OPINION OF ADVOCATE GENERAL LÉGER

delivered on 20 September 2001 [1]

1. By this reference for a preliminary ruling, the Bundesverwaltungsgericht (Federal Administrative Court) (Germany) requests the Court to interpret certain provisions of Regulation (EEC) No 259/93 [2] in order to enable it to ascertain whether the decree of the Government and the Ministry of the Environment and Transport of *Land* Baden-Württemberg of 12 September 1996 on the management of certain waste for disposal and the Special Waste Agency [3] [4] is compatible with Community law.

2. The decree lays down a mandatory procedure for the processing of certain waste for disposal. Essentially, it requires producers and holders of hazardous waste established in *Land* Baden-Württemberg to offer such waste, for incineration, to a processing centre belonging to that *Land*. Those operators are therefore denied the opportunity of exporting that type of waste to another Member State for processing there.

3. Taking the view that it is not in a position to assert categorically that the decree is in principle consistent with Community law and, in particular, with Article 29 EC, the national court asks the Court to rule on the compatibility of the prohibition laid down in the decree with Community law.

I — The legal background

A — *Community provisions*

Directive 75/442/EEC [5]

4. The directive seeks to harmonise national legislation on waste disposal. It was adopted on the basis of Articles 100 and 235 of the EC Treaty (now Articles 94 EC and 308 EC). The provisions of that

1 — Original language: French.

2 — Council Regulation of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community (OJ 1993 L 30, p. 1, 'the regulation').

3 — 'The Agency'.

4 — GBl, p. 586, 'the decree' or 'the decree in issue'.

5 — Council Directive of 15 July 1975 on waste (OJ 1975 L 194, p. 39, 'the directive').

directive have in particular been amended by Council Directive 91/156/EEC of 18 March 1991,[6] based on Article 130s of the Treaty (now, after amendment, Article 175 EC).

5. Under Articles 3, 4 and 5, the directive seeks, first, to prevent, reduce, recover and use waste; secondly, to protect human health and the environment in the processing of waste, whether the waste is intended for disposal or recovery; and, finally, to establish at Community level and, if possible, at national level, an integrated network for waste disposal.

6. Article 5 of the directive provides:

'1. Member States shall take appropriate measures, in co-operation with other Member States where this is necessary or advisable, to establish an integrated and adequate network of disposal installations, taking account of the best available technology not involving excessive costs. The network must enable the Community as a whole to become self-sufficient in waste disposal and the Member States to move towards that aim individually, taking into account geographical circumstances or the need for specialised installations for certain types of waste.

2. The network must also enable waste to be disposed of in one of the nearest appropriate installations, by means of the most appropriate methods and technologies in order to ensure a high level of protection for the environment and public health.'

7. Article 7 of the directive requires Member States to draw up waste management plans to attain the objectives referred to in Articles 3, 4 and 5 and to allow them to take measures to prevent movements of waste which are not in accordance with those plans.

The regulation

8. The regulation arranges the supervision and control of shipments of waste between Member States. It was adopted on the basis of Article 130s of the EC Treaty and repeals and replaces Directive 84/631/EEC.[7]

6 — OJ 1991 L 78, p. 32.

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

9. Title II of the regulation, entitled 'Shipments of waste between Member States', includes Chapter A on the procedure applicable to shipments of waste for disposal. Article 4(3)(a)(i), which appears in Chapter A, provides as follows:

'In order to implement the principles of proximity, priority for recovery and self-sufficiency at Community and national levels in accordance with Directive 75/442/EEC, Member States may take measures in accordance with the Treaty to prohibit generally or partially or to object systematically to shipments of waste. Such measures shall immediately be notified to the Commission, which will inform the other Member States.'

B — *National provisions*

Relevant legislative provisions

10. Paragraph 41(1) of the Federal law of 27 September 1994 [8] defines waste for disposal requiring special supervision as 'waste from industrial undertakings or other economic undertakings or public institutions which by its nature or owing to its condition or quantity represents a particular danger to health, the air or water, is particularly explosive or inflammable or may convey or give rise to contaminating agents'.

11. The first sentence of Paragraph 9(1) of the Gesetz über die Vermeidung und Entsorgung von Abfällen und die Behandlung von Altlasten in Baden-Württemberg (Landesabfallgestez), [9] in the 15 October 1996 version, [10] most recently amended by Paragraph 4 of the Law of 16 July 1998, [11] provides that the authorities of *Land* Baden-Württemberg are to establish, together with the producers and holders of waste, plants for the processing and disposal of waste requiring special supervision.

12. The second sentence of Paragraph 9(2) of the LAbfG enables the *Land* Government to determine by regulation that producers and holders of that type of waste must offer it to the operators of the processing centres or to the agency set up in accordance with Paragraph 28a(1) of that law.

13. Under the third sentence of Paragraph 9(2) of the LAbfG, waste which cannot be

8 — Directed at promoting recycling and ensuring the environmentally sound disposal of waste (Kreislaufwirtschafts- und Abfallgesetz, BGBl I, p. 2705, 'the Federal law of 27 September 1994).

9 — The *Land* law on waste ('the LAbfG').

10 — GBl, p. 617.

11 — GBl, p. 422.

processed in the processing centres is to be sent to the processing establishment proposed by the producer or holder of the waste.

17. Under Paragraph 1(2) of the decree, the processing centres are, for waste for storage, for the special disposal site in Billigheim and, for waste for incineration, the waster incinerator belonging to the Abfall-Verwertungsgesellschaft mbH in Hamburg, [14] 'within the framework of the delivery obligations in force'. [15]

Relevant provisions of the decree

14. In accordance with the second sentence of Paragraph 9(2) of the LAbfG, the Government of *Land* Baden-Württemberg adopted the decree, as amended by the Decree of 26 January 1998. [12]

18. Under the first sentence of Paragraph 3(1) of the decree, producers and holders of waste for disposal requiring special supervision which is produced in *Land* Baden-Württemberg or which is to be processed, stored or deposited there must offer such waste to the agency, which sends it to a processing centre, in accordance with Paragraph 4(1) of that decree.

15. Paragraph 1(1) of the decree states that the operator responsible for the processing centres for waste for disposal is SBW Sonderabfallentsorgung Baden-Württemberg GmbH, [13] an undertaking established in 1973 and owned as to the majority of its share capital by the *Land*.

19. The second sentence of Paragraph 3(1) of the decree none the less provides for certain exceptions to that obligation, in particular where the quantity of waste to be processed is below certain thresholds or where the waste is disposed of under certain conditions in plants belonging to the producers or holders of waste.

16. In the absence of an incineration centre for special waste in *Land* Baden-Württemberg, a joint operation was set up between that *Land* and *Land* Hamburg.

12 — GBl, p. 73.
13 — 'SBW'.
14 — 'AVG'.
15 — See points 23 and 24 of this Opinion.

20. Paragraph 4(1) of the decree provides as follows:

'The Special Waste Agency shall send the waste offered to it to [SBW] for processing in the processing centres in accordance with Paragraph 1(2), provided that the waste can be processed in those plants. As regards [AVG]'s special incineration centre in Hamburg, the obligation to deliver 20 000 tonnes per annum must be observed. It shall send the waste sent to it in accordance with the first sentence to the processing centres.'

21. Paragraph 4(3) of the decree states that the waste offered [to the agency] which is not sent to one of the two centres referred to above, in accordance with Article 4(1), is to be sent by the agency to the establishment proposed by the producer or holder of the waste, on condition that the waste can be properly processed from the aspect of German environmental law.

22. The obligation referred to in Paragraphs 1(2) and 4(1) of the decree to deliver an annual quantity of 20 000 tonnes to the special incineration centre in Hamburg arises under the agreement concluded on 5 May 1994 for a term of 15 years, between SBW and AVG. [16]

The agreement

23. According to the preamble to the agreement, *Land* Hamburg is to make available, under a joint operation with *Land* Baden-Württemberg, a part of its incineration capacity for special waste offered by SBW, at a price of DEM 1 200 per tonne of waste delivered. The waste is to be incinerated at AVG's processing centre in Hamburg.

24. The agreement states that the volume of special waste offered by SBW for incineration by AVG is to be limited to 30 000 tonnes per annum. [17] SBW undertakes to provide AVG with a minimum quantity of 20 000 tonnes per annum. The agreement states, in addition, that quantities not delivered are also to be invoiced at the same rate. It is none the less provided that payment of the amount corresponding to the price for processing the minimum guaranteed quantity may be demanded. [18] To cover those losses, *Land* Baden-Württemberg is to constitute a guarantee corresponding to DEM 180 000 000.

16 — 'The agreement'.

17 — Article 2(2) of the agreement.

18 — Article 3(1) and (3) of the agreement.

II — Facts and procedure

25. DaimlerChrysler AG [19] challenged the lawfulness of the decree and sought its annulment before the Verwaltungsgerichtshof (Administrative Court) Baden-Württemberg in an action brought on 4 December 1996.

26. DaimlerChrysler argued before that court that the obligation to offer special waste produced by its factories in *Land* Baden-Württemberg to an incineration centre in Hamburg deprives it of the opportunity to export that waste to Belgium for incineration at a lower cost. On that point, DaimlerChrysler stated that the shipment of waste to the plant in Hamburg, over a distance of generally between 600 and 800 km, entailed an additional cost of DEM 2 200 000 each year.

27. In support of its claims, DaimlerChrysler argued that the obligation to offer waste to AVG's incineration centre in Hamburg amounts to a quantitative restriction on imports prohibited by Article 34 of the EC Treaty (now, after amendment, Article 29 EC) and also by the provisions of the directive and the regulation.

28. The Verwaltungsgerichtshof held that the action for annulment was unfounded and dismissed it by judgment of 24 November 1997.

29. DaimlerChrysler lodged an appeal before the Bundesverwaltungsgericht, which, by decision of 14 May 1998, authorised the procedure for an appeal on a point of law, [20] owing to the legal interest of the case.

30. Being uncertain as to the compatibility of the decree with Community law, the Bundesverwaltungsgericht decided, by judgment of 24 June 1999, to stay proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Is the expression "in accordance with the Treaty" in Article 4(3)(a)(i) of Council Regulation (EEC) No 259/93 to be construed as meaning that, in the case of a general prohibition on the export of waste for disposal, where that waste requires special supervision, which is justified by the principles of proximity, priority for recovery and self-sufficiency in waste disposal, a further issue to be examined is whether the export ban is compatible with primary law of the European Union, in particular with the prohibition of

19 — 'DaimlerChrysler'.

20 — '*Revision*'.

quantitative restrictions on trade between the Member States under Article 28 et seq. of the EC Treaty?

(2) If Question 1 is answered in the affirmative, in the case of an export ban imposed by legislation and restricted as to quantity, is review of the legislative provision as such sufficient or must there be a review of each individual case in which an intended export is prohibited in application of the legislative provision? In that context, is it permissible, by the imposition of obligations to offer waste for disposal where that waste requires special supervision to a domestic facility, to lay down for a period of 15 years a ban on the export of that waste, if at the time when those obligations were imposed the security sought in the treatment of waste could be obtained only by an agreement of that duration concluded with the operator of that facility?

(3) Are the Member States authorised by Article 4(3) of Regulation (EEC) No 259/93 to adopt legislation which, in the context of obligations to offer waste for disposal where that waste requires special supervision, makes the shipment of such waste to other Member States subject to the condition that the intended disposal satisfies the requirements of the State of dispatch on environmental protection?

(4) Does Article 3 et seq. of Regulation (EEC) No 259/93 preclude a Member State from applying before the notification procedure a procedure of its own in relation to the offer and allocation of waste, applicable to the intended transfrontier shipment of waste for disposal where that waste requires special supervision?'

III — First question

Preliminary observations

31. Before answering the first question, I consider it useful to set out, in order to avoid referring back to it, the factual and legal information provided by the national court which is binding on the Court and on which my reasoning will be based. I shall then explain the nature of the concerns of the national court and the legal problems on which it seeks guidance.

Factual and legal information provided by the national court

32. First, the decision for reference does not mention the exact type of waste produced by DaimlerChrysler which this

action concerns. It is merely stated that it is 'waste for disposal requiring special supervision'. Under Paragraph 41(1) of the Federal Law of 27 September 1994, such waste is defined as 'waste which by its nature or owing to its condition or quantity represents a particular danger to health, the air or water, is particularly explosive or inflammable or may convey or give rise to contaminating agents'. That waste must therefore be regarded as dangerous waste for disposal within the meaning of Directive 78/319/EEC on toxic and dangerous waste, [21] which is not, moreover, disputed.

33. Secondly, according to the national court, the principle of the prohibition on exporting waste to Member States or to non-member countries for disposal is at issue. Paragraph 9 of the LAbfG requires producers and holders of waste established in *Land* Baden-Württemberg to dispose of hazardous waste on German territory. On that point, the decision for reference states that, under that provision of the LAbfG, the Government of *Land* Baden-Württemberg adopted the decree. The actual wording of the decree and also its objective as confirmed by the historical background are unambiguous. According to the national court, the requirement to dispose of hazardous waste produced in the *Land* in processing plants in Germany seeks 'to prohibit, or at least restrict, incineration in foreign plants'. [22]

21 — Council Directive of 20 March 1978, OJ 1978 L 84, p. 43.

22 — Decision for reference, p. 9.

34. Thirdly, the national court considers that the objective pursued by the prohibition in both the decree and the agreement [23] is essentially environmental.

In the decision for reference, the national court states that the decree seeks to apply the principles set out in Article 4(3)(a)(i) of the regulation. [24] In addition, contrary to the applicant's submissions, the national court states that the measures thus adopted by the decree are not only justified by ecological considerations but are also proportionate. [25]

The national court likewise states that the conclusion of the agreement seeks 'to neutralise the increasingly urgent problem of the proper disposal of hazardous waste produced in *Land* Baden-Württemberg' [26] and to overcome the economic context of the time which did not allow the establishment, in all *Länder*, of new processing and incineration plants in environmentally sound and economically viable conditions. [27]

23 — See point 23 of this Opinion.

24 — Namely the principles of proximity, priority for recovery and self-sufficiency [see, on that point, the decision for reference (pp. 12 to 16)].

25 — Decision for reference, p. 10.

26 — Ibid., p. 9.

27 — Ibid.

35. The determination and classification of facts [28] and the application of the rule of Community law to the facts of the case [29] fall within the exclusive jurisdiction of the national court. I shall therefore take those facts as established.

Meaning and scope of the question

36. The Bundesverwaltungsgericht considers that the prohibition on exporting hazardous waste for disposal imposed by the contested decree must be considered to be an 'imperative requirement of environmental protection', within the meaning of the Court's case-law. [30] It concludes that the prohibition is not contrary to Article 28 EC et seq.

37. None the less, the Bundesverwaltungsgericht considers that it cannot be absolutely certain on this point. [31] It considers that some doubt remains because the measures to be taken by the Member States under Article 4(3)(a)(i) of the regulation must be 'in accordance with the Treaty'. The national court therefore specifically questions the meaning and scope of the expression 'in accordance with the Treaty' in that article of the regulation. It wonders whether that expression means that a measure justified by the principles of proximity, priority for recovery and self-sufficiency must also be compatible with the prohibition on quantitative restrictions on trade between the Member States as laid down in Article 28 EC et seq. [32] In other words, the national court wonders whether, after having reviewed whether the contested national measure is appropriate to the principles of Community environmental law, in accordance with Article 4(3)(a)(i) of the regulation, and whether that measure is proportionate, it must in addition ascertain that the provisions of Article 28 EC et seq. have been observed.

Answer

38. The answer to the first question depends on whether the regulation establishes a harmonised system for shipments of waste at Community level. The purpose of the Community legislative action which consists of harmonising national laws is specifically to ensure the establishment and operation of the common market. Therefore, in accordance with the settled case-law of the Court, where there has been harmonisation by a provision of secondary legislation, the question as to whether a provision of national law implementing

28 — See, in particular, Case C-318/98 *Fornasar and Others* [2000] ECR I-4785.

29 — See, in particular, Case 10/86 *VAG France* [1986] ECR 4071.

30 — See in particular, Case C-2/90 *Commission* v *Belgium* [1992] ECR I-4431, *'Wallonie'*; Case C-155/91 *Commission* v *Council* [1993] ECR I-939 and Case C-422/92 *Commission* v *Germany* [1995] ECR I-1097.

31 — According to the national court, 'on its interpretation of the relevant EU law, the matter cannot be deemed to be clarified beyond all reasonable doubt' (decision for reference, p. 8).

32 — Decision for reference, p. 15.

that provision of secondary legislation is consistent with Article 28 EC no longer arises.

39. In *Vanacker and Lesage* [33] the question was whether the compliance with Community law of a French measure, implementing Directive 75/439/EEC on the disposal of waste oils, [34] fell to be assessed solely in the light of the provisions of that directive or whether it also had to be assessed in the light of the provisions of the Treaty on the principle of the free movement of goods.

40. The Court clearly found that 'since the question of the collection of waste oil has been regulated in a harmonised manner at Community level by the directive, any national measure relating thereto must be assessed in the light of the provisions of the directive and not of Articles 30 to 36 of the Treaty'. [35]

41. The question of whether the regulation lays down a harmonised system for movements of waste at Community level was resolved in *Parliament* v *Council*. [36]

42. In that case, the Court was called on to adjudicate on the Council's choice of legal basis for adoption of the regulation. The Parliament contended that the purpose and aim of the regulation related to movements of waste within the Community and foreign trade in waste between the Community and non-member countries. Therefore, the regulation should have been adopted on the basis of Articles 100a and 113 of the EC Treaty (now, after amendment, Articles 95 EC and 133 EC) and not on the basis of Article 130s of the Treaty.

43. Following a full analysis of the content of the regulation and of its aims, the Court held that it set out exhaustively the conditions governing shipments of waste between Member States and the procedures to be followed for their authorisation with a view to ensuring the protection of the environment, taking account of objectives falling within the scope of environmental policy. [37] The choice of Article 130s of the Treaty [38] was therefore valid.

According to the Court, the regulation seeks to provide 'a harmonised set of procedures whereby movements of waste can be limited in order to secure protection of the environment'. [39]

33 — Case C-37/92 [1993] ECR I-4947.

34 — Council Directive of 16 June 1975 (OJ 1975 L 194, p. 23).

35 — *Vanacker and Lesage*, paragraph 9.

36 — Case C-187/93 [1994] ECR I-2857, paragraph 26.

37 — See, in particular, *Parliament* v *Council*, paragraphs 21, 22 and 26.

38 — That article constitutes the specific legal basis for the Community's competence relating to the environment.

39 — See *Parliament* v *Council*, paragraph 26.

44. It follows from the foregoing that the decree must be assessed solely in the light of the provisions of the regulation and not those of Article 28 EC et seq.

45. Article 4(3)(a)(i) of the regulation authorises Member States to take measures to prohibit shipments of waste in order to implement the principles of proximity and self-sufficiency.

46. The expression 'in accordance with the Treaty' in Article 4(3)(a)(i) of the regulation must, to my mind, be interpreted as meaning 'without its being possible to allege that Member States, exercising the power to restrict the free movement of goods which is conferred on them, have infringed the Treaty'.

47. Waste for disposal is in fact 'goods'.[40] Therefore in principle waste has to move freely. None the less, because they are adopted in order to implement the principles set out in Article 174(2) EC, any measures restricting or prohibiting the movement of waste may be justified.[41]

48. The principles of self-sufficiency and proximity are by definition principles which are difficult to reconcile with that of the free movement of goods. The content of those principles was set out by the Court in *Wallonie* as follows: '[t]he principle that environmental damage should as a matter of priority be remedied at source, laid down by Article 130r(2) of the Treaty as a basis for action by the Community relating to the environment, entails that it is for each region, municipality or other local authority to take appropriate steps to ensure that its own waste is collected, treated and disposed of [*principle of self-sufficiency*]; it must accordingly be disposed of as close as possible to the place where it is produced, in order to limit as far as possible the transport of waste [*principle of proximity*]'.[42]

49. Requiring Member States to comply with the principle of the free movement of goods where they take measures implementing provisions of secondary legislation based on those principles, is meaningless, since those measures comply with the principle of proportionality.

40 — *Wallonie*, paragraph 28.

41 — Article 174 EC defines the material scope of the Community's competence concerning the environment. It provides that environmental policy pursues a series of objectives (paragraph 1), principles (paragraph 2) and requirements (paragraph 3). The principle that 'environmental damage should as a priority be rectified at source' is included, and is otherwise defined by the Court as the 'principles of self-sufficiency and proximity'.

42 — Paragraph 34.

50. By the wording of Article 4(3)(a)(i) of the regulation and the choice of the expression 'in accordance with the Treaty', the Community legislature shows its willingness to favour environmental protection, described by the Court as 'an imperative requirement of environmental protection', [43] as an exception to the principle of the free movement of goods. [44]

51. The interpretation which I propose of the expression 'in accordance with the Treaty', referred to in Article 4(3)(a)(i) of the Regulation, is confirmed by the Court's case-law. [45]

52. In the exercise of its jurisdiction, the national court assessed the content of the national measure, the context in which it was taken, the aims pursued and the methods used to achieve those aims. It found that the disputed national measure, in laying down the principle that hazardous waste should be disposed of on national territory, incorporated the requirements of the regulation in its internal legal order. The national court also considered that the decree complied with the principle of proportionality. [46] As the examination of the compatibility of the national measure with the regulation has already been carried out, there is therefore no need to examine its compatibility with Article 28 EC et seq.

53. It follows from the foregoing reasoning that a Member State which adopts a national measure, under which the export of hazardous waste for disposal is prohibited, with the aim of implementing, in accordance with the provisions of Article 4(3)(a)(i) of the regulation, the principles of self-sufficiency and proximity, remains within the bounds of the powers conferred on it by the regulation.

54. Certain parties have asked whether the decree is compatible with Article 176 EC.

55. Article 176 EC authorises Member States to adopt measures which are more protective of the environment than those provided for in Community law. In *Dusseldorp and Others* [47] the Court none the less stated that, in exercising the discretion granted by Article 176 EC, Member States must ensure that they comply with Article 28 EC et seq.

43 — Ibid., paragraph 32.

44 — See, also, Case C-379/98 *PreussenElektra* [2001] ECR I-2099, paragraph 68 et seq., where the Court held that the obligation to purchase electricity produced from renewable sources of energy, imposed on electricity supply undertakings was compatible with Article 28 EC because it was based on considerations relating to environmental protection. The aim pursued by the disputed national legislation consisted, in accordance with Article 174(1) EC, in ensuring careful and rational use of resources by promoting electricity production from renewable sources of energy such as hydraulic energy, wind energy, solar energy, gas from waste dumps and sewage treatment plants or products or residues and biological waste from agriculture and forestry.

45 — See, to that effect, *Commission* v *Council*, paragraph 13, where the Court held that 'imperative requirements relating to the protection of the environment justify exceptions to the free movement of waste'.

46 — See points 34 and 35 of this Opinion.

47 — Case C-203/96 [1998] ECR I-4075, paragraph 39.

56. In the present case, the competent German authorities have only exercised a right conferred on them by Article 4(3)(a)(i) of the regulation. The decree cannot therefore be regarded as a more stringent measure provided for by Article 176 EC. It is therefore pointless to consider whether the decree is compatible with Article 176 EC.

57. In conclusion, I propose that the Court should consider the first question raised by the national court to the effect that the lawfulness of a national measure adopted on the basis of Article 4(3)(a)(i) of the regulation must be assessed solely in the light of the provisions of the regulation and not of Article 28 EC et seq. The expression 'in accordance with the Treaty' in Article 4 must be interpreted as expressly authorising, in such a way as to be compatible with the provisions of the Treaty on restrictions on the free movement of goods, national measures based on the principles of proximity and self-sufficiency, principles related to environmental protection.

IV — Second question

58. The second question is submitted as a subsidiary question, on the assumption that the first question is answered in the affirmative. Having regard to the answer to the first question, the second question becomes irrelevant.

V — Third question

Preliminary observations

59. By its third question, the national court asks the Court whether Article 4(3) of the Regulation must be interpreted as meaning that Member States may take national measures, making the shipment to other Member States of hazardous waste for disposal subject to the condition that the intended disposal in the Member State of destination satisfies the requirements of the Member State of dispatch on environmental protection.

60. The national court states that the national legislation in question authorises the agency to prohibit the shipment of waste to a processing facility in another Member State even where:

— that facility satisfies the requirements set by the national environmental law of the Member State of destination and those laid down by Community environmental law, where they exist, and

— the agency is not able to send waste to one of the centres in Germany,

where the requirements complied with by the Member State of destination as regards waste processing are not those of the German State.

61. In order to provide a useful response to the national court, I shall examine the question raised in the abovementioned context.

Answer

62. As we have seen, the conditions and procedures allowing Member States to restrict or prohibit shipments of waste within the Community are harmonised. Consequently, shipments of waste within the Community can be prohibited or restricted only for the reasons expressly laid down in the regulation.

63. Under Article 4(2)(b) and (c) of the regulation, the objections to the intended shipment are based on paragraph 3 of the Article.

64. According to Article 4(3) of the Regulation, the competent authorities of the Member State of dispatch may object to the intended shipment:

— in order to implement the principles of proximity, priority for recovery and self-sufficiency; [48]

— in cases where the installation has to dispose of waste from a nearer source and the competent authority has given priority to this waste; [49]

— in order to ensure that shipments are in accordance with waste management plans; [50]

— if the planned shipment is not in accordance with national laws and regulations relating to environmental protection, public order, public safety or health protection [51] or if it conflicts with obligations resulting from international conventions concluded by the

48 — Article 4(3)(a)(i) and (b)(i) of the regulation.

49 — Article 4(3)(b)(ii) of the regulation.

50 — Article 4(3)(b)(iii).

51 — Article 4(3)(c), first indent.

Member State or Member States concerned; [52]

— if the notifier or the consignee was previously guilty of illegal trafficking (in this case, the competent authority of dispatch may refuse all shipments involving the person in question in accordance with national legislation). [53]

65. It follows both from the wording of the relevant provisions of the regulation and from its structure and purpose that objections to shipments of waste within the Community seek essentially to allow Member States to ensure the shipment and disposal of waste in a safe way for humans and for the environment. [54]

66. It is clear from the grounds of prohibition of the planned shipments, such as those laid down by the decree, that those conditions are not satisfied. The national measure prohibits the planned shipment even if the shipment or the conditions for disposal of waste comply with the relevant Community provisions. The decree likewise authorises the agency to object to the shipment where it is unable to send the waste in question to one of the processing centres in Germany and where there is no complaint that the facility in the Member State of destination disposes of hazardous waste in a way which poses a risk to human health or which harms the environment.

67. In my view, moreover, it appears impossible to view the national provision as a more stringent protective measure provided for by Article 176 EC. [55] The Government of *Land* Baden-Württemberg can exercise its discretion under that article only on condition that it complies with the requirements laid down in the provision. That, as we have seen, [56] presupposes that the provisions of Article 28 EC et seq. and the principle of proportionality are observed. In the present case, this is clearly not the case since the decree prohibits in principle the exporting of waste, with a view to its disposal, to other Member States.

68. In conclusion, the foregoing arguments having been taken into account, I propose that the Court should answer the third question as follows: Article 4(3) of the regulation must be interpreted as meaning that it precludes a national measure which makes the shipment of waste to other Member States subject to the condition that its disposal is effected in accordance with the requirements of the Member State of dispatch on environmental protection where the requirements laid down by the

52 — Article 4(3)(c), third indent.

53 — Article 4(3)(c), second indent.

54 — On that point, see *Commission* v *Germany* (paragraphs 40 and 41).

55 — See point 55 of this Opinion.

56 — Ibid.

relevant legislation of the Member State of destination do not pose a risk to human health or the environment.

VI — Fourth question

Preliminary observations

69. By this question, the national court asks the Court to interpret Article 3 et seq. of the regulation. It specifically requests the Court to state whether those articles authorise a Member State to apply, before the notification procedure provided for in the case of transfrontier shipments of waste for disposal, a procedure of its own concerning the offer and allocation of such waste.

70. According to the national court, the procedure set up by the decree does not form part of the Community notification procedure. In its opinion, the decree establishes a procedure which requires an economic operator wishing to make a shipment of waste for disposal in another Member State to follow the national procedure laid down by the decree. It is only where the waste is not allocated to one of the national facilities provided for that purpose that it is permissible to follow the Community notification procedure laid down by Article 3 et seq. of the regulation.

Answer

71. As I have already stated, the context of the present case is that of a request for a shipment of hazardous waste for disposal in another Member State.

72. In addition, I note that the regulation exhaustively governs the procedure applicable to transfrontier shipments of waste within the Community.

73. Articles 3 to 5 of the regulation set out the various formalities to be completed by the applicant and by the competent authorities, for the purpose of a shipment of waste for disposal to a Member State.

74. Under Article 3 of the regulation, the notifier must first of all apply to the authority of the State of destination and inform the authority of the State of dispatch that it has done so; it must provide information on the nature of the waste, the route taken by the waste, transport, the consignee of the waste, disposal operations

and the contract entered into between the notifier and the consignee. [57]

75. Article 4 of the regulation lays down the procedure and conditions on which the competent authorities of the State of destination or the State of dispatch may raise objections to the proposed shipment.

76. Finally, Article 5(1) of the regulation states that 'the shipment may be effected only after the notifier has received authorisation from the competent authority of destination'.

77. It follows from the wording of those provisions that the Community legislature established a complete and harmonised system concerning both the conditions to be satisfied and the procedure to follow for the shipment of waste to Member States. Its intention is therefore to prevent the competent authorities of the States of dispatch and of destination from establishing parallel procedures or imposing supplementary conditions.

78. From the structure and the wording of those provisions, it further appears that the Community legislature meant to lay down the right to ship waste provided that certain conditions are satisfied. Objection to a shipment is regarded as an exception to that rule.

79. The decree establishes a mechanism which operates in the opposite direction. Under the provisions, an operator wishing to ship the waste which it produces for disposal in another Member State must first apply to an authority of the State of dispatch for allocation of that waste to a national plant. It is only where it is refused such an allocation that it may exercise its right to ship the waste.

80. Such a mechanism is therefore clearly incompatible with the harmonised Community procedure.

81. Consequently, I propose that the Court should answer the fourth question to the effect that Article 3 et seq. of the regulation must be interpreted as meaning that they preclude a national measure which makes the notification procedure established by the regulation in respect of shipments of waste to Member States conditional on a specific prior national procedure concerning the offer and allocation of waste for disposal.

57 — Article 3(1) to (8).

Conclusion

82. In those circumstances, I propose that the Court should provide the following answers to the questions referred by the Bundesverwaltungsgericht:

(1) The lawfulness of a national measure adopted on the basis of Article 4(3)(a)(i) of Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community must be assessed solely in the light of the provisions of the regulation and not those of Article 28 EC et seq. The expression 'in accordance with the Treaty' in Article 4 must be interpreted as expressly authorising, in such a way as to be compatible with the provisions of the Treaty on restrictions on the free movement of goods, national measures based on the principles of proximity and self-sufficiency.

(2) Article 4(3) of Regulation No 259/93 must be interpreted as meaning that it precludes a national measure which makes the shipment of waste to other Member States subject to the condition that its disposal is effected in accordance with the requirements of the State of dispatch on environmental protection where the requirements laid down by the relevant legislation of the Member States of destination do not pose a risk to human health or the environment.

(3) Article 3 et seq. of Regulation No 259/93 must be interpreted as meaning that they preclude a national measure which makes the notification procedure established by the regulation in respect of shipments of waste to Member States conditional on a specific prior national procedure concerning the offer and allocation of waste for disposal.