or in order to be used for other purposes, so long as the reprocessing does not take the form of energy recovery and is not effected by means of disposal. Accordingly, recycling does not include the reprocessing of metal packaging waste when it is transformed into a secondary raw material, such as material meeting the specifications of Grade 3B, but covers the reprocessing of such waste when it is used to produce ingots, sheets or coils of steel. That interpretation would be no different if the concepts of recycling and waste referred to by Directive 75/442 on waste were taken into account, given that, under Article 3(2) of Directive 94/62, packaging waste is defined as any packaging or packaging material covered by the definition of the term waste in Directive 75/442 and that, should the term recycling, which is not defined in Directive 75/442, not have the same meaning as the term appearing in Directive 94/62, only the latter term would be applicable to packaging waste since the provisions of Directive 94/62, as special legislation, prevail over those of Directive 75/442. see paras 64, 66-69, 88, 90, 92-93, operative part 1-2

JUDGMENT OF THE COURT (Fifth Chamber)  
19 June 2003 [\(1\)](#)

((Directive 75/442/EEC, as amended by Directive 91/156/EEC and Decision 96/350/EC – Directive 94/62/EC – Concept of waste – Concept of recycling – Processing of metal packaging waste))

In Case C-444/00,  
REFERENCE to the Court under Article 234 EC by the High Court of Justice of England and Wales, Queen's Bench Division (Administrative Court), for a preliminary ruling in the proceedings pending before that court between  
**The Queen** on the application of **Mayer Parry Recycling Ltd**

and

**Environment Agency, Secretary of State for the Environment, Transport and the Regions, interveners: Corus (UK) Ltd and Allied Steel and Wire Ltd (ASW),**

on the interpretation 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 Commission Decision 96/350/EC of 24 May 1996 (OJ 1996 L 135, p. 32), and of European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste (OJ 1994 L 365, p. 10),

THE COURT (Fifth Chamber),,

composed of: M. Wathelet, President of the Chamber, C.W.A. Timmermans (Rapporteur), P. Jann, S. von Bahr and A. Rosas, Judges,  
Advocate General: S. Alber,  
Registrar: M.-F. Contet, Principal Administrator,

after considering the written observations submitted on behalf of:

—

Mayer Parry Recycling Ltd, by M. Fordham and T. de la Mare, Barristers,  
instructed by Denton Wilde Sapte, Solicitors,

—

the Environment Agency, by R. Navarro, acting as Agent, and J. Howell QC,

—

Corus (UK) Ltd, by R. Singh and J. Simor, Barristers, instructed by J. Maton,  
Solicitor,

—

the United Kingdom Government, by G. Amodeo, acting as Agent, and P. Sales  
and M. Hoskins, Barristers,

—

the Danish Government, by J. Molde, acting as Agent,

—

the Netherlands Government, by H.G. Sevenster, acting as Agent,

—

the Austrian Government, by C. Pesendorfer, acting as Agent,

—

the Commission of the European Communities, by R.B. Wainwright and  
H. Støvlbaek, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Mayer Parry Recycling Ltd, represented by M. Fordham; the Environment Agency, represented by J. Howell; Corus (UK) Ltd, represented by R. Singh; the United Kingdom Government, represented by G. Amodeo and P. Sales; the Netherlands Government, represented by J. van der Oosterkamp, acting as Agent; and the Commission, represented by R.B. Wainwright, at the hearing on 18 April 2002,

after hearing the Opinion of the Advocate General at the sitting on 4 July 2002,  
gives the following

## Judgment

1

By order of 9 November 2000, received at the Court on 30 November 2000, the High Court of Justice of England and Wales, Queen's Bench Division (Administrative Court), referred to the Court for a preliminary ruling under Article 234 EC two questions on the interpretation 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 Commission Decision 96/350/EC of 24 May 1996 (OJ 1996 L 135, p. 32) ( Directive 75/442), and of European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste (OJ 1994 L 365, p. 10).

2

Those questions were raised in proceedings between Mayer Parry Recycling Ltd ( Mayer Parry) and the Environment Agency concerning the latter's refusal to grant Mayer Parry's application for accreditation as a reprocessor, which is defined as a person who carries out the activities of waste recovery or recycling.

### **Legal context**

Community legislation

3

Article 1 of Directive 75/442 states: For the purposes of this Directive:

(a)

waste shall mean any substance or object in the categories set out in Annex I which the holder discards or intends or is required to discard. The Commission, acting in accordance with the procedure laid down in Article 18, will draw up, not later than 1 April 1993, a list of wastes belonging to the categories listed in Annex I. This list will be periodically reviewed and, if necessary, revised by the same procedure;

(b)

producer shall mean anyone whose activities produce waste ( original producer) and/or anyone who carries out pre-processing, mixing or other operations resulting in a change in the nature or composition of this waste;

...

(e) disposal shall mean any of the operations provided for in Annex IIA;

(f) recovery shall mean any of the operations provided for in Annex IIB;

...

4 The recovery operations specified in Annex IIB include, at point R 4, recycling/reclamation of metals and metal compounds. The introductory note to Annex IIB explains that that annex is intended to list recovery operations as they occur in practice.

5 Article 3(1) of Directive 75/442 provides: Member States shall take appropriate measures to encourage:

(a) firstly, the prevention or reduction of waste production and its harmfulness, in particular by: ...

(b) secondly:

(i) the recovery of waste by means of recycling, re-use or reclamation or any other process with a view to extracting secondary raw materials, or

(ii) the use of waste as a source of energy.

6 Article 4 of Directive 75/442 provides: Member States shall take the necessary measures to ensure that waste is recovered or disposed of without endangering human health and without using processes or methods which could harm the environment ...Member States shall also take the necessary measures to prohibit the abandonment, dumping or uncontrolled disposal of waste.

7 Article 8 of Directive 75/442 states: Member States shall take the necessary measures to ensure that any holder of waste:

—

has it handled by a private or public waste collector or by an undertaking which carries out the operations listed in Annex IIA or B, or

—

recovers or disposes of it himself in accordance with the provisions of this Directive.

8 The first subparagraph of Article 9(1) of Directive 75/442 is worded as follows: For the purposes of implementing Articles 4, 5 and 7, any establishment or

undertaking which carries out the operations specified in Annex IIA must obtain a permit from the competent authority referred to in Article 6.

9

Article 10 of Directive 75/442 states: For the purposes of implementing Article 4, any establishment or undertaking which carries out the operations referred to in Annex IIB must obtain a permit.

10

Article 12 of Directive 75/442 provides: Establishments or undertakings which collect or transport waste on a professional basis or which arrange for the disposal or recovery of waste on behalf of others (dealers or brokers), where not subject to authorisation, shall be registered with the competent authorities.

11

Article 13 of Directive 75/442 provides: Establishments or undertakings which carry out the operations referred to in Articles 9 to 12 shall be subject to appropriate periodic inspections by the competent authorities.

12

Article 15 of Directive 75/442 states: In accordance with the polluter pays principle, the cost of disposing of waste must be borne by:

—

the holder who has waste handled by a waste collector or by an undertaking as referred to in Article 9, and/or

—

the previous holders or the producer of the product from which the waste came.

13

Article 1 of Directive 94/62 states:

1.

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

2.

To this end this Directive lays down measures aimed, as a first priority, at preventing the production of packaging waste and, as additional fundamental principles, at reusing packaging, at recycling and other forms of recovering packaging waste and, hence, at reducing the final disposal of such waste.

14

Article 3 of Directive 94/62 provides: For the purposes of this Directive:

1.

packaging shall mean all products made of any materials of any nature to be used for the containment, protection, handling, delivery and presentation of goods, from raw materials to processed goods, from the producer to the user or the consumer. Non-returnable items used for the same purposes shall also be considered to constitute packaging. ...

2. packaging waste shall mean any packaging or packaging material covered by the definition of waste in Directive 75/442/EEC, excluding production residues;

...

6. recovery shall mean any of the applicable operations provided for in Annex IIB to Directive 75/442/EEC;

7. recycling shall mean the reprocessing in a production process of the waste materials for the original purpose or for other purposes including organic recycling but excluding energy recovery;

...

15 Article 6(1) of Directive 94/62 states: In order to comply with the objectives of this Directive, Member States shall take the necessary measures to attain the following targets covering the whole of their territory:

(a) no later than five years from the date by which this Directive must be implemented in national law, between 50% as a minimum and 65% as a maximum by weight of the packaging waste will be recovered;

(b) within this general target, and with the same time-limit, between 25% as a minimum and 45% as a maximum by weight of the totality of packaging materials contained in packaging waste will be recycled with a minimum of 15% by weight for each packaging material;

(c) no later than 10 years from the date by which this Directive must be implemented in national law, a percentage of packaging waste will be recovered and recycled, which will have to be determined by the Council in accordance with paragraph 3(b) with a view to substantially increasing the targets mentioned in paragraphs (a) and (b).

16 The first subparagraph of Article 7(1) of Directive 94/62 provides: Member States shall take the necessary measures to ensure that systems are set up to provide for:

(a) the return and/or collection of used packaging and/or packaging waste from the consumer, other final user, or from the waste stream in order to channel it to the most appropriate waste management alternatives;

(b) the reuse or recovery including recycling of the packaging and/or packaging waste collected,  
in order to meet the objectives laid down in this Directive.

National legislation

17

Section 93 of the Environment Act 1995 empowers the Secretary of State for the Environment, Transport and the Regions to make regulations imposing producer responsibility obligations on such persons, and in respect of such products or materials, as may be prescribed. That section was enacted to ensure implementation of Article 6(1) of Directive 94/62.

18

The Producer Responsibility Obligations (Packaging Waste) Regulations 1997 ( the 1997 Regulations) were adopted pursuant to sections 93, 94 and 95 of the Environment Act 1995.

19

The 1997 Regulations use the definitions of recovery and recycling contained in Article 3 of Directive 94/62 and define reprocessor as a person who, in the ordinary course of conduct of a trade, occupation or profession, carries out the activities of recovery or recycling.

20

Under the 1997 Regulations, a waste producer must furnish to the Environment Agency a certificate of compliance stating that he has complied with his recovery and recycling obligations for the relevant year. It is a criminal offence to contravene this provision. In addition, under regulation 22 a producer must provide the Environment Agency with information from his records, including the amount in tonnes of packaging waste provided to a reprocessor.

21

The 1997 Regulations allow a producer to fulfil the foregoing obligations by being a member of a registered scheme throughout a relevant year. There is no requirement for the operator of the scheme to furnish the Environment Agency with a certificate of compliance, but he is required, under regulation 24 of the 1997 Regulations, to maintain records of, and supply the Environment Agency with, certain information, including the amount in tonnes of packaging waste provided to a reprocessor.

22

The Environment Agency and the Scottish Environment Protection Agency have issued a document called the Orange Book, which establishes a voluntary accreditation system. The system allows accredited reprocessors to issue Packaging Waste Recovery Notes ( PRNs) as evidence of delivery of packaging waste to them by producers or registered schemes.

23

The accreditation system is intended to enable a producer to confirm to the Environment Agency or the Scottish Environment Protection Agency that the packaging waste which he has delivered to a reprocessor has been recovered or recycled, thereby permitting satisfactory monitoring of producers and registered schemes with regard to their obligations under the 1997 Regulations. It is also intended to provide a means of establishing consistency with regard to the provision of documentary evidence of recovery and recycling.

24

Under the system established by the Orange Book, the Environment Agency accepts that PRNs issued by accredited reprocessors contain all the information

which producers are normally obliged to supply to it pursuant to regulation 22 of the 1997 Regulations. Only accredited reproprocessors are entitled to issue PRNs. PRNs are transferable and have an economic value. They are sold by accredited reproprocessors to producers of packaging waste.

25

The Environment Agency's policy is to accredit those businesses specified in paragraph 3 of Annex D to the Orange Book, which states that for metals (aluminium and steel), the reproprocessor will be the business producing the ingots, sheets or coils of aluminium or steel from packaging waste.

26

The point in the cycle in respect of which accreditation is granted generally corresponds to the point at which a new product is made that is indistinguishable from one made from materials which have never been waste. The scheme was set up so as to ensure that PRNs would not be issued twice in the course of the processing of the same materials and to reduce the possibility of fraud.

27

The integrated pollution control regime laid down by the Environmental Protection Act 1990 regulates pollution of the environment from certain prescribed processes, including those relating to the production of steel. Such processes may be carried out only if authorised by the Environment Agency. Activities which form part of a process subject to integrated pollution control are excluded from the national waste management licensing regime as established by the Waste Management Licensing Regulations 1994, which implement Directive 75/442.

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

28

Mayer Parry is a company which specialises in the treatment of scrap metal so as to render it suitable for use by steelmakers for the purpose of producing steel.

29

Mayer Parry obtains scrap metal, which includes packaging waste, from industrial and other sources. The scrap metal has commercial value and Mayer Parry generally has to pay to obtain it. Mayer Parry collects, inspects, tests for radiation, sorts, cleans, cuts, separates and shreds (fragmentises) the scrap metal. Through this process, Mayer Parry transforms ferrous scrap metal into material which meets the specifications of Grade 3B (Grade 3B material). It sells the Grade 3B material to steelmakers, which use it to produce ingots, sheets or coils of steel.

30

In November 1998, Mayer Parry applied to the Environment Agency for accreditation as a reproprocessor entitled to issue PRNs under the voluntary scheme established by the Environment Agency and the Scottish Environment Protection Agency, as set out in the Orange Book.

31

The Agency refused the application by decision of 15 November 1999. Mayer Parry brought judicial review proceedings before the High Court of Justice of England and Wales, Queen's Bench Division (Administrative Court), seeking,

*inter alia* , the annulment of that decision and a declaration that it carries out recovery and recycling within the meaning of Directive 94/62. Corus (UK) Ltd ( Corus) and Allied Steel and Wire Ltd ( ASW) have intervened in the High Court proceedings.

32

The High Court states that, during the course of the proceedings before it, it has become apparent that it is necessary to establish whether the activities carried out by Mayer Parry do or do not constitute recycling within the meaning of Directive 94/62. In the light of the arguments of the parties, it is also necessary to consider certain issues arising with regard both to Directive 75/442 and to the relationship between that directive and Directive 94/62.

33

The High Court also points out that there were earlier proceedings between Mayer Parry and the Environment Agency concerning the definition of waste, which gave rise to a first judgment of the High Court, dated 9 November 1998. Following that judgment, the scrap metal treated by Mayer Parry so as to constitute Grade 3B material was not considered to be waste.

34

Since the High Court of Justice of England and Wales, Queen's Bench Division (Administrative Court), considered that the case before it necessitated interpretation of the Community rules, it decided to stay proceedings and to refer the following questions to the Court of Justice for a preliminary ruling: Where an undertaking deals with packaging materials including ferrous metals, which (when received by that undertaking) constitute waste within the meaning of Article 1(a) of Council Directive 75/442/EEC on waste, as amended by Council Directive 91/156/EEC and Commission Decision 96/350/EC, by means of sorting, cleaning, cutting, crushing, separating and/or baling so as to render those materials suitable for use as a feedstock in a furnace in order to produce ingots, sheets or coils of steel:

(1)

Have those materials been recycled, and do they cease to be waste, for the purposes of Council Directive 75/442, when they have been:

(a)

rendered suitable for use as a feedstock, or

(b)

used by a steelmaker so as to produce ingots, sheets or coils of steel?

(2)

Have those materials been recycled for the purposes of European Parliament and Council Directive 94/62/EC on packaging and packaging waste when they have been:

(a)

rendered suitable for use as a feedstock, or

(b)

used by a steelmaker so as to produce ingots, sheets or coils of steel?

**Observations submitted to the Court**

35

Mayer Parry contends that Directives 75/442 and 94/62 display four features of importance for the main proceedings. First, Directive 75/442 provides common terminology. Second, it is apparent from those directives that the discard rule affects whether material is classified as waste in that Grade 3B material could be classified as waste only if Mayer Parry were to discard it. Third, the objective of seeking to conserve natural resources is achieved when secondary raw materials, such as the Grade 3B material, are obtained. Fourth, a distinction is drawn in the two directives between physical recovery and energy recovery.

36

Mayer Parry further contends that, under the Court of Justice's case-law, there are four guiding principles for determining when waste has been recycled. First, the question whether a substance is waste is one for the national court and must be determined in the light of all the circumstances of the case, regard being had to the aim of Directive 75/442 and the need to ensure that its effectiveness is not undermined. Second, any substance is waste if its holder has discarded it or seeks to do so. Third, there is a distinction between waste recovery and normal industrial treatment. Fourth, recovery has been completed where the process has produced a secondary raw material for use in an industrial process. Once a secondary raw material has been produced for use of this kind, such as, in the main proceedings, the Grade 3B material produced by Mayer Parry, recovery and therefore recycling are considered to have been completed and the material is no longer waste.

37

The Environment Agency argues that the concept of recycling must be given the same meaning in Directive 75/442 and Directive 94/62 because they have the same objectives. Furthermore, since the concept of waste is the same in Directive 75/442 and Directive 94/62, the directives fall to be considered together. The Environment Agency also submits that the question submitted by the High Court concerns the interpretation of Community law and that the answer to such a question cannot be left to the national court.

38

With regard to determining when waste has been recycled, the Environment Agency argues, first, that a substance does not cease to be waste merely because it is in the possession of someone other than the original producer and that person does not himself intend, and is not required, to discard it. Second, although waste does not necessarily cease to be waste merely because it may be said to have undergone a recovery operation, the description of some of those operations may none the less enable the point at which material ceases to be waste to be determined. Thus, there is no reason to retain waste management controls over materials once they have been used to generate energy (point R 1 of Annex IIB to Directive 75/442) or have been reclaimed, regenerated, recycled, reused or applied to land resulting in benefit to agriculture or ecological improvement (points R 2 to R 10 of that annex), or once any wastes obtained from such operations have been used (point R 11 of the annex).

39

The Environment Agency contends that the activities of an undertaking such as Mayer Parry do not result in recycling because, as a producer, it carries out only pre-processing or other operations resulting in a change in the nature or composition of the scrap metal which it handles.

40

The United Kingdom Government contends that, in order to decide the main proceedings, it is sufficient to establish whether Mayer Parry's activities constitute recycling within the meaning of Directive 94/62 and, accordingly, there is no need to consider Directive 75/442. In this connection it states, first, that under Directive 94/62 waste can be recycled only once. Second, Mayer Parry's activities do not satisfy the conditions of the definition of recycling in Article 3(7) of Directive 94/62, because they do not constitute a production process and Mayer Parry does not carry out reprocessing in the sense of either a reconstitution of waste materials into some new item or use in a process similar to that in which the raw material is used. Third, Article 6(2) of Directive 94/62 shows that recycling occurs only at the stage at which a steelmaker produces ingots, sheets or coils of steel.

41

The United Kingdom Government also submits that, if it is necessary to examine the relationship between Directive 94/62 and Directive 75/442, the operation of the latter allows the Member States a margin of appreciation in defining for themselves what constitutes a recovery operation, whereas Directive 94/62 does not. So far as concerns determination of the point at which material ceases to be waste, a different approach is required for each of the directives since they pursue different objectives.

42

Corus is a steelmaker which uses Grade 3B material produced by Mayer Parry in the manufacture of ingots, coils and sheets of steel. It is accredited as a reprocessor by the Environment Agency and is one of the interveners in the main proceedings. Corus concurs with the observations of the United Kingdom Government, stressing, first, that it is sufficient in the present case for the Court to rule on Directive 94/62. Second, it submits that its activities constitute recycling for the purposes of Directive 94/62 because they enable the Grade 3B material to be used for production purposes. Third, the mode of proof of recycling is a matter falling within Member State competence.

43

The Danish Government endorses the arguments of the Environment Agency, emphasising that the concept of waste must be interpreted broadly in order to protect the environment. In interpreting that concept, weight must be attached to the question whether the waste has undergone such an alteration in its composition that it is possible to speak of a new product which need not be made subject to control by the Member States on environmental grounds. It concludes that treatment such as that carried out by Mayer Parry does not constitute recycling within the meaning of Directives 75/442 and 94/62, so that the Grade 3B material produced by it remains waste.

44

The Netherlands Government submits that, for the purposes of Directive 75/442, the concept of recycling covers not only the use of waste in a production process, but also its processing in a recovery operation designed to obtain a secondary raw material. In order to determine whether such an operation has been completed and whether the material is consequently no longer waste, it is necessary to examine whether its holder is liable to discard it within the meaning of Article 1(a) of Directive 75/442. In this connection, it should be established whether the recovery operation has yielded material which has the same characteristics and properties as a raw material.

45

The Netherlands Government argues that recycling within the meaning of Article 3(7) of Directive 94/62 must, on the other hand, be interpreted differently. It follows from that article that the recycling of packaging waste cannot be completed before the waste — *qua* secondary raw material — has been reused in a production process. In other words, recycling within the meaning of Directive 94/62 has not yet been completed at the moment when a secondary raw material is obtained, even if the material has, at that moment, ceased to be waste within the meaning of Directive 75/442. Only if the packaging waste is in fact used, as a secondary raw material, in a production process can there be a guarantee that the consumption of primary raw materials will be reduced. Consequently, the Grade 3B material produced by Mayer Parry has been recycled within the meaning of Directive 94/62 only once it has been used by a steelmaker for the production of ingots, sheets or coils of steel.

46

The Austrian Government contends, first, that the definitions set out in Directive 94/62 cannot deviate from those in Directive 75/442. Second, in order to determine whether waste which has undergone a recovery operation is no longer waste, it is necessary to balance the interests of environmental protection and protection of human health against the promotion of recycling. Third, the recovery of waste need not necessarily be effected in one step. At every individual step it is necessary to examine whether recovery occurs. Mayer Parry accordingly does not carry out recycling, but simply recovery of waste in order to have it undergo recycling within the meaning of Directive 94/62.

47

The Commission contends that the definitions of recovery and of recycling, as a mode of recovery, in the context of Directive 75/442 must be interpreted in the same way as the definitions in Directive 94/62. Any divergent interpretation would mean that there is a danger of double-counting an operation for the purpose of achievement of the directives' goals. The Commission further submits that waste can be regarded as having been recycled only when the reprocessing has been completed and a new product created. The material produced by Mayer Parry cannot be regarded as having undergone recycling, that is to say as no longer being waste. The fact that the Grade 3B material produced by Mayer Parry has an economic value and is sold to steel producers does not detract from this conclusion.

48

In addition, the Commission stresses that the designation of waste is crucial to the proper operation of waste management control mechanisms. It points out that Article 2(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) incorporates by reference the definition of the term waste contained in Article 1(a) of Directive 75/442. Within that framework, substances which are potentially environmentally hazardous may not circulate within the Community and cross its borders without any supervisory or monitoring controls. Thus, scrap metal which has not yet been completely recycled or recovered cannot circulate uncontrolled within the Community.

**The Court's answer**

Preliminary remarks

49

It is necessary, as a preliminary point, to define the link between Directive 75/442 and Directive 94/62, given that the observations submitted to the Court differ on this point and the questions relate to both directives.

50

Directive 75/442, in its initial version, was the first directive containing measures designed to harmonise national legislation of the Member States with regard to preventing the generation of waste and to its disposal.

51

That directive was substantially amended by Directive 91/156, although its amendment did not fundamentally alter the concept of waste which still covers substances or objects which the holder discards or intends or is required to discard. The new provisions introduced by Directive 91/156 include Article 2(2), according to which specific rules for particular instances, or supplementary rules, on the management of particular categories of waste may be laid down by means of individual directives, thus making Directive 75/442 framework legislation.

52

Directive 94/62 contains specific rules or rules supplementing Directive 75/442, within the meaning of Article 2(2), for the management of a particular category of waste, namely packaging waste.

53

Nevertheless, Directive 75/442 remains very important for the interpretation and application of Directive 94/62.

54

First, as stated in the seventh recital in its preamble, Directive 94/62 forms part of the Community strategy for waste management set out, *inter alia*, in Directive 75/442.

55

Second, taking account of the objective, set down in the third recital in the preamble to Directive 91/156, of having common waste terminology, Directive 94/62 contains provisions which expressly refer to Directive 75/442, such as Article 3(2) defining packaging waste.

56

Third, since packaging waste is waste within the meaning of Directive 75/442, the latter remains applicable to such waste in so far as Directive 94/62 does not otherwise provide. That is so, for example, in the case of the requirements set out in Articles 4 and 5 of Directive 75/442 as regards waste disposal.

57

Accordingly, Directive 94/62 must be considered to be special legislation (a *lex specialis*) vis-à-vis Directive 75/442, so that its provisions prevail over those of Directive 75/442 in situations which it specifically seeks to regulate.  
Consideration of the questions referred for a preliminary ruling

58

The main proceedings are concerned with the question whether Mayer Parry, in producing Grade 3B material, carries out a recycling operation enabling it to be accredited as a reprocessor and, therefore, to issue PRNs.

59

It is common ground between the parties to the main proceedings that the Grade 3B material is produced by Mayer Parry from metal packaging waste. Those proceedings thus relate, in the first place, to the concept of recycling with regard to packaging waste.

60

The second question, which relates to the recycling of packaging waste within the meaning of Directive 94/62, should therefore be answered first.  
Question 2

61

By its second question, the national court essentially seeks to ascertain whether recycling within the meaning of Article 3(7) of Directive 94/62 is to be interpreted as including the reprocessing of metal packaging waste when it has been transformed into a secondary raw material, such as Grade 3B material, or only when it has been used to produce ingots, sheets or coils of steel.

62

In order to answer this question, it is necessary, first of all, to interpret the term recycling, as defined in Article 3(7) of Directive 94/62, and secondly, to consider whether it is the production of Grade 3B material or the manufacture of ingots, sheets or coils of steel from metal packaging waste which must be classified as recycling.

63

It is apparent both from the preambles and from the provisions of Directives 75/442 and 94/62 that recycling is a form of recovery. It follows from Article 3(1)(b) of Directive 75/442 and the fourth recital in its preamble that the essential characteristic of a waste recovery operation is constituted by its principal objective that the waste serve a useful purpose in replacing other materials which would have had to be used for that purpose, thereby enabling natural resources to be conserved (Case C-6/00 ASA [2002] ECR I-1961, paragraph 69). Recycling as a form of recovery must accordingly pursue the same objective.

64

The definition of recycling in Article 3(7) of Directive 94/62 sets out the elements which make up such an operation, namely the reprocessing of waste materials,

in a production process, and for the original purpose or for other purposes excluding energy recovery.

65

In accordance with that definition, the recycling process has at its base waste material which must be reprocessed. Although the definition does not specify that the waste must be packaging waste, it is clear from the context of Directive 94/62, which relates only to packaging and packaging waste, that only such waste is referred to. By virtue of Article 3(2) of Directive 94/62 and Article 1(a) of Directive 75/442, to which Article 3(2) refers, packaging waste is defined as any packaging or packaging material, excluding production residues, which the holder discards or intends or is required to discard. Packaging waste thus derives from packaging within the meaning of Article 3(1) of Directive 94/62.

66

According to the definition of recycling, the packaging waste must undergo reprocessing in a production process. Such a process requires the packaging waste to be worked in order to produce new material or to make a new product. In this sense, recycling can be clearly distinguished from other recovery or waste-processing operations referred to by the Community legislation, such as reclamation of raw materials and compounds of raw materials (points R 3, R 4 and R 5 of Annex IIB to Directive 75/442), pre-processing, mixing or other operations, which result only in a change in the nature or composition of the waste (see Article 1(b) of Directive 75/442).

67

Also, the waste may be regarded as recycled only if it has been reprocessed so as to obtain new material or a new product for the original purpose. This means that the waste must be transformed into its original state in order to be useable, where appropriate, for a purpose identical to the original purpose of the material from which it was derived. In other words, metal packaging waste must be regarded as recycled where it has undergone reprocessing in the course of a process designed to produce new material or make a new product possessing characteristics comparable to those of the material of which the waste was composed, in order to be able to be used again for the production of metal packaging.

68

The definition of recycling states in addition that the waste may be reprocessed in a production process for the original purpose or for other purposes. It follows that the concept of recycling is not limited to the situation where the new material or new product, possessing characteristics comparable to those of the original material, is used for the same purpose of metal packaging. Use for other purposes also features in the concept.

69

Those other purposes may be of any kind so long as the reprocessing of the packaging waste does not take the form of energy recovery, since that is expressly excluded by Article 3(7) of Directive 94/62, and is not effected by means of disposal, a method which would run counter to the very concept of recycling as a form of waste recovery.

70

The definition of recycling, as interpreted in paragraphs 63 to 69 of this judgment, is consonant with the objectives of Directive 94/62.

71

As is apparent from the first recital in its preamble and Article 1(1), Directive 94/62 is intended, first, to prevent and reduce the impact of packaging waste on the environment so as to provide a high level of environmental protection and, second, to ensure the proper functioning of the internal market.

72

Preserving the environment and achieving a high level of environmental protection constitute an objective reflecting the requirements of Article 174(1) and (2) EC. In order to attain that objective, the Community legislature has laid down minimum targets in Article 6(1)(a) of Directive 94/62 in order to ensure that at least one half by weight of packaging waste will be recovered. Recycling is to be regarded as constituting an important part of recovery in its various forms and, along with reuse, is a form to be given preference, as the 11th and 8th recitals in the preamble to Directive 94/62 respectively state.

73

By interpreting the definition of recycling in Article 3(7) of Directive 94/62 as meaning that the reprocessing of packaging waste must enable new material or a new product possessing characteristics comparable to those of the material from which the waste was derived to be obtained, a high level of environmental protection is ensured.

74

It is only at that stage that the ecological advantages which led the Community legislature to accord a degree of preference to this form of waste recovery are fully achieved, namely a reduction in the consumption of energy and of primary raw materials (see the 11th recital in the preamble to Directive 94/62).

75

Furthermore, it is also only at that stage that the materials at issue cease to be packaging waste and the various waste controls laid down by the Community legislature accordingly lose their rationale. Since the recycling involves the transformation of the packaging waste into new material or a new product possessing characteristics comparable to those of the material from which the waste was derived, the result of that transformation can no longer be classified as packaging waste.

76

Finally, the interpretation of the concept of recycling which results from paragraphs 63 to 69 of this judgment removes any ambiguity as to the point at which packaging waste must be regarded as recycled and thereby makes it possible to discount the risk of a number of processing operations in respect of the same waste each being taken into account as a recycling operation for the purpose of application of the percentages laid down in Article 6(1) of Directive 94/62.

77

Such an interpretation is also consonant with the requirements of clarity and uniformity which flow from the purpose of Directive 94/62 regarding the proper functioning of the internal market, consisting, more specifically, in the avoidance of obstacles to trade and distortion of competition.

78

First, obstacles to trade could arise if different concepts of recycling were applied in the Member States, so that the same material or product could be regarded as recycled in one Member State – and would accordingly have ceased to be classified as packaging waste and been freed from all waste-specific controls – while that would not be the case in another Member State.

79

Second, given that all businesses involved in the production, use, import and distribution of packaging and packaged products must take on the responsibility incumbent upon them under the polluter-pays principle (see the 29th recital in the preamble to Directive 94/62), the concept of recycling must be applied uniformly in order that those businesses are in an equal position in the internal market with regard to competition.

80

The concept of waste having thus been clarified, it is necessary, secondly, to consider whether Grade 3B material, such as that produced by Mayer Parry in the main proceedings, may be regarded as falling within that concept.

81

It is common ground between the parties to the main proceedings that the materials or objects forming the starting point for Mayer Parry's production of Grade 3B material are packaging waste.

82

Mayer Parry collects, inspects, tests for radiation, sorts, cleans, cuts, separates and shreds (fragmentises) metal packaging waste by means of a process as described by the national court in paragraphs 34 and 35 of the order for reference. The national court has established that Mayer Parry, in producing Grade 3B material, reprocesses packaging waste in order to create a secondary raw material suitable for use in substitution for a primary raw material, such as iron ore. It therefore cannot be ruled out from the outset that Mayer Parry reprocesses ferrous metal packaging waste in a production process within the meaning of Article 3(7) of Directive 94/62, namely in a process designed to produce new material or to manufacture a new product.

83

However, the production of Grade 3B material does not constitute reprocessing of metal packaging waste with the objective of returning that material to its original state, namely steel, and of reusing it in accordance with its original purpose, namely the manufacture of metal packaging, or for other purposes. In other words, the metal packaging waste reprocessed by Mayer Parry does not undergo reprocessing in a production process conferring on the Grade 3B material characteristics comparable to those of the material of which the metal packaging was composed.

84

Grade 3B material is a mixture which, apart from ferrous elements, contains impurities (ranging from 3% to 7% according to the various parties), such as paint and oil, non-metallic materials and undesirable chemical elements, which remain to be removed when the material is used to produce steel. Grade 3B material cannot therefore be used directly for the manufacture of new metal packaging.

85

It follows that Grade 3B material such as that produced by Mayer Parry cannot be regarded as recycled packaging waste.

86

It accordingly remains to consider whether the use of Grade 3B material in the production of ingots, sheets or coils of steel, in circumstances such as those of the main proceedings, may be regarded as a packaging-waste recycling operation.

87

That is in fact the case, since the production process in question results in the manufacture of new products, namely ingots, sheets or coils of steel, which possess characteristics comparable to those of the material of which the metal packaging waste incorporated in the Grade 3B material was initially composed and which may be used for a purpose identical to the original purpose of the material from which that waste was derived, namely the metal packaging, or for other purposes.

88

It follows from all the foregoing considerations that the answer to the second question must be that recycling within the meaning of Article 3(7) of Directive 94/62 is to be interpreted as not including the reprocessing of metal packaging waste when it is transformed into a secondary raw material such as Grade 3B material, but as covering the reprocessing of such waste when it is used to produce ingots, sheets or coils of steel.

Question 1

89

By its first question, the national court essentially seeks to ascertain whether the answer to the second question would be different if the concepts of recycling and waste referred to by Directive 75/442 were taken into account.

90

Packaging waste is defined in Article 3(2) of Directive 94/62 as any packaging or packaging material covered by the definition of the term waste in Directive 75/442. Packaging waste within the meaning of Directive 94/62 must therefore be regarded as waste within the meaning of Directive 75/442.

91

First, it is apparent from paragraphs 86 and 87 of this judgment that a manufacturer of ingots, sheets or coils of steel from Grade 3B material that derives from metal packaging waste carries out recycling within the meaning of Directive 94/62. Second, it also follows from paragraph 75 of this judgment that, once packaging waste has been recycled within the meaning of Directive 94/62, it is no longer to be regarded as packaging waste for the purposes of that

directive or, therefore, of Directive 75/442. Accordingly, ingots, sheets or coils of steel manufactured from Grade 3B material which derives from metal packaging waste that has been recycled is no longer packaging waste for the purposes of Directives 94/62 and 75/442.

92

Furthermore, recycling is not defined in Directive 75/442. Should that term, as envisaged by Directive 75/442, not have the same meaning as the term appearing in Directive 94/62, only the latter term would be applicable to packaging waste. As is clear from paragraphs 53 and 57 of this judgment, even though Directive 75/442 is the framework legislation and is relevant when interpreting and applying Directive 94/62, that does not prevent the provisions of the latter, as special legislation, from prevailing over those of Directive 75/442.

93

The answer to the first question must therefore be that the answer to the second question would be no different if the concepts of recycling and waste referred to by Directive 75/442 were taken into account.

### **Costs**

94

The costs incurred by the United Kingdom, Danish, Netherlands and Austrian Governments and the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Fifth Chamber),

in answer to the questions referred to it by the High Court of Justice of England and Wales, Queen's Bench Division (Administrative Court), by order of 9 November 2000, hereby rules:

1.

**Recycling within the meaning of Article 3(7) of European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste is to be interpreted as not including the reprocessing of metal packaging waste when it is transformed into a secondary raw material such as material meeting the specifications of Grade 3B, but as covering the reprocessing of such waste when it is used to produce ingots, sheets or coils of steel.**

2.

**That interpretation would be no different if the concepts of recycling and waste referred to by Council Directive 75/442/EEC of 15 July 1975 on waste were taken into account.**

von Bahr

Rosas

Delivered in open court in Luxembourg on 19 June 2003.

R. Grass  
Registrar

M. Wathelet  
President of the Fifth Chamber

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[1](#) –

Language of the case: English.

OPINION OF ADVOCATE GENERAL  
ALBER  
delivered on 4 July 2002 [\(1\)](#)

**Case C-444/00**

The Queen on the application of Mayer Parry Recycling Limited

v

**1. Environment Agency**  
**2. Secretary of State for Environment, Transport and the Regions**

**Interveners:**

**1. Corus (UK) Limited**  
**2. Allied Steel and Wire Limited**

(Reference for a preliminary ruling from the High Court of Justice of England and Wales)

((Directive 75/442/EEC, as amended by Directive 91/156/EEC and Decision 96/350/EC – Directive 94/62/EC – Concept of waste – Concept of recycling – Treatment of metal-bearing packaging waste))

I – Introduction

1. In the present proceedings, the High Court of Justice in London seeks a preliminary ruling from the Court of Justice on the interpretation of Council Directive 75/442/EEC of 15 July 1975 on waste [\(2\)](#) (the Waste Directive) and European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste [\(3\)](#) (the Packaging Directive). The point at issue is essentially whether the treatment (sorting, cleaning, cutting, crushing, separating and/or baling) by the claimant in the main proceedings, Mayer Parry Recycling Limited (MPR), of packaging waste made of metal amounts to complete recycling so that, after its processing, the scrap metal is no longer to be classified as waste.

2. MPR would like to be accredited as a reprocessor entitled to issue Packaging Waste Recovery Notes (PRNs) (as to the significance of PRNs, see point 19 below). That right has been granted by one of the defendants in the main proceedings, the Environment Agency, which has competence for England and Wales, to the steelmakers which melt down the material processed by MPR and produce ingots, sheets or coils from it.

II – Legal context

A –

## Community law

### (1) The Waste Directive

3. Article 1 of the Waste Directive provides: For the purposes of this Directive:

(a) waste shall mean any substance or object in the categories set out in Annex I which the holder discards or intends or is required to discard.

4. Annex I to the Waste Directive specifies, under point Q5, materials contaminated or soiled as a result of planned actions (e.g. residues from cleaning operations, packing materials, containers, etc.). The annex also contains two sweep-up points: Q1 Production or consumption residues not otherwise specified below and Q16 Any materials, substances or products which are not contained in the above categories.

5. For the concept of recovery, Article 1(f) refers to the operations provided for in Annex IIB. That annex lists, under point R3, recycling/reclamation of metals and metal compounds.

6. Article 3(1) of the Waste Directive sets the following objectives for the Member States:

(a) firstly, the prevention or reduction of waste production and its harmfulness, ...

(b) secondly:

(i) the recovery of waste by means of recycling, re-use or reclamation or any other process with a view to extracting secondary raw materials, or

(ii) the use of waste as a source of energy.

### (2) The Packaging Directive

7. Article 3 of the Packaging Directive contains, *inter alia*, the following definitions:

2. packaging waste shall mean any packaging or packaging material covered by the definition of waste in Directive 75/442/EEC, excluding production residues; ...

6. recovery shall mean any of the applicable operations provided for in Annex IIB to Directive 75/442/EEC;

7. recycling shall mean the reprocessing in a production process of the waste materials for the original purpose or for other purposes including organic recycling but excluding energy recovery

8. Article 6(1) of the Packaging Directive imposes the following obligation for the recovery of packaging waste: In order to comply with the objectives of this Directive, Member States shall take the necessary measures to attain the following targets covering the whole of their territory:

(a) no later than five years from the date by which this Directive must be implemented in national law, between 50% as a minimum and 65% as a maximum by weight of the packaging waste will be recovered;

(b) within this general target, and with the same time-limit, between 25% as a minimum and 45% as a maximum by weight of the totality of packaging materials contained in packaging waste will be recycled with a minimum of 15% by weight for each packaging material.

9. In accordance with Article 8, in order to achieve the recovery rate the Member States must set up systems for the return and/or collection and also the recovery of packaging waste.

### (3) Divergences between the various language versions

10. At the heart of these proceedings is the concept of recycling within the meaning of the Packaging and Waste Directives. It is accordingly necessary at this early stage to point out some terminological differences in the various language versions of both directives.

11. The term recycling is used in the English version of both Article 3(1)(b)(i) of the Waste Directive and Article 3(7) of the Packaging Directive. In the Romance languages and Dutch, words cognate with the word recycling ( recyclage, reciclado, riciclo and so forth) are likewise to be found in both provisions. In other languages, words not cognate with recycling, but which are the same in both directives, are chosen.

12. Only in the German, Swedish and Finnish versions do different terms appear in the foregoing provisions of the Waste and Packaging Directives. Thus, in German the Waste Directive refers to Rückführung and the Packaging Directive to stoffliche Verwertung. In the German version of the Commission's proposal for the Packaging Directive, the word Recycling was added in brackets after the term stoffliche Verwertung, but it was dropped in the subsequent legislative process.

13. Finally, in Directive 2000/53/EC of the European Parliament and of the Commission of 18 September 2000 on end-of-life vehicles ( Directive 2000/53), [\(4\)](#) which admittedly is not directly relevant to the present case but is referred to by some parties for the purpose of comparison, the German version too speaks of recycling.

14. Since only a small proportion of the language versions thus contain different terms in the two directives, it cannot be concluded from the difference in choice of words in those versions alone that the terms have different meanings. In the remainder of this Opinion, the terms stoffliche Verwertung, Rückführung and Recycling are therefore understood linguistically as synonyms. That does not preclude, however, that recycling for the purpose of the Waste Directive and for the purpose of the Packaging Directive have different meanings in accordance with their respective definitions, as remains to be examined.

B —

#### National rules

15. Article 6(1) of the Packaging Directive was transposed into national law by the Producer Responsibility Obligations (Packaging Waste) Regulations 1997 ( the Regulations). The Regulations require producers of packaging waste to recycle or recover by other means specific quantities of such waste. Recovery and recycling have the same definitions in the Regulations as in the Packaging Directive.

16. Under the Regulations producers must be registered, take steps to recover and recycle specified quantities of packaging waste and furnish certificates of compliance in respect of their recovery and recycling obligations. It is a criminal offence to contravene those requirements.

17. Producers may also, and in practice generally do, satisfy their obligations by being a member of a registered scheme.

18. The British environment agencies have issued guidance in Producer Responsibility Obligations 1997: Guidance on evidence of compliance and

voluntary accreditation of reprocessors, which is known as the Orange Book. The Orange Book document sets out in greater detail the requirements of the environment agencies with regard to evidence that producers have complied with their recovery and recycling obligations and provides for a voluntary system of accreditation for reprocessors entitled to issue PRNs.

19. A reprocessor certifies in a PRN the amount of packaging waste from the United Kingdom accepted by him, whether it is to be recycled or recovered and which recovery operations are to be applied to the material. Through the submission of PRNs, a producer can demonstrate to the Environment Agency that the packaging waste which he has delivered (or had delivered on his behalf) to an accredited reprocessor has been duly recycled or recovered. PRNs are tradeable and have an economic value (£10 to £15 per tonne in 2000 in the case of the metal packaging waste at issue here).

20. The Environment Agency accredits the businesses listed in paragraph 3 of Annex D to the Orange Book; for metals (aluminium and steel), businesses producing ingots, sheets or coils from packaging waste are accredited as reprocessors.

21. Accreditation is thus granted in respect of the point in the materials cycle at which a new product is made that is indistinguishable from one made from primary raw materials. That is intended to facilitate the administrative process and ensure that PRNs are not issued twice in the course of the processing of the same material.

III – Facts of the main proceedings

22. MPR obtains – generally against payment – scrap metal, including packaging waste, from industrial and other sources. It processes the scrap so that it meets the Grade 3B specification developed by the industry. That essentially requires the following processing steps: visual inspection, radiation testing, shredding into fist-sized pieces, several sorting processes to separate out foreign substances (for example plastics, non-ferrous metals, glass or stones), and further visual inspection. Around 4.1% of Grade 3B material is metal from packaging waste. MPR then sells the Grade 3B material to steelworks, which produce ingots, sheets or coils of steel from it. Grade 3B material is highly efficient because of its high iron content, its high density and its large surface area. It sells for around £60 per tonne.

23. The parties to the main proceedings disagree as to the extent to which the Grade 3B material produced by MPR still contains organic and inorganic impurities; the figures range from 2%-3% (MPR – non-free contaminants) up to 7% (the Environment Agency). The impurities include remaining surface coatings such as paint or oil, non-metallic materials and undesirable chemical elements. Because of its potential pollutant content, Grade 3B material is required to be kept under cover or on a hard standing with drainage to a sump. The impurities are not removed until the steel-production stage.

24. Steel producers are subject to the Integrated Pollution Control regime laid down by the Environmental Protection Act 1990. Under that regime, the processes used by them must meet certain environmental standards and require

authorisation. On the other hand, they are exempt from licensing under national waste management legislation.

25. In November 1998 MPR applied for accreditation as a reprocessor entitled to issue PRNs. By letter dated 15 November 1999, the Environment Agency refused that application. MPR then commenced proceedings before the High Court, seeking, *inter alia*, annulment of that decision and a declaration that it performs recovery and recycling within the meaning of the Packaging Directive.

IV – Order for reference

26. By order of 9 November 2000, the High Court stayed proceedings and referred the following questions to the Court of Justice for a preliminary ruling: Where an undertaking deals with packaging materials including ferrous metals, which (when received by that undertaking) constitute waste within the meaning of Article 1(a) of Council Directive 75/442/EEC on waste, as amended by Council Directive 91/156/EEC and Commission Decision 96/350/EC, by means of sorting, cleaning, cutting, crushing, separating and/or baling so as to render those materials suitable for use as a feedstock in a furnace in order to produce ingots, sheets or coils of steel:

(1) Have those materials been recycled, and do they cease to be waste, for the purposes of Council Directive 75/442, when they have been:

(a) rendered suitable for use as a feedstock, or

(b) used by a steelmaker so as to produce ingots, sheets or coils of steel?

(2) Have those materials been recycled for the purposes of European Parliament and Council Directive 94/62/EC on packaging and packaging waste when they have been:

(a) rendered suitable for use as a feedstock, or

(b) used by a steelmaker so as to produce ingots, sheets or coils of steel?

V – Arguments of the parties

27. Observations have been submitted to the Court of Justice by the following parties: MPR; the Environment Agency; Corus UK Limited ( Corus), a steel producer which has intervened in the main proceedings in support of the Environment Agency's position; the United Kingdom, Netherlands, Danish and Austrian Governments; and the Commission.

A –

Mayer Parry Recycling Limited

28. MPR puts interpretation of the Waste Directive to the fore and argues in summary as follows: it recovers packaging waste and produces Grade 3B ferrous scrap, which is not waste but a secondary raw material; the Packaging Directive must be interpreted consistently with the Waste Directive; since Grade 3B scrap is not waste, the processing by MPR must also be regarded as complete recycling for the purposes of the Packaging Directive.

29. With regard to the Community law framework, MPR explains that four principal common features of the Waste Directive and the Packaging Directive can be identified.

30. First, the terms waste, recovery and recycling have the same meaning in both directives, recycling being a particular form of recovery. Recovery operations for the purposes of the directives can only be carried out on waste.

Second, the decisive factor for the definition of waste is that the person holding the material discards it. Third, the directives pursue the objective of conserving raw materials through waste recovery. Fourth, a distinction is drawn between physical recovery and energy recovery.

31. MPR also explains the economic significance of eligibility to issue PRNs, a right enjoyed by the person who carries out the recycling. Since MPR's processing of the scrap metal enables it to be used by steel producers in the same way as a primary raw material, MPR's Grade 3B material is not waste but a secondary raw material. The steel producers therefore do not recover any waste and if only for that reason cannot be regarded as recyclers.

32. In its observations on the first question referred for a preliminary ruling, MPR derives the following guiding principles from the case-law of the Court of Justice or the Opinions of Advocates General. It is for the national court to determine in the light of all the circumstances whether material is waste. [\(5\)](#) In deciding whether it is waste, the decisive factor is whether the holder discards it. [\(6\)](#) Waste recovery is to be distinguished from normal industrial treatment of products. [\(7\)](#) Recovery has been completed if the recovered substance can be used directly in a production process as a secondary raw material. [\(8\)](#)

33. MPR contests, on the other hand, the approach put forward by the Environment Agency, according to which recovery is not completed until later, that is to say when one can no longer tell whether a product has been made from waste or from primary raw materials. That argument, which is based on the definition of recycling in the Packaging Directive, is not tenable. The Packaging Directive is subordinate to the Waste Directive and cannot define the concept of recovery in a manner that diverges from the Waste Directive.

34. In Article 3(7) of the Packaging Directive which defines recycling, the focus placed on reprocessing in a production process serves to distinguish recycling from energy recovery. The process applied by MPR constitutes a production process in any event, in that a secondary raw material, namely Grade 3B scrap, is produced. That material is not waste because it has an economic value and there would be no risk of its being discarded.

35. MPR suggests the following factors in particular for distinguishing a secondary raw material from waste: the substance's suitability for reutilisation with or without further pre-treatment, its economic value and the environmental hazards posed by it. In MPR's view, it is for the referring court to determine the extent to which those criteria are met.

36. Should the Court of Justice none the less wish to consider the matter, MPR contends that Grade 3B material meets the criteria for secondary raw materials. It can be used directly for steel production, just as iron ore, without further treatment. No special environmental protection measures are required either for its storage and transportation or when it is used to produce steel.

37. MPR submits with regard to the second question that materials which have been completely recovered and are no longer waste for the purposes of the Waste Directive are also to be regarded as recycled for the purposes of the Packaging Directive.

## The Environment Agency

38. The Environment Agency agrees with MPR that the same understanding of the terms waste and recovery underlies both directives. It takes the view, however, in contrast to MPR, that the treatment carried out by MPR does not amount to complete recycling. It is not until the Grade 3B material has been melted down and the steelmaker has produced ingots, sheets or coils of steel that recycling is completed and waste ceases to be present.

39. With regard to the relationship between the two questions referred for a preliminary ruling, the Environment Agency states that the two directives must be interpreted together. The Packaging Directive merely makes clearer what is to be understood by recycling as a particular form of recovery. Article 2(2) of the Waste Directive expressly allows special directives for particular categories of waste such as packaging waste. Since both directives pursue the objective of encouraging waste recovery, the same definition of recovery is to be used as a basis. After complete recycling for the purposes of the Packaging Directive, the recovered material can equally no longer be regarded as waste for the purposes of the Waste Directive.

40. With regard to the first question, the Environment Agency stresses first of all that the Court of Justice should answer the question itself. The assessment as to when waste has been completely recovered cannot be left to the Member States, as MPR submits, since that runs counter to the objective of harmonisation of laws throughout the Community. The concepts of waste and recovery are sufficiently specific to be of direct application without being further defined by national law.

41. The Environment Agency also refers to the case-law stating that the concept of waste is to be interpreted broadly [\(9\)](#) and to the objectives of the Waste Directive, namely to avoid waste, encourage recovery and prohibit the uncontrolled disposal of waste.

42. The Waste Directive does not lay down when material ceases to be waste. In any event, that does not happen simply because waste comes into the possession of the person who wishes to recover material or carry out some other treatment. The fact that waste is subjected to one of the recovery operations specified in Annex IIB to the Waste Directive may mean that it ceases to be waste, but that is not necessarily the case, as the Court has held. [\(10\)](#)

43. MPR does not carry out recycling, but only pre-processing in that it sorts the waste and changes its composition. MPR is consequently a waste producer within the meaning of Article 1(b) of the Waste Directive. The treatment carried out by MPR is not reprocessing in a production process under Article 3(7) of the Packaging Directive. Equally, in Directive 2000/53 the corresponding treatment of end-of-life cars is regarded as pre-treatment and not as recycling.

44. The Environment Agency contests MPR's argument that Grade 3B scrap constitutes a secondary raw material and has therefore been recycled. Recovery does not always have the aim of extracting secondary raw materials. Nor, under the Court's case-law, does a material cease to be waste by being transformed into a secondary raw material. Its suitability for use as a raw material does not preclude its classification as waste.

45. In addition, the Environment Agency disputes MPR's assertion that no special environmental protection controls are required when dealing with Grade 3B material. Steel producers who process Grade 3B scrap are subject to Integrated Pollution Control.

46. Moreover, the Court, in contrast to certain Advocates General, has regarded the environmental protection requirements for dealing with a material or the environmental hazards posed by the material as likewise not determining whether it is classified as waste. [\(11\)](#)

47. On the basis of its answer to the first question, the Environment Agency suggests in answer to the second question that the packaging waste has been recycled only when ingots, sheets or coils of steel have been produced.

C —

Corus UK Limited

48. In Corus's submission, only the second question need be answered. In that connection, it is for the Member State to select the point at which materials may be regarded as completely recycled and decide whether or not they are still waste, in so far as the objectives of the Packaging Directive are thereby observed.

49. The United Kingdom has settled on a correct and perfectly justifiable point in time for completion of recycling by focusing on the production of ingots, sheets and coils by the steelmaker. Grade 3B scrap, on the other hand, is to be regarded as waste.

50. The question whether material has been recycled is to be decided on the basis of the Packaging Directive alone. The answer turns on whether the material can be used again in the manufacture of packaging or for other production purposes. This requirement is met only by Corus's products, and not MPR's upstream products. In the absence of Community provisions, the mode of proof of recycling can be laid down by the Member States.

51. Income from the issue of PRNs is used by the undertakings carrying out the recycling to expand capacity. This helps to increase the recycling rate for metal packaging waste which is still very low. MPR, on the other hand, has no corresponding commercial interest in the recovery of packaging waste as such waste forms only a very small part of its throughput. If MPR were entitled to issue PRNs, there would be a risk that it would process large amounts of Grade 3B scrap and then only store it.

D —

The Danish Government

52. The Danish Government essentially agrees with the submissions of the Environment Agency. The concept of waste is, in its view, to be interpreted broadly in order to ensure that the waste stream and waste disposal and recovery are monitored. As soon as material ceases to be waste it is no longer subject to corresponding controls. In particular, 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 [\(12\)](#) ceases to apply. In accordance with the case-law, the economic value of material or its recoverability is irrelevant to the definition of waste.

53. The scrap metal processed by MPR is waste. The reprocessing referred to in the definition of recycling presupposes an alteration in the material's composition which makes it immediately usable again. That precondition is not met until the steelmaker makes its products.

54. In Denmark, gathering and sorting are taken to be not recovery but pre-treatment. Corresponding pre-treatment may or must also take place in some circumstances before waste is disposed of, as shown by, for example, Article 6 of Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste (13) and Article 6 of Directive 2000/76/EC of the European Parliament and of the Council of 4 December 2000 on the incineration of waste. (14)

55. If not even complete recovery necessarily deprives material of its classification as waste, as the Court has held, (15) *a fortiori* pre-treatment does not lead to that result.

E —

The Netherlands Government

56. The Netherlands Government states with regard to the first question that the point in time at which material is recycled coincides with the point in time at which it ceases to be waste. In *Arco Chemie*, the Court laid stress on the importance of the idea of discarding to the concept of waste. (16) That concept must be interpreted in a manner consistent with the objectives of the Waste Directive and therefore broadly.

57. Under the Waste Directive, recycling takes place not only where waste is used in a production process but also in the case of recovery with the objective of extracting secondary raw materials. Whether a secondary raw material with the same characteristics as a primary raw material has been created from the waste depends on whether the holder of the material produced discards it.

58. In that regard, account is to be taken of the following cumulative criteria: the material's composition must be such as to enable it to be used in the same way as the corresponding primary raw material; it must not contain more impurities than the primary raw material; it must be capable of being used without further pre-treatment; its use must not give rise to any higher environmental risk than use of the primary raw material; the use must not consist merely of a recovery process; and the material must not have a negative economic value.

59. The answer to the first question should therefore be that packaging waste that includes metals is recycled for the purpose of the Waste Directive and no longer waste when the criteria set out above are met and the material is thus suitable for use as a raw material.

60. The Netherlands Government submits with regard to the second question that recycling in the Packaging Directive has a different meaning from recycling in the Waste Directive. Waste is not recycled within the meaning of the Packaging Directive until it has been reused in a production process, hence in the present case on the production of ingots, sheets and coils of steel. The objectives of saving energy and raw materials are achieved only through actual use in a production process. Furthermore, that is the only way of ensuring that no double-counting occurs in relation to meeting the recycling rates under Article 6 of the Packaging Directive.

F –

The Austrian Government

61. In its examination of the first question the Austrian Government points out that recycling is defined not in the Waste Directive but in the Packaging Directive. Directive 2000/53 also contains a definition in similar terms. Those definitions focus on use in a production process and are narrower than the concept of recovery under the Waste Directive.

62. With regard to the concept of waste, the Austrian Government refers to the findings of the Court in *Arco Chemie* . (17) The point at which recovery is completed is determined by the following criteria: the material is normally used for the purpose in question and there is a market for it; quality criteria exist which take account of its characteristics as waste; it does not give rise to any higher environmental risk than comparable raw materials.

63. The Austrian Government adds in relation to the second question that recycling need not be effected in one step. At every step it must be examined whether there is, or perhaps only appears to be, recovery.

64. In summary, MPR carries out waste recovery, but only as a step preliminary to recycling within the meaning of the Packaging Directive.

G –

The United Kingdom Government

65. The United Kingdom Government states that only the second question needs to be answered in order to dispose of the main proceedings and it therefore focuses its observations on that question.

66. It points out that packaging waste can be recycled only once, even though this might occur in a number of stages. It is necessary to avoid recovery operations in respect of the same material being taken into account more than once for the purposes of the recycling rate under Article 6(1)(b) of the Packaging Directive. Recycling is carried out in the present case by the steel producers.

67. MPR's treatment of the waste does not correspond to the definition of recycling in Article 3(7) of the Packaging Directive. Sorting, cleaning, crushing and baling do not constitute production processes.

68. Nor is reprocessing involved, since the waste retains its essential characteristics and does not become a new product. *Re* processing presupposes a use similar to the original use, that is to say melting down in the place of the primary raw material and the production of ingots, sheets and coils of steel. The pre-treatment carried out by MPR for that use is not itself reprocessing. Only this view meets the objective laid down in Article 6(2) of the Packaging Directive of manufacturing packaging or other products from recycled packaging material where possible.

69. The United Kingdom Government underpins that view by drawing a comparison with Directive 2000/53, which contains provisions similar to those of the Packaging Directive.

70. It contests the interpretation put forward by MPR under which the Packaging and Waste Directives are read as one. The Waste Directive does not establish any definitions which are to apply to all other legislation in this field; on the

contrary, the definitions in Article 1 of the Waste Directive are expressly stated to be for the purposes of that directive.

71. When the Community legislature wishes to use in other legal measures the same definitions as in the Waste Directive, it does so by express reference. The Packaging Directive contains some such references; as for the remainder, the terms used in it are to be interpreted autonomously.

72. Article 2(2) of the Waste Directive expressly envisages the adoption of special rules, such as the Packaging Directive. The Packaging Directive contains independent definitions of the terms recycling and recovery. Article 3(6), which defines recovery, refers only to the applicable operations provided for in Annex IIB to the Waste Directive. [\(18\)](#)

73. It is apparent from Annex IIB to the Waste Directive that waste can pass through several recovery steps. Metallic waste could for example be stored first of all (R 12) and the metal could later be reclaimed (R 3). Recycling, on the other hand, is possible only once, for the reasons stated. Only such operations listed in Annex IIB to the Waste Directive as constitute recycling can be applicable operations within the meaning of Article 3(6) of the Packaging Directive.

74. The Packaging Directive contains independent definitions of the terms recycling, energy recovery and organic recycling (Article 3(7), (8) and (9)). Other forms of recovery are not mentioned. Only the types of recovery expressly mentioned are applicable operations under the Packaging Directive. Of those, only recycling is applicable to metals.

75. It is not sufficient for MPR to carry out a recovery operation under Annex IIB to the Waste Directive; rather, it must carry out an applicable operation under the Packaging Directive, namely recycling.

76. In order to ensure that the recovery of packaging waste is recorded in accordance with uniform standards throughout the Community, it is necessary to have a clearly definable criterion determining when material is completely recovered. To that extent the Member States are left with no discretion. The most suitable point in time is when the scrap metal is melted down again.

77. The Packaging Directive has the objective of actual reprocessing. As long as packaging waste has only been prepared for reprocessing, actual use, namely the melting down, is not ensured.

78. A substance is to be regarded as recycled packaging material for the purposes of Article 6(1)(b) of the Packaging Directive if two conditions are met: the packaging material must have been packaging waste and it must have been recycled. It is irrelevant whether the material has ceased at any point in time to be waste within the meaning of the Waste Directive.

79. The United Kingdom Government concludes from all the foregoing considerations that it is inappropriate to read the two directives together in the absence of appropriate references in the Packaging Directive.

80. The United Kingdom Government makes further observations on the first question in the alternative only. Unlike the Packaging Directive, the Waste Directive allows the Member States a margin of appreciation in determining what constitutes a recovery operation. [\(19\)](#) It cannot be concluded from the fact that

material has been recovered within the meaning of the Waste Directive that it has undergone an applicable recovery operation under the Packaging Directive.

81. The Court has confirmed that the concept of recovery under the Waste Directive needs to be defined more precisely by national implementing legislation. (20) The Packaging Directive, on the other hand, allows only three types of recovery (recycling, energy recovery and organic recycling) and to that extent confers no margin of appreciation on the Member States.

82. Nor can the Packaging Directive have retroactively altered the meaning of the Waste Directive which was enacted first. It would be contrary to the principle of legal certainty to wish to ascribe to the Waste Directive a new and different meaning following adoption of the Packaging Directive.

H —

The Commission

83. The Commission is essentially of the same view as the Environment Agency. The terms waste and recovery have the same meaning in the Waste Directive and the Packaging Directive. The special definition of recycling in the Packaging Directive takes account of the objectives of that directive (priority of recycling over energy recovery).

84. It is true that MPR's activity is a step in the material's recovery, but recovery is not completed until the material is processed in the furnace. Only then is there no longer waste. Nor is that conclusion in any way altered by the fact that MPR's products have an economic value. A processed substance can still be waste even after complete recovery. That applies *a fortiori* where recovery consists of mere sorting and pre-treatment for subsequent use as a secondary raw material.

85. The Commission deduces from the arguments of the parties before the national court that Grade 3B scrap still contains impurities which are not removed until it is melted down and that special environmental protection precautions are required for handling the material. This shows that it is waste.

86. Finally, the Commission stresses the importance of a clear definition of waste for, by way of example, the application of Regulation No 259/93, even if that regulation is not of direct relevance to the present case.

VI — Legal assessment

A —

The relationship between the Waste Directive and the Packaging Directive

87. The parties hold differing views as to the relationship between the two directives and between the terms waste, recovery and recycling used in them.

88. A majority is of the opinion that the directives are to be read together and that the respective terms have the same meaning in each. Most of the proponents of this view therefore consider it necessary to answer both questions referred for a preliminary ruling. Since, in their submission, the same understanding of the relevant terms underlies both directives, the answers proposed by them to both questions correspond. With the exception of MPR, they consider that MPR's activity constitutes not complete recycling but pre-treatment or some other recovery operation and that the Grade 3B scrap produced is waste. MPR arrives at the opposite result.

89. The United Kingdom Government and Corus, on the other hand, are of the view that the Packaging Directive is to be interpreted and applied independently and that only the second question referred for a preliminary ruling is relevant to the decision in the main proceedings.

90. In that regard, it must be stated first of all that the Waste Directive introduced in 1975 the first basic rules for harmonisation of national laws in the field of waste disposal. In this area of the law which was then just beginning to develop the Community confined itself in the directive to a few vague framework provisions.

91. Above all, what is actually waste was not laid down precisely. It is true that the Waste Directive was substantially reformulated in 1991. (21) However, the definition of waste remained almost unchanged. The definition has time and again confronted the Court with difficult questions of interpretation, to which it has not always been possible to find satisfactory answers.

92. In 1991 Article 2(2) was also introduced, which expressly envisages the laying down in further directives of specific rules concerning particular instances, or of supplementary rules, for the management of individual categories of waste. The Packaging Directive constitutes such special supplementary legislation.

93. It is true that Article 2(2) reads like an enabling power. However, such a power is not actually required. The power to adopt directives in the field of waste management arises directly from the EC Treaty, in the case of the Packaging Directive from Article 100a (now, after amendment, Article 95 EC). Even without Article 2(2) of the Waste Directive it would have been open to the Community to adopt further special directives relating to waste.

94. There is accordingly no order of precedence as between the provisions of the two directives in the sense of the Waste Directive ranking above the Packaging Directive. On the contrary, they are equal-ranking measures of secondary legislation which are directly founded on the Treaty. At the same time the Packaging Directive forms a special legislative measure for the category of waste covered by it which overrides the Waste Directive if their provisions conflict.

95. That of course does not mean that the Waste Directive is irrelevant to the handling of packaging waste. First, the Packaging Directive refers on numerous occasions to the Waste Directive. Through reference to them, definitions in the Waste Directive are also applicable to the matters covered by the Packaging Directive. In that way, account is taken of the objective, set out in the third recital in the preamble of Directive 91/156 amending the Waste Directive, (22) of having a basis of common terminology for Community waste law.

96. Corresponding references appear in relation to the definition of packaging waste in Article 3(2) of the Packaging Directive and of recovery in Article 3(6). On the other hand, recycling is defined in Article 3(7) without any reference to the Waste Directive.

97. Second, packaging waste is simultaneously waste within the meaning of the Waste Directive, as is in any event clear from the definition in Article 3(2) of the Packaging Directive. In so far as the Packaging Directive contains no divergent provisions, all other relevant waste-law provisions therefore also apply to packaging waste. The Community did not wish, by the Packaging Directive, to

establish a self-contained set of rules for packaging waste and to take this category of waste outside the scope of other provisions of waste law.

98. Thus, the Packaging Directive contains detailed provisions on the recovery of packaging waste but not, for example, on its disposal or its transfrontier shipment. Articles 4 and 5 of the Waste Directive and Regulation No 259/93 are consequently also to be observed when handling packaging waste.

99. Finally, the principles of the Waste Directive are to be observed when interpreting the Packaging Directive in so far as the overall Community strategy for waste management finds expression in the former. (23) The Packaging Directive itself also fits into that overall strategy.

100. Both directives thus essentially pursue the same objectives, namely, first, the prevention and reduction of waste production (24) and, second, the recovery of waste instead of its disposal. (25) This ultimately assists in the prudent and rational utilisation of natural resources, as required by the third indent of Article 174(1) EC.

101. Of course, the Packaging Directive goes further than the Waste Directive in so far as it sets quantitative objectives for the proportion of packaging waste that is to be recovered and recycled.

B —

The relationship between the concept of waste and recycling

102. The relationship between classification as waste and the carrying out of a recycling operation is of crucial importance for deciding the case. It is not in dispute that the material which MPR processes is packaging waste. If the material were to cease to be packaging waste as a result of the recycling, that would turn exclusively on the interpretation of the Packaging Directive, which constitutes special legislation for the recycling of packaging waste.

103. In the view of the Court, a complete recovery operation under Annex IIB does not necessarily deprive a substance of its classification as waste. (26) Rather, that fact is only one of the factors to be taken into consideration for the purpose of determining whether the substance constitutes waste. However, this finding cannot automatically be applied to the case of recycling.

104. It is true that, theoretically, it cannot be ruled out that a substance obtained by a recycling operation also constitutes waste. If, for instance, there were no demand for the recycled material in the foreseeable future and the storage costs exceeded the proceeds which might be obtained later, it would be conceivable that the recycling undertaking would wish to discard its products. In practice, however, it would probably be extremely rare for a holder of material recycled at considerable expense to intend to discard it again.

105. It would also be inconsistent with the spirit and purpose of the Packaging Directive to accept that recycled packaging waste is still waste. The central concern of the Packaging Directive is the attainment of quantitative recovery objectives. If packaging waste did not as a rule cease to be waste upon being recycled, it could undergo a recovery operation again. The same material would then be recovered twice and double counted with regard to achievement of the recovery rate.

106. A majority of the parties submit that the two directives should be read together and also consider that waste ceases to be waste after recycling has been carried out. Proceeding on that basis, MPR in particular judges the recovery operation carried out on the basis of whether the processed material continues or ceases to be waste. The definition of recycling is thus determined by the recycling's outcome.

107. This approach fails to take into account that for the definition of recycling the Packaging Directive is special legislation *vis-à-vis* the Waste Directive. Regard would not be had to that relationship if the question whether recycling has been carried out were determined on the basis of whether or not a material is waste. On the view put forward in this Opinion as to the relationship between the two directives, it must, quite to the contrary, be examined first and foremost whether a recycling operation has been carried out. If that is the case, it is to be concluded as a rule that the recovered material has ceased to be waste.

108. In this connection, it should be remembered that, in accordance with settled case-law, the question whether a substance is waste cannot be answered on the basis of certain characteristics of the substance itself, but that the crucial factor is the conduct of the holder of the waste, that is to say whether or not he intends to discard the substance. (27) The Court has thus refused to make classification of a material as waste dependent on its economic value, its fitness for reuse (28) or the environmental hazards posed by it. (29)

109. The holder's conduct can be appraised only with regard to his intentions, a fact which causes the body applying the law considerable difficulties. The Court solves this problem by inferring an intention to discard the substance from objective indicators; in so doing it has regard both to all the factual circumstances and to the aim of the Waste Directive. (30)

110. In determining whether Grade 3B scrap is to be classified as waste, all circumstances which suggest the discarding of a substance, or no such discarding, would accordingly be relevant. In this context, a crucial factor is whether the material has already undergone recycling. If it has not, a further indicator can be whether it is to be subjected to such a recovery process. Assessment of the processes carried out by MPR or the steel producers in the light of Article 3(7) of the Packaging Directive is thus an issue preliminary to the classification of Grade 3B scrap as waste and not vice-versa.

111. The Court has found that it may not be inferred from the mere fact that an operation referred to in Annex IIA or IIB to the Waste Directive is carried out that the holder of the material intends to discard it since it is often difficult to distinguish between waste disposal or recovery operations and the treatment of other products. (31)

112. However, those findings do not preclude the approach put forward here. In contrast to the position in the judgments cited, the material to be recovered was (at any rate originally) packaging waste. The issue is solely that of determining whether it is still waste. Classification of the operations which have already been carried out or are still to be carried out has, in this case, a significance different from that in cases where it is first to be established whether the material to be dealt with is waste at all.

113. Moreover, it is to be inferred that material is waste from the carrying out not of a recovery operation under Annex IIB to the Waste Directive but of a recycling operation, which is more precisely defined in Article 3(7) of the Packaging Directive than the operations in Annex IIB.

114. Nor is the concept of waste retroactively altered by the approach put forward here. Rather, the classification of a substance under the Waste Directive has always depended on whether the holder intends to dispose of it. The Waste Directive does not lay down the criteria to be applied in determining the holder's intention. (32) As already stated, that depends on the overall circumstances in each case. In this connection, not only factual circumstances but also the wider legislative context may be relevant, even if the pertinent legislation was not adopted until after the Waste Directive.

C —

The order in which the two questions referred for a preliminary ruling should be dealt with

115. It follows from the observations set out in A and B above that the question as to which operation constitutes complete recycling of steel from packaging waste does not turn on whether the materials arising from the process in question are still to be classified as waste within the meaning of the Waste Directive. On the contrary, the very characterisation of the operation carried out determines whether they cease to be waste.

116. It therefore appears unnecessary, having regard to the questions of law to be decided in the main proceedings, to answer the first question submitted for a preliminary ruling. In any event, the second question is to be dealt with first.

D —

The second question referred for a preliminary ruling

117. Article 3(7) of the Packaging Directive defines recycling for the purposes of that directive. This provision forms the basis for answering the second question submitted for a preliminary ruling. It would appear that hitherto the Court has not adopted a view on the concept of recycling. Before interpreting the provision on the basis of its wording, brief consideration must be given to the Community law context, the meaning of the term recycling in the light of the objectives of the Packaging Directive and the evolution of that concept in the legislative process which led to the adoption of the Packaging Directive.

(1) Preliminary remarks

(a) Recycling in Community law

118. The Packaging Directive contains the first detailed definition of the concept of recycling, which — in simple terms — consists in recovery of the materials from which the packaging has been produced in order to reuse them. This method of recovering packaging waste has two merits. First, the recycled material no longer needs to be disposed of as waste. Secondly, energy and raw materials are conserved.

119. Essentially this approach may be found in a series of older legislative measures. Thus, in the Waste Directive — if not also in the German language version — the term recycling is likewise referred to in Article 3(1)(b)(i). MPR places substantial reliance on that provision, where, in its submission, the aspect

of recycling highlighted is the extraction of secondary raw materials. The national court too refers, in alternative (a) in its questions, to the obtaining of secondary raw materials ( a feedstock).

120. The idea of recycling had already appeared in Article 2(e) of Council Directive 85/339/EEC of 27 June 1985 on containers of liquids for human consumption (33) which was replaced by the Packaging Directive. (34) In addition, Article 3 of Council Directive 75/439/EEC of 16 June 1975 on the disposal of waste oils (35) should be mentioned.

121. Apart from the fact that those special legislative measures can have little bearing on the sphere of packaging waste, they also provide no further pointers as to the concept of recycling. That is equally true of the legislative measures following the Packaging Directive which took up its definition of recycling. (36)

(b) Recycling in the Packaging Directive's legislative context

122. Article 3(7) of the Packaging Directive cannot be looked at in isolation. On the contrary, in interpreting that provision regard is to be had to the objectives of the directive and of related legislation.

123. It is to be noted that the Packaging Directive aims, on the one hand, to prevent any impact of packaging waste on the environment or to reduce such impact, thus providing a high level of protection, and, on the other hand, to ensure the functioning of the internal market. (37)

(i) High level of environmental protection

124. The objective of attaining a high level of environmental protection accords with the requirements of Article 174(2) EC. Article 6 EC requires environmental protection requirements to be integrated also when measures to harmonise laws are adopted. The Court has deduced from that objective, which the Waste Directive also serves, that the concept of waste is to be interpreted broadly. (38)

125. Applied to the Packaging Directive, this means that the concept of recycling cannot be interpreted in such a way that a material ceases to be waste too quickly and consequently is no longer subject to waste controls at a time when those controls are still necessary in order to ensure a high level of environmental protection.

126. It is to be ensured in particular that used packaging does not pose an environmental hazard and that — in so far as it cannot be reused — it is where possible recovered, avoiding disposal. (39)

127. Of the various forms of recovery, recycling is the one to be preferred. (40) It contributes to environmental protection by conserving energy and primary raw materials and reducing the amount of waste for ultimate disposal. (41)

(ii) No distortion of competition in the internal market

128. In contrast to the Waste Directive, the Packaging Directive sets specific recovery targets. Article 6(1)(b) thus imposes quantitative obligations on the Member States with regard to the proportion of the total amount of packaging material that must as a minimum be recycled. The Packaging Directive, which is based on Article 100a of the EC Treaty, is intended to standardise the provisions of the Member States, and distortions of competition are intended to be avoided.

129. Even if, taking all factors into account, recycling can lead to savings in the national economy, (42) it represents a cost factor for the undertakings which

must pay for recycling the packaging placed into circulation by them. Ultimately that expenditure makes their products more expensive and thus affects their prospects on the market.

130. The Community has to some extent accepted unequal burdens on industry in the Member States by not laying down a specific minimum recovery rate but allowing a spread of rates. Greater imbalances could result if the Member States take as a basis concepts of recycling which differ substantially from one another and the costs of meeting the recovery rates consequently differ.

131. The Court should therefore lay down a definitive interpretation of the concept of recycling in order to ensure that the objective of harmonising laws is achieved. In addition, the interpretation must ensure that the same packaging material is not counted more than once in recycling rate calculations, as the United Kingdom Government correctly points out.

(c) Evolution of the concept of recycling in the legislative process

132. The definition of recycling in the Commission proposal (43) differs from the version in force (see point 7 above), stating: recycling means the recovery of the waste materials for the original purpose or for other purposes excluding energy recovery; recycling means also regeneration and composting.

133. The definition is not considered in greater detail in the explanatory memorandum. It lacks some elements which are included in the version now in force. According to the German version of the proposal, simply materials ( Stoffe) can undergo recycling; it is left open whether or not they must be waste. In addition, the process is characterised solely by the objective of reuse of the material for the original or other purposes. The draft does not contain a more detailed description of the process of recycling.

134. A version corresponding in essence to the current formulation first appears in Common Position (EC) 13/94 of the Council of 4 March 1994. (44) No reason is given for the amendment. Nor does it appear to be commented on by either the Commission or the Parliament in the subsequent procedure. It can merely be stated that the definition ultimately adopted describes the process of recycling more precisely and thus enables a clearer line to be drawn between recycling and other recovery operations, a fact which has significance with regard to the recovery rates in Article 6(1).

(d) Subsequent evolution

135. Recycling has in the meantime acquired considerable importance and will in the future play an even more significant role in the recovery of packaging waste.

136. It is apparent from the interim report prescribed by Article 6(3), which the Commission submitted in 1999, (45) that almost all the Member States had already attained the minimum targets four years after the directive entered into force and some had clearly exceeded the maximum targets. The United Kingdom, with a recycling share of 30% by weight, occupied a place nearer the bottom of the list of Member States; in the case of steel, the recycling rate reached an average of 26% by weight. (46)

137. In the meantime the Commission has submitted a proposal to amend the Packaging Directive. (47) The proposal envisages a significant increase in the recovery rates (between 60% and 75% by weight for recovery and between 55%

and 70% by weight for recycling). Furthermore, the Commission follows a new approach of introducing separate rates for the recycling of various materials. Thus, the recycling rate for metals should reach 50% by weight in the future.

138. In particular with regard to plastics, a distinction is, moreover, drawn between mechanical, chemical and feedstock recycling. Those further definitions could be illuminating if taken as subcategories of recycling. However, doubts are engendered by use of a Commission proposal for the amendment of the Packaging Directive in order to draw conclusions as to the interpretation of the directive in the version in force.

#### (2) Interpretation of Article 3(7) of the Packaging Directive

139. The definition of recycling in Article 3(7) of the Packaging Directive contains three elements of relevance here: recycling is undergone by waste materials (a); the waste materials are reprocessed for the original or another purpose (b); and the reprocessing occurs in a production process (c). The inclusion of organic recycling and exclusion of energy recovery are irrelevant to the present case.

##### (a) Waste materials

140. MPR submits that the steel producers do not carry out any recycling if only because the starting material supplied by MPR, Grade 3B scrap, is already no longer waste.

141. In the definition of recycling, however, the term used is not waste but waste materials which is not to be found anywhere else in the Packaging Directive, or in the Waste Directive. It could be concluded from this choice of words that the materials which can undergo recycling derive from (packaging) waste but at the time of recycling do not necessarily still have to be waste within the meaning of the Waste Directive. Classification of the steel producers' activity would then no longer depend on whether or not the Grade 3B scrap melted down by them is still waste.

142. This must be prefaced by the observation that some language versions of the Packaging Directive simply use the term corresponding to waste in Article 3(7) too (as the French, Spanish, Portuguese and Finnish versions do). The majority of the language versions, on the other hand, parallel the English version where waste materials appears (as the German, Danish, Swedish, Dutch and Italian versions do). It therefore cannot be ruled out that use of the term waste materials was intended to indicate that not only waste may undergo recycling.

143. A factor running counter to that interpretation is the function, already set out, of the definition of recycling in relation to achievement of the recovery targets. If material which derives from waste but is no longer waste could still be subjected to a recycling operation, there would be the risk that material which has already been recycled once would undergo recycling once again. That could result in the same material being counted more than once when calculating the recovery rate.

144. Furthermore, the definition of packaging waste in Article 3(2) of the Packaging Directive actually includes packaging material in so far as it is covered by the definition of waste in the Waste Directive. In view of that, it is hardly possible to proceed on the basis that the term waste materials was intended to denote substances which are not waste.

145. One might, however, wonder whether materials which are subjected to recycling can be waste at all. Since recycling is described as use in a production process, it might be supposed that the element of discarding which is central to the definition of waste is missing.

146. That proposition is opposed, however, by the fact that all recovery constitutes a beneficial use of waste but the materials to be recovered do not cease to be waste for that reason. On the contrary, in accordance with the Court's case-law discarding of material takes place precisely when it is recovered or disposed of. (48) Since recycling is to be regarded as a special form of recovery, (49) material which is to be subjected to an appropriate production process cannot cease to be waste solely for that reason.

147. The term waste materials emphasises on the contrary only the material-based starting point for recycling. Recycling is underlain by the idea that certain substances are recovered from waste and reused, so that a materials cycle arises, as the word recycling makes clear.

148. Starting out from that idea, the term waste *materials* makes it clear that the various materials or substances joined together as packaging must be dealt with separately with regard to their recycling. Glass, metal, plastic, paper and so forth can be used only in specific production processes applicable to the material in question. That differentiates recycling, including organic recycling, from energy recovery, for which mixtures of substances can also be used.

149. It must therefore be concluded that it was not intended, by employing the term waste materials, to indicate that substances which undergo recycling no longer have to be waste. Rather, that term merely takes account of the fact that the materials must be recovered separately.

(b) Reprocessing for the original purpose or another purpose

150. The concept of *re* processing means that the waste materials are, by their treatment, returned to a state in which they were before they became packaging waste. That process should make the materials reusable for the original or another purpose.

151. The United Kingdom Government has put forward the view, as Corus did at the hearing, that the term other purposes must mean purposes similar to the production of new packaging. However, the directive's wording provides no basis for that interpretation. Nor is it even the issue. In accordance with the spirit and purpose of the directive, it is intended merely to preclude the recycling of material for the purpose of then treating it as waste again, that is to say carrying out further recovery operations or even disposing of it.

(c) Production process

152. The distinguishing feature of a production process is that, with some utilisation of means of production and the use of energy, one or more starting materials are transformed or joined together in such a way that in the end a new product is created. The starting materials can be raw materials or semi-finished products. The new product is characterised by a higher degree of processing than the starting material.

(3) Classification of the operation carried out by MPR

153. It must be examined whether, on the basis of the interpretation of Article 3(7) of the Packaging Directive put forward in this Opinion, MPR's activity is to be regarded as recycling.

154. The materials processed by MPR include a certain proportion of metal packaging waste which indisputably amounts to waste materials falling within the definition that has been elucidated.

155. It is open to doubt, however, whether MPR carries out reprocessing for the original purpose or for other purposes. For that to be the case, MPR would have to return the material to a state in which it was before it became packaging or packaging waste.

156. It cannot be reconverted into iron ore. Even if it is assumed that Grade 3B scrap has already been used in producing the packaging, MPR does not return the material to an identical state. Grade 3B scrap is a mixture containing, in addition to steel, a certain amount of foreign substances. The previously processed Grade 3B scrap and the Grade 3B scrap obtained by MPR from packaging waste do not have the same composition. Rather, the material does not attain a previous state until it is pure steel again.

157. Nor can Grade 3B scrap be used directly for the original purpose of producing new packaging. At most, another purpose is possible, namely use as material for stoking furnaces.

158. The aim of recycling is, however, to recover starting materials. As long as there are still mixtures of substances which must be cleaned and have foreign substances removed from them in further processes, reprocessing has not yet been completed. Rather, subsequent cleaning and separation processes are to be regarded as recovery operations. The production of a substance which must be subjected to further recovery operations cannot amount to another purpose within the meaning of Article 3(7) of the Packaging Directive.

159. As is apparent from the order for reference, Grade 3B scrap contains impurities which must be removed before the steel is reused. Those foreign substances are not separated from the steel by means of physical or chemical processes until the melting-down stage when they are removed with the slag which forms a sediment on the liquid metal or vaporise.

160. Finally, the operations carried out by MPR cannot be regarded as a production process. It is true that MPR indisputably uses both machines and energy. The crushing could also be regarded as a kind of transformation. However, the process does not result in a product which displays a higher degree of processing than the starting material. Rather, MPR produces a secondary raw material. That material may admittedly meet the Grade 3B specification established by the industry and therefore be suitable for use in a production process. However, it is still a raw material which — as its appellation already indicates — is unprocessed.

161. The wording in Article 3(2)(b)(i) of the Waste Directive concerning the concept of recycling (see point 6 above) does not preclude that outcome. On MPR's reading of that provision, the objective of recycling is precisely to extract secondary raw materials.

162. First, it is, however, not entirely clear whether the phrase with a view to extracting secondary raw materials refers to the word recycling or only to the final matter listed, namely any other process. As the Environment Agency correctly points out, on reclamation at any rate, which is also included in the list, no secondary raw material is extracted.

163. Nor is the term recycling included in Article 1 of the Waste Directive where any other definitions applying to the Waste Directive are set out. It is therefore questionable whether the term recycling should be defined at all at this point in the directive.

164. Secondly, regard is to be had to the relationship between the two directives. On the interpretation of the Packaging Directive put forward in this Opinion, when a secondary raw material is produced recycling within the meaning of the directive has not yet taken place. That is at any rate the case where the secondary raw material still contains foreign substances which must be removed in subsequent operations. If a different concept of recycling were to underlie the Waste Directive in this regard, the Packaging Directive, as special legislation, would override it.

165. This interpretation also accords with the objectives of the Packaging Directive, in accordance with which recycling is to result in the saving of primary raw materials. Primary raw materials are not saved until steel is obtained from Grade 3B scrap instead of from iron ore.

166. Moreover, a narrow interpretation is required in order that the packaging waste processed by MPR does not cease to be waste at a time when it still needs to be controlled as waste. It is apparent from the order for reference that, even after processing by MPR, the material contains impurities which call for special storage precautions, as in the case of waste, in order to avoid soil contamination. In addition, on the subsequent processing of the material the steel producers are subject to Integrated Pollution Control.

167. MPR's treatment of packaging waste is thus not recycling within the meaning of the Packaging Directive because the metal is not completely recovered, foreign substances still requiring removal, and because there is no production process from which a new product comes into being.

(4) Classification of the operation carried out by the steel producers

168. The Grade 3B scrap which the steel producers melt down should comprise waste materials derived from packaging. The material processed by MPR originally contained packaging waste. The fact that the operation carried out by MPR is not to be classified as recycling is an indication that the material is still waste.

169. The only issue which might require consideration is whether MPR has recovered the material in another way and it has thereby ceased to be waste. The processing by MPR could for example involve recycling/reclamation of metals and metal compounds in accordance with point R3 of Annex IIB to the Waste Directive.

170. It is, however, to be remembered that the Court has held that the carrying out of a complete recovery operation under Annex IIB does not necessarily deprive a substance of its classification as waste. [\(50\)](#) That applies *a fortiori*

where pre-treatment such as sorting and grinding is involved which does not purge the material of all unwanted foreign substances. (51)

171. Since the material is to undergo a further processing operation, in which the steel is rid of the final foreign substances, only when it reaches the steel producers, MPR's treatment has not caused the packaging material to cease to be waste. Regard is also to be had in this connection to the fact that the steel producers are subject to Integrated Pollution Control when they process the Grade 3B material.

172. The fact that Grade 3B scrap has an economic value and is suitable for use as a raw material does not prevent it from continuing to be waste. (52) In *Palin Granit*, the Court regarded the degree of likelihood that a substance will be reused, without any further processing prior to its reuse, as a relevant criterion for determining whether it is waste for the purposes of the Waste Directive. (53)

173. In the present case, the precise likelihood that the Grade 3B material will be further processed by the steel producers immediately after being treated by MPR is unknown. There are, however, some indications that the Grade 3B scrap is used in the steelworks at once.

174.

In

*Palin Granit*, however, the issue to be decided was whether leftover stone which arises as a by-product from quarrying is waste in the first place. In answering that question, different criteria are to be applied from those in the present case, in which it is clear that the material at issue was waste. In order to take account of the protective aim of the Waste and Packaging Directives, it is to be presumed that the material continues to be waste at least until it has demonstrably been fully recovered. As a rule, material ceases to be waste upon being recycled. (54) That is not necessarily the case with other forms of recovery. (55)

175. The treatment by the steel producers also constitutes reprocessing for the original or another purpose. Through remelting, pure steel is obtained and the material is thus again brought to a state in which it was before the packaging was produced. The ingots, sheets or coils of steel can be used to produce packaging again or other products.

176. Finally, the melting down also forms a production process. In the steelmaking process, using furnaces and energy, (semi-finished) products are made, from the Grade 3B scrap which have a higher degree of processing than the starting material.

177. The answer to the second question should therefore be that the materials have not already been recycled within the meaning of Article 3(7) of the Packaging Directive when they have been rendered suitable for use as a feedstock but have been recycled only when they have been used by a steelmaker so as to produce ingots, sheets or coils of steel.

E —

The first question

178. In view of the answer to the second question, it appears no longer necessary to answer the first question. The question whether packaging waste

has been recycled is to be determined exclusively on the basis of the Packaging Directive.

179. The question whether and when it ceases to be waste is relevant in relation to recycling only in so far as waste materials form the starting material for recycling. In the absence of recycling by MPR, Grade 3B scrap has — as set out — not ceased to be waste and can be recycled by the steel producers.

180. The first question might, however, also be understood as meaning that the High Court wishes to ascertain when other materials not covered by the Packaging Directive are to be regarded as recycled.

181. In accordance with settled case-law, it is first of all solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court of Justice. [\(56\)](#)

182. Nevertheless, the Court has held that it has no jurisdiction to give a preliminary ruling on a question submitted by a national court where it is quite obvious that the interpretation of Community law, or the decision as to validity of Community law, sought by that court bears no relation to the actual facts of the main action or its purpose or where the problem is hypothetical. [\(57\)](#)

183. The parties to the proceedings before the High Court are in dispute as to the entitlement to issue PRNs in respect of the recycling of packaging waste. The order for reference provides no indication at all that the question of when waste other than packaging waste has been recycled is relevant to the decision in the case pending before the High Court.

184. Accordingly, the question should not be answered.

#### VII — Conclusion

185. On the basis of the foregoing arguments, I propose the following answer to the second question referred for a preliminary ruling: Packaging waste made of steel has not already been recycled within the meaning of Article 3(7) of European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste when it has been rendered suitable for use as a feedstock but has been recycled only when it has been used by a steelmaker so as to produce ingots, sheets or coils of steel.

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[1](#) –

Original language: German.

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[2](#) –

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 amending Directive 75/442 (OJ 1991 L 78, p. 32) and by Commission Decision 96/350/EC of 24 May 1996 adapting Annexes IIA and IIB to Directive 75/442 (OJ 1996 L 135, p. 32).

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[3](#) –

OJ 1994 L 365, p. 10.

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[4](#) –

OJ 2000 L 269, p. 34.

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[5](#) –

MPR refers to the Opinions of Advocate General Jacobs in Joined Cases C-304/94, C-330/94, C-342/94 and C-224/95 *Tombesi and Others* [1997] ECR I-3561, point 56, and Case C-129/96 *Inter-Environnement Wallonie* [1997] ECR I-7411, points 69 and 70, and to the judgment in Joined Cases C-418/97 and C-419/97 *ARCO Chemie Nederland and Others* [2000] ECR I-4475, paragraphs 51, 65 to 71, 73, 88 and 97.

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[6](#) –

Opinion in *Inter-Environnement Wallonie* , cited in footnote 5, points 26, 27 and 60, Opinion in *Tombesi* , cited in footnote 5, points 50 and 51, and judgment in *ARCO Chemie* , cited in footnote 5, paragraphs 34, 36, 46 and 47.

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[7](#) –

Judgment in *Inter-Environnement Wallonie* , cited in footnote 5, paragraph 33.

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[8](#) –

Opinion in *Tombesi* , cited in footnote 5, points 53 and 54, Opinion in *Inter-Environnement Wallonie* , cited in footnote 5, point 78, and judgment in *ARCO Chemie* , cited in footnote 5, paragraphs 93 and 94.

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[9](#) –

Judgment in *ARCO Chemie* , cited in footnote 5, paragraphs 34 to 40.

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[10](#) –

Judgment in *ARCO Chemie* , cited in footnote 5, paragraphs 89, 95, 96 and 97.

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[11](#) –

The Environment Agency refers in particular to the judgments in *Inter-Environnement Wallonie* , cited in footnote 5, paragraph 30, and in *ARCO Chemie* , cited in footnote 5, paragraphs 64 to 69.

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[12](#) –

OJ 1993 L 30, p. 1.

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[13](#) –

OJ 1999 L 182, p. 1.

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[14](#) –

OJ 2000 L 332, p. 91.

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[15](#) –

Judgment in *ARCO Chemie* , cited in footnote 5, paragraph 96.

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[16](#) –

Cited in footnote 5, paragraphs 36 to 41.

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[17](#) –

Cited in footnote 5, paragraphs 40, 41 and 97.

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[18](#) –

The language versions diverge. While the German version and some others, for example the Spanish version, refer generally to the operations provided for in Annex IIB to the Waste Directive ( die Maßnahmen, cualquiera de las operaciones), other language versions have a restriction added (for example applicable operations, opérations applicables, pertinenti operazioni, toepasselijke handelingen).

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[19](#) –

The United Kingdom Government refers to the Opinion in *Tombesi* , cited in footnote 5, point 56.

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[20](#) –

Judgments in *Inter-Environnement Wallonie* , cited in footnote 5, paragraph 33, and in *ARCO Chemie* , cited in footnote 5, paragraph 70.

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[21](#) –

See footnote 2 above.

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[22](#) –

Cited in footnote 2.

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[23](#) –

See the seventh recital in the preamble to the Packaging Directive.

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[24](#) –

See in particular Article 3(1)(a) of the Waste Directive and Article 1(2) of the Packaging Directive.

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[25](#) –

See in particular Article 3(1)(b) of the Waste Directive and Article 1(2) of the Packaging Directive.

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[26](#) –

Judgment in *ARCO Chemie* , cited in footnote 5, paragraphs 94 and 95.

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[27](#) –

Judgments in *Inter-Environnement Wallonie* , cited in footnote 5 above, paragraph 26, and in Case C-9/00 *Palin Granit* [2002] ECR I-3533, paragraph 22.

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[28](#) –

Judgments in Joined Cases C-206/88 and C-207/88 *Vessoso and Zanetti* [1990] ECR I-1461, paragraph 9, and in *Tombesi* , cited in footnote 5, paragraph 52.

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[29](#) –

. *ARCO Chemie* , cited in footnote 5, paragraph 66.

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[30](#) –

See the judgment in *Palin Granit* , cited in footnote 27, paragraphs 24 and 25.

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[31](#) –

Judgments in *ARCO Chemie* , cited in footnote 5, paragraphs 51 and 82, and in *Palin Granit* , cited in footnote 27, paragraph 27.

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[32](#) –

See the judgment in *Palin Granit* , cited in footnote 27, paragraph 25.

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[33](#) –

OJ 1985 L 176, p. 18.

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[34](#) –

See Article 23 of the Packaging Directive.

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[35](#) –

OJ 1975 L 194, p. 23.

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[36](#) –

See in particular Article 2(7) of Directive 2000/53.

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[37](#) –

See Article 1(1) of the Packaging Directive and the first recital in its preamble.

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[38](#) –

Judgment in *ARCO Chemie* , cited in footnote 5, paragraph 40.

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[39](#) –

See Article 1(2) of the Packaging Directive and the seventh recital in its preamble.

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[40](#) –

See the eighth recital in the preamble to the Packaging Directive. The priority accorded to recycling is, however, subject to a proviso as to adequate scientific and technological knowledge concerning recovery.

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[41](#) –

See the 11th recital in the preamble to the Packaging Directive.

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[42](#) –

The Commission estimates, on the basis of various studies, that the costs of recycling are roughly equal to the saved waste disposal costs. (See the explanatory memorandum for the Commission proposal for a Directive of the European Parliament and of the Council amending Directive 94/62/EC on packaging and packaging waste, COM(2001) 729 final of 7 December 2001, p. 17.)

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[43](#) –

COM(92) 278 final, also reproduced without the statement of reasons at OJ 1992 C 263, p. 1.

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[44](#) –

OJ 1994 C 137, p. 65.

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[45](#) –

COM(1999) 596 final.

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[46](#) –

See Table III.5 of the 1999 interim report (cited in footnote 45), which reproduces figures for the United Kingdom for 1997.

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[47](#) –

Commission proposal of 7 December 2001 for a Directive of the European Parliament and of the Council amending Directive 94/62/EC on packaging and packaging waste (COM(2001) 729 final, also reproduced without the explanatory memorandum at OJ 2002 C 103 E, p. 17).

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[48](#) –

Judgment in *ARCO Chemie* , cited in footnote 5, paragraph 47.

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[49](#) –

See the 11th recital in the preamble to the Packaging Directive.

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[50](#) –

Judgment in *ARCO Chemie* , cited in footnote 5, paragraphs 94 and 95.

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[51](#) –

See the judgment in *ARCO Chemie* , cited in footnote 5, paragraph 96; as to grinding, see the judgment in *Tombesi* , cited in footnote 5, paragraph 53.

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[52](#) –

Judgments in *Vessoso and Zanetti* , cited in footnote 28, paragraphs 12 and 13, in *Tombesi* , cited in footnote 5, paragraph 54, and in *Inter-Environnement Wallonie* , cited in footnote 5, paragraph 31.

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[53](#) –

Judgment in *Palin Granit* , cited in footnote 27, paragraph 37.

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[54](#) –

See points 104 and 105 above.

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[55](#) –

See the case-law cited in footnote 26.

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[56](#) –

See in particular the judgment in Case C-415/93 *Bosman* [1995] ECR I-4921, paragraph 59.

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[57](#) –

See the judgments in *Bosman* , cited in footnote 56, paragraph 61, and in Case C-437/97 *EKW and Wein & Co* [2000] ECR I-1157, paragraph 52.