Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

29 March 2012*

(Environment — Regulation (EC) No 1013/2006 — Article 18(1) and (4) — Shipments of certain waste — Article 3(2) — Mandatory information — Identity of waste producers — Information not provided by the intermediary dealer — Protection of business secrets)

In Case C-1/11,

REFERENCE for a preliminary ruling under Article 267 TFEU from the Verwaltungsgericht Mainz (Germany), made by decision of 26 November 2010, received at the Court on 3 January 2011, in the proceedings

Interseroh Scrap and Metals Trading GmbH

v

Sonderabfall-Management-Gesellschaft Rheinland-Pfalz mbH (SAM),

THE COURT (Fourth Chamber),

composed of J.-C. Bonichot, President of the Chamber, A. Prechal, K. Schiemann (Rapporteur), L. Bay Larsen and C. Toader, Judges,

Advocate General: Y. Bot,

Registrar: A. Impellizzeri, Administrator,

having regard to the written procedure and further to the hearing on 26 October 2011,

after considering the observations submitted on behalf of:

— Interseroh Scrap and Metals Trading GmbH, by A. Oexle, Rechtsanwalt,

— Sonderabfall-Management-Gesellschaft Rheinland-Pfalz mbH (SAM), by C. v. der Lühe, Rechtsanwalt,

— the Belgian Government, by M. Jacobs and T. Materne, acting as Agents,

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

— the Portuguese Government, by L. Fernandes and M. João Lois, acting as Agents,

— the European Commission, by G. Wilms and A. Marghelis, acting as Agents,

* Language of the case: German.

after hearing the Opinion of the Advocate General at the sitting on 8 December 2011,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 18 of Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste (OJ 2006 L 190, p. 1), as amended by Commission Regulation (EC) No 308/2009 of 15 April 2009 (OJ 2001 L 97, p. 8) ('Regulation No 1013/2006').

2 The reference has been made in proceedings between Interseroh Scrap and Metals Trading GmbH ('Interseroh'), a dealer specialising in steel and metal scrap, and Sonderabfall-Management-Gesellschaft Rheinland-Pfalz mbH (SAM) ('SAM'), to which Land Rheinland-Pfalz has entrusted inter alia the supervision of specific waste streams in Land Rheinland-Pfalz, concerning the details to be given in the document contained in Annex VII to Regulation No 1013/2006 ('the shipment document').

Legal context

European Union law

3 Recital 7 in the preamble to Regulation No 1013/2006 notes the importance of organising and regulating the supervision and control of shipments of waste in a way which takes account of the need to preserve, protect and improve the quality of the environment and human health and which promotes a more uniform application of that regulation throughout the European Union.

4 Recital 15 in the preamble to Regulation No 1013/2006 states that it is appropriate to ensure a minimum level of supervision and control in the case of shipments of waste listed in Annex III, IIIA or IIIB to that regulation destined for recovery operations by requiring such shipments to be accompanied by certain information.

5 Article 1(1) of Regulation No 1013/2006 provides that the latter establishes procedures and control regimes for the shipment of waste, depending on the origin, destination and route of the shipment, the type of waste shipped and the type of treatment to be applied to the waste at its destination.

6 Article 3(2)(a) of Regulation No 1013/2006 provides that shipments of waste listed in Annex III or IIIB to that regulation destined for recovery are subject to the general information requirements laid down in Article 18 of that regulation, if the amount of waste shipped exceeds 20 kilograms.

7 Annex III to Regulation No 1013/2006 includes, under the sub-heading '"Green" listed waste', inter alia the waste listed in Annex IX to the Convention on the control of transboundary movements of hazardous wastes and their disposal, signed at Basel on 22 March 1989, which was approved on behalf of the Community by Council Decision 93/98/EEC of 1 February 1993 (OJ 1993 L 39, p. 1), ('the Basel Convention').

8 Annex IX to the Basel Convention states that wastes contained in that annex are not in principle covered by Article 1(1)(a) of that convention and are therefore not considered in principle to be 'hazardous wastes' for the purposes of that convention.

9 Code B 1010 in Annex IX to the Basel Convention covers 'Metal and metal-alloy wastes in metallic, non-dispersible form', inter alia, iron and steel scrap, chromium scrap, copper scrap, nickel scrap, aluminium scrap, zinc scrap and tin scrap.

10 Article 18 of Regulation No 1013/2006, entitled 'Waste to be accompanied by certain information', provides:

'1. Waste as referred to in Article 3(2) and (4) that is intended to be shipped shall be subject to the following procedural requirements:

(a) In order to assist the tracking of shipments of such waste, the person under the jurisdiction of the country of dispatch who arranges the shipment shall ensure that the waste is accompanied by the document contained in Annex VII.

(b) The document contained in Annex VII shall be signed by the person who arranges the shipment before the shipment takes place and shall be signed by the recovery facility or the laboratory and the consignee when the waste in question is received.

2. The contract referred to in Annex VII between the person who arranges the shipment and the consignee for recovery of the waste shall be effective when the shipment starts and shall include an obligation, where the shipment of waste or its recovery cannot be completed as intended or where it has been effected as an illegal shipment, on the person who arranges the shipment or, where that person is not in a position to complete the shipment of waste or its recovery (for example, is insolvent), on the consignee, to:

(a) take the waste back or ensure its recovery in an alternative way; and

(b) provide, if necessary, for its storage in the meantime.

The person who arranges the shipment or the consignee shall provide a copy of the contract upon request by the competent authority concerned.

3. For inspection, enforcement, planning and statistical purposes, Member States may in accordance with national legislation require information as referred to in paragraph 1 on shipments covered by this Article.

4. The information referred to in paragraph 1 shall be treated as confidential where this is required by Community and national legislation.'

11 Article 20(2) of Regulation No 1013/2006 provides inter alia that the person who arranges for the shipment and the consignee receiving the waste must keep information given pursuant to Article 18(1) of that regulation for at least three years from the date when the shipment starts.

12 The shipment document contained in Annex VII to Regulation No 1013/2006 is shown below:

ANNEX VII

INFORMATION ACCOMPANYING SHIPMENTS OF WASTE AS REFERRED TO IN ARTICLE 3(2) AND (4)

Consignment information (1)

1. Person who arranges the shipment Name: Address: Contact person: Tel.: Fax: E-mail:		**2. Importer/consignee** Name: Address: Contact person: Tel.: Fax: E-mail:
3. Actual quantity: Tonnes (Mg): m³:		**4. Actual date of shipment:**
5.(a) First carrier (2): Name: Address: Contact person: Tel.: Fax: E-mail: Means of transport: Date of transfer: Signature:	**5.(b) Second carrier:** Name: Address: Contact person: Tel.: Fax: E-mail: Means of transport: Date of transfer: Signature:	**5.(c) Third carrier:** Name: Address: Contact person: Tel.: Fax: E-mail: Means of transport: Date of transfer: Signature:
6. Waste generator (3) **Original producer(s), new producer(s) or collector:** Name: Address: Contact person: Tel.: Fax: E-mail:		**8. Recovery operation (or if appropriate disposal operation in the case of waste referred to in Article 3(4)):** R-code/D-code: **9. Usual description of the waste:**
7. Recovery facility ☐ **Laboratory** ☐ Name: Address: Contact person: Tel.: Fax: E-mail:		**10. Waste identification** *(fill in relevant codes):* (i) Basel Annex IX: (ii) OECD *(if different from (i)):* (iii) EC list of wastes: (iv) National code:

11. Countries/States concerned:

Export/dispatch	Transit			Import/destination

12. Declaration of the person who arranges the shipment: I certify that the above information is complete and correct to my best knowledge. I also certify that effective written contractual obligations have been entered into with the consignee *(not required in the case of waste referred to in Article 3(4)):*

Name: Date: Signature:

13. Signature upon receipt of the waste by the consignee:

Name: Date: Signature:

TO BE COMPLETED BY THE RECOVERY FACILITY OR BY THE LABORATORY:

14. Shipment received at recovery facility ☐ **or laboratory** ☐ Quantity received: Tonnes (Mg): m³:

Name: Date: Signature:

(1) Information accompanying shipments of green listed waste and destined for recovery or waste destined for laboratory analysis pursuant to Regulation (EC) No 1013/2006. For completing this document, see also the corresponding specific instructions as contained in Annex IC of Regulation (EC) No 1013/2006.
(2) If more than three carriers, attach information as required in blocks 5 (a), (b), (c).
(3) When the person who arranges the shipment is not the producer or collector, information about the producer or collector shall be provided.'

National law

13 According to the information provided to the Court by the Verwaltungsgericht Mainz, the Basic Law of the Federal Republic of Germany (Grundgesetz für die Bundesrepublik Deutschland; 'the Basic Law') provides for the protection of business secrets in Paragraph 12, concerning freedom to conduct a business, in conjunction with Paragraph 14, concerning the right to property. According to the case-law of the Bundesverfassungsgericht (Constitutional Court), an undertaking's sources of supply are moreover business secrets which fall to be protected as a fundamental right.

The dispute in the main proceedings and the questions referred for a preliminary ruling

14 Interseroh is a subsidiary of Interseroh SE, a major European company specialising in collecting, processing and dealing in secondary raw materials (scrap metals, recovered paper, plastic waste and waste wood). Interseroh SE employs around 2 000 staff at some one hundred sites spread over 13 countries.

15 Interseroh, in its capacity as a dealer, undertakes deliveries of any quantity of various qualities of scrap metal in response to orders from its customers, which are steelworks, foundries and ironworks.

16 In that context, Interseroh operates exclusively as an 'intermediary dealer' ('Streckenhändlerin'). The feature of that particular form of trading is that the dealer buys goods from the producer or collector and sells them on without itself taking physical possession of the goods. Contractual relationships are established only between the dealer and the producer, on the one hand, and the dealer and the customer, on the other hand.

17 The types of metals in which Interseroh deals are considered to be 'wastes' falling within Code B 1010 of the Basel Convention, which appears in Annex IX to that convention, and hence on the 'green' list of wastes set out in Annex III to Regulation No 1013/2006. Transboundary transport of such wastes was, accordingly, subject to the information requirements laid down in Article 18 of that regulation.

18 The person who arranges the shipment, in the present case Interseroh, is required, in SAM's submission, under Article 18(1)(a) of Regulation No 1013/2006, to ensure that the waste is accompanied by the shipment document during transport. Under Article 18(1)(b) and Article 20(2) of Regulation No 1013/2006, that document must be signed and kept for at least three years by the consignee of the delivery.

19 One practical consequence of that interpretation is that a dealer in Interseroh's situation is obliged, in view of the information that must appear in Field 6 of that document, to reveal its sources of supply to its customers, and those customers therefore have the opportunity of contacting the producer or collector of the waste direct and to dispense with the services of the intermediary dealer when concluding subsequent contracts.

20 Interseroh considers that the obligation to reveal its sources of supply to its customers infringes its right to protection of its business secrets and represents a serious impediment to its economic activity as an intermediary dealer. That obligation also causes it pecuniary damage since the information concerning its sources of supply constitutes a substantial share of the undertaking's business know-how and goodwill. Lastly, Interseroh has already lost numerous customers as a result of the obligation to reveal its sources of supply.

21 Interseroh therefore decided to enter its own name instead of that of the producer or collector in Field 6 of the shipment document or to leave that section blank, and did so on several occasions when transporting waste. However, as the actual producers or collectors are named on the delivery notes and weight certificates that must also accompany the transport of waste and be presented in the event of a check, administrative proceedings were brought against Interseroh's Manager on account of the obvious conflict between the information given on the delivery notes and weight certificates, on the one hand, and in Field 6 of the shipment document, on the other hand.

22 A particular instance arose when a vehicle check was carried out on the A3 motorway near Montabaur on 7 May 2009. By decision of 5 August 2009, SAM therefore imposed on Interseroh's Manager a fine of EUR 150. Following an appeal against that decision, proceedings are currently pending before the Staatsanwaltschaft Mainz (Mainz Public Prosecutor's Office).

23 As a consequence, on 18 December 2009 Interseroh brought an action before the referring court, by which it seeks a declaration that, as an intermediary dealer, it is not required to enter the name of the waste producer in Field 6 of the shipment document.

24 The referring court takes the view that, in principle, the Basic Law requires that information concerning the waste producer must be treated as confidential, under Paragraph 12 in conjunction with Paragraph 14 of that law, since it is generally acknowledged that an undertaking's sources of supply are business secrets, which fall to be protected as a fundamental right.

25 In those circumstances the Verwaltungsgericht Mainz decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Does Article 18(4) of [Regulation No 1013/2006] also apply to those involved in the shipment process?

(2) If not, is Article 18(1) of that regulation restricted by [EU] primary law in order to protect business secrets?

(3) If question 1 is answered in the affirmative, is the obligation under Article 18(1) of that regulation on the persons who arrange the shipments to disclose the name of the waste producer or waste collector to the consignee of the waste by means of the document set out in Annex VII limited by Article 18(4) in order to protect business secrets?

(4) If question 3 is answered in the affirmative, does the extent of the limitation depend on a weighing up of the interests (on the one hand, the business interests affected, on the other, protection of the environment) on a case-by-case basis?'

Consideration of the questions referred

26 The referring court takes as a starting point the fact that Article 18(1) of Regulation No 1013/2006 requires, in principle, the person who arranges a shipment of waste covered by that provision to complete the shipment document in full and to send it to the consignee of the shipment for signature and safe-keeping. That requirement entails disclosure of the name of the waste producer to the consignee of the shipment, with potentially damaging consequences, as described in paragraphs 20 and 21 above, for an intermediary dealer in Interseroh's situation.

27 The referring court questions in those circumstances whether an intermediary dealer such as the applicant, when arranging shipments of waste, may validly rely either on Article 18(4) of Regulation No 1013/2006, which allows data to be treated as confidential in certain circumstances or, alternatively, on a general principle of European Union law such as the principle of the protection of business secrets, in order to avoid disclosing the identity of the waste producer to the consignee of the shipment by means of the shipment document.

28 It is apparent from the reference for a preliminary ruling and from the observations submitted to the Court that all the shipments at issue in the main proceedings are of raw materials such as metals of different qualities, which are bought and resold by the intermediary and which constitute 'green' listed, non-hazardous wastes.

The first, third and fourth questions

29 By its first, third and fourth questions, which should be considered together, the referring court asks in essence whether Article 18(4) of Regulation No 1013/2006 must be interpreted as allowing an intermediary dealer arranging a shipment of waste not to disclose the name of the waste producer to the consignee of the shipment where such non-disclosure is necessary in order to protect the intermediary's business secrets.

30 Article 18(4) of Regulation No 1013/2006 provides that the information referred to in Article 18(1), namely, the information contained in the shipment document, is to be treated as confidential where this is required by Community and national legislation.

31 As for the identity of the persons who might be bound by the confidentiality requirements to which Article 18(4) of Regulation No 1013/2006 refers, it is clear from a literal and systematic interpretation of that provision that the confidentiality requirements to which it refers are such that they apply to any person in possession of the information concerned, which includes both the authorities of dispatch and destination and all the natural or legal persons involved in the shipment of waste.

32 The wording of Article 18(4) of Regulation No 1013/2006 does not make any distinction among persons who may be in possession of the information concerned and, in particular, does not make any reference to Article 18(3) of Regulation No 1013/2006, which specifically concerns the public authorities.

33 However, it is also to be inferred from Article 18 of Regulation No 1013/2006 that the confidentiality requirements to which Article 18(4) refers are not such that they could preclude the transmission, between the undertakings involved in the shipping operation, of information covered by Annex VII to that regulation.

34 First, Article 18(1)(a) of Regulation No 1013/2006 provides that a shipment document must be prepared and must accompany any shipment of waste to which that provision applies. The person arranging such a shipment is therefore required to complete, inter alia, Field 6 of the shipment document provided for in Annex VII of that regulation, in which it must enter the name of the waste producer.

35 Secondly, Article 18(1)(b) of Regulation No 1013/2006 provides that the shipment document must be signed by the person who arranges the shipment and the consignee of the shipment of waste, whilst Article 20(2) of that regulation requires the person who arranges for the shipment and the consignee to keep the information covered by Article 18(1) of that regulation for at least three years from the date when the shipment starts.

36 The necessary consequence of those provisions is that the consignee of the shipment receives all of the information contained in the shipment document, and will therefore be made aware inter alia of the name of the waste producer, which, as required by Annex VII to that regulation, is given in Field 6 of that document.

37 Any potential confidentiality requirement under Article 18(4) of Regulation No 1013/2006 would have no effect in that regard since, as the Advocate General states in essence in point 50 of his Opinion, the issue of whether the information contained in the shipment document is to be treated as confidential arises only after that document has been prepared and communicated. Article 18(4) of Regulation No 1013/2006 can apply only if the information has already been given in the shipment document, as provided in Article 18(1) of Regulation No 1013/2006 in conjunction with Annex VII to that regulation.

38 Therefore, as the Advocate General states in point 64 of his Opinion, the scope of such confidentiality requirements is necessarily limited to the contacts which persons having access to the shipment document, namely the competent administrative authorities and persons involved in the shipment in question, have with third parties to that shipment.

39 That interpretation is supported by the wording of Article 18(4) of Regulation No 1013/2006, which expressly states that the information referred to in the shipment document is to be 'treated as confidential', and makes no mention of any hypothetical exception to the requirement to provide all the required information in the shipment document. It is also supported by footnote 3 to Annex VII to that regulation, which states that when the person who arranges the shipment is not the producer or collector, information about the producer or collector must be provided.

40 Consequently, the answer to the first, third and fourth questions is that Article 18(4) of Regulation No 1013/2006 must be interpreted as not permitting an intermediary dealer arranging a shipment of waste not to disclose the name of the waste producer to the consignee of the shipment, as provided for in Article 18(1) of Regulation No 1013/2006 in conjunction with Annex VII to that regulation, even though such non-disclosure might be necessary in order to protect the business secrets of that intermediary dealer.

Second question

41 The second question is referred only in the event that Article 18(4) of Regulation No 1013/2006 does not permit an intermediary dealer arranging a shipment of waste to avoid disclosing the name of the waste producer to the consignee of the shipment. The referring court notes that, as was stated in paragraph 13 above, the Basic Law provides for the protection of business secrets, which covers inter alia an undertaking's sources of supply. There is no relevant national provision under which the fundamental rights at issue can be restricted. It raises the question, in those circumstances, whether business secrets are protected under European Union primary law restricting the scope of Article 18(1) of Regulation No 1013/2006.

42 It must therefore be understood that, by its question, the referring court seeks in essence to ascertain whether Article 18(1) of Regulation No 1013/2006 must be interpreted, in the context of a shipment of waste covered by that provision, as requiring an intermediary dealer to complete Field 6 of the shipment document and transmit it to the consignee, without the scope of that requirement being restricted by a right to protection of business secrets.

43 In that regard, Articles 15(1), 16 and 17 of the Charter of Fundamental Rights of the European Union, provide, respectively, for the right to engage in work and to pursue a freely chosen or accepted occupation, the freedom to conduct a business and the right to property. Moreover, according to settled case-law, both the right to property and the freedom to pursue a trade or business are general principles of European Union law (see Case C-280/93 *Germany* v *Council* [1994] ECR I-4973, paragraph 78; Joined Cases C-20/00 and C-64/00 *Booker Aquaculture and Hydro Seafood* [2003] ECR I-7411, paragraph 68; Joined Cases C-154/04 and C-155/04 *Alliance for Natural Health and Others* [2005] ECR I-6451, paragraph 126; and Joined Cases C-453/03, C-11/04, C-12/04 and C-194/04 *ABNA and Others* [2005] ECR I-10423, paragraph 87). Moreover, according to settled case-law, the protection of business secrets is a general principle of European Union law (see Case C-450/06 *Varec* [2008] ECR I-581, paragraph 49 and the case-law cited).

44 It should be noted, however, that, even if the obligation to disclose the name of the waste producer to the consignee of a shipment of waste were to constitute a breach of the protection of the business secrets of intermediary dealers, that could not have the consequence of restricting the scope of a provision of secondary law that is clear and unconditional.

45 As was held in paragraphs 33 to 40 above, the inevitable consequence of the administrative tracking procedure provided for in Article 18 of Regulation No 1013/2006 is that the consignee of the shipment will be made aware of the name of the waste producer and no derogation may be inferred from that regulation.

46 In those circumstances, any unjustified breach of the protection of business secrets, assuming it were established, would not be such as to limit the scope of Article 18 of Regulation No 1013/2006, but rather to call into question the validity of that provision. The national court has not, however, asked the Court of Justice to rule on the validity of Article 18 of Regulation No 1013/2006, or even expressed any doubt in that regard, and the Court does not have sufficient facts before it to enable it to assess the validity of that provision.

47 Consequently, the answer to the second question is that Article 18(1) of Regulation No 1013/2006 must be interpreted as requiring an intermediary dealer, in the context of a shipment of waste covered by that provision, to complete Field 6 of the shipment document and transmit it to the consignee, without any possibility of the scope of that requirement being restricted by a right to protection of business secrets.

Costs

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

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

1. **Article 18(4) of Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste, as amended by Commission Regulation (EC) No 308/2009 of 15 April 2009, must be interpreted as not permitting an intermediary dealer arranging a shipment of waste not to disclose the name of the waste producer to the consignee of the shipment, as provided for in Article 18(1) of Regulation No 1013/2006 in conjunction with Annex VII to that regulation, even though such non-disclosure might be necessary in order to protect the business secrets of that intermediary dealer.**

2. **Article 18(1) of Regulation No 1013/2006, as amended by Regulation No 308/2009, must be interpreted as requiring an intermediary dealer, in the context of a shipment of waste covered by that provision, to complete Field 6 of the document contained in Annex VII to Regulation No 1013/2006, as amended by Regulation No 308/2009, and transmit it to the consignee, without any possibility of the scope of that requirement being restricted by a right to protection of business secrets.**

[Signatures]