JUDGMENT OF THE COURT (Fifth Chamber)
29 April 2004 *

In Case C-341/01,

REFERENCE to the Court under Article 234 EC by the Landesgericht Korneuburg (Austria) for a preliminary ruling in the proceedings pending before that court between

Plato Plastik Robert Frank GmbH

and

Caropack Handelsgesellschaft mbH,

on the interpretation of Article 3(1) of European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste (OJ 1994 L 365, p. 10) and of other Community provisions,

* Language of the case: German.

THE COURT (Fifth Chamber),

composed of: C.W.A. Timmermans, acting as President of the Fifth Chamber, A. Rosas (Rapporteur) and S. von Bahr, Judges,

Advocate General: P. Léger,
Registrar: Múgica Arzamendi, Principal Administrator,

after considering the written observations submitted on behalf of:

— Plato Plastik Robert Frank GmbH, by M. Deuretsbacher, Rechtsanwalt,

— Caropack Handelsgesellschaft mbH, by K. Berger, Rechtsanwalt,

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

— the French Government, by G. de Bergues, acting as Agent,

— the Finnish Government, by T. Pynnä, acting as Agent,

— the Swedish Government, by B. Hernqvist, acting as Agent,

— the Commission of the European Communities, by G. zur Hausen, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of de Plato Plastik Robert Frank GmbH, represented by M. Deuretsbacher and P. Angst, retired judge, of Caropack Handelsgesellschaft mbH, represented by K. Berger, of the Austrian Government, represented by T. Kramler, acting as Agent, and of the Commission, represented by G. zur Hausen, at the hearing on 22 May 2003,

after hearing the Opinion of the Advocate General at the hearing of 11 September 2003,

gives the following

Judgment

1 By order of 4 September 2001, received at the Court on 11 September 2001, the Landesgericht (Regional Court) Korneuburg referred to the Court for a preliminary ruling pursuant to Article 234 EC seven questions concerning the interpretation of Article 3(1) of European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste (OJ 1994 L 365, p. 10) and of other Community provisions.

2 These questions have arisen in the context of an action brought by Plato Plastik Robert Frank GmbH ('Plato Plastik'), which manufactures and distributes plastic bags, against Caropack Handelsgesellschaft mbH ('Caropack'), which markets them, concerning the latter's refusal to provide confirmation that it has joined the system for the collection and recovery of packaging waste.

Legal framework

Community legislation

3 Article 1(1) of Directive 94/62 states that the purpose of the directive is to harmonise national measures concerning the management of packaging and packaging waste. It aims, on the one hand, to prevent and reduce their impact on the environment of the Member States as well as of third countries, 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.

4 Article 2(1) provides that the directive applies to all packaging placed on the market in the Community and all packaging waste, whether it is used or released at industrial, commercial, office, shop, service, household or any other level, regardless of the material used.

5 Article 3(1), first subparagraph, of Directive 94/62 defines packaging as follows:

'... 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.'

6 Article 3(1), second subparagraph, adds that 'packaging consists only of:

(a) sales packaging or primary packaging, i.e. packaging conceived so as to constitute a sales unit to the final user or consumer at the point of purchase;

(b) grouped packaging or secondary packaging, i.e. packaging conceived so as to constitute at the point of purchase a grouping of a certain number of sales units whether the latter is sold as such to the final user or consumer or whether it serves only as a means to replenish the shelves at the point of sale; it can be removed from the product without affecting its characteristics;

(c) transport packaging or tertiary packaging, i.e. packaging conceived so as to facilitate handling and transport of a number of sales units or grouped packagings in order to prevent physical handling and transport damage. ...'

7 Article 7(1) of Directive 94/62 deals with systems for the return, collection and recovery of used packaging and/or packaging waste. It is worded as follows:

'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, ... 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

8 Directive 94/62 was transposed into the Austrian legal system by the Verpackungsverordnung, a decree of the Federal Minister for the Environment, Youth and Family Affairs on the avoidance and recovery of packaging waste and

certain product waste and the setting up of collection and recovery systems (BGBl. 1996/648, 'the Verpackungsverordnung').

9 The Verpackungsverordnung applies, according to Paragraph 1 thereof, inter alia to any person who, in Austria, produces or markets packaging or products out of which packaging is directly produced or who buys or imports packaging, goods or commodities in packaging for their own use or consumption.

10 Paragraph 2 of the Verpackungsverordnung defines packaging as follows:

'1. For the purposes of this decree, "packaging" means packaging materials ... . Packaging materials are products which are intended to enclose or hold together goods or commodities for the purposes of trade, storage, transportation, mailing or sale. ...

2. "Transportation packaging" is packaging such as ... sacks ... as well as components of transportation packaging, intended to protect goods or commodities against damage, either from the producer to the distributor or en route to delivery to end users via the distributor, or which are used for transport safety reasons.

3. "Sales packaging" is packaging such as ... bags, ... sacks, ... carrier bags, ... or similar wrappings as well as components of sales packaging, used by end users ... especially as a medium for carrying directions for use or statutorily prescribed product information. ...

4. "Grouped packaging" means packaging ... which either is added to one or more items of sales packaging or surrounds goods or commodities, in so far as it is not required for delivery to end users, for example for reasons of hygiene or technical reasons specific to the product or so that the product has a longer shelf-life or as protection against damage or spoiling.

5. "Service packaging" means transportation packaging or sales packaging, such as carrier bags, ... paper bags, ... or similar containers, provided that they are made in a technically uniform shape and usually filled at or near the point of sale.

...'

11 Paragraph 3 of the Verpackungsverordnung deals with the obligations of producers, importers, packagers and distributors of transportation and sales packaging in connection with recycling.

12 Paragraph 4(1) of the Verpackungsverordnung provides that distributors of transportation or sales packaging, called retailers, must either join a collection or recovery system or take other measures for the return and recovery of packaging which are described in Paragraph 3(6) of the same Decree, unless an importer, packager or distributor further up the distribution chain proves and confirms in writing that he belongs to a system for the collection and recovery of returned packaging at every stage.

13 Paragraph 11 of the Verpackungsverordnung relates to the setting up of collection and recovery systems and subparagraph 1 thereof provides as follows:

'A system for the collection and recovery of transportation or sales packaging shall ensure the collection and recovery of packaging materials for which contracts are concluded with undertakings referred to in Paragraphs 3, 4 and 13 (3). The collection and recovery systems shall be required to conclude contracts, in the context of their sphere of operation as laid down in their licence, with each undertaking referred to in Paragraph 3, in so far as this is desired by the undertaking and is objectively justified.'

The main proceedings

14 Plato Plastik manufactures and distributes plastic carrier bags and tie bags. It supplies these bags direct to retailers or intermediaries.

15 Caropack markets carrier bags supplied by Plato Plastik. Some of the bags are offered for sale in food supermarkets, where they hang near the checkouts and are handed to customers on request against separate payment. Among these bags are some which bear the logo 'Der Grüne Punkt', which indicates that the producer takes part in the system for the collection and recovery of packaging waste. Other bags are used in clothes shops. The shop assistant puts the purchased goods in the bag without the customer having to pay separately for the bag.

16 Caropack also markets tie bags supplied by Plato Plastik. These are available to customers, free of charge, at the fruit and vegetable sections of food supermarkets. Customers put their purchases in them and weigh the goods.

17 By virtue of the Verpackungsverordnung, Plato Plastik is, as a producer of plastic bags, deemed to be a packaging producer with an obligation either to take back the packaging waste itself, free of charge, or to join a collection and recovery system.

18 The collection and recovery system for transportation and sales packaging established by the Verpackungsverordnung is managed in Austria by a single company, Altstoffrecycling Austria Aktiengesellschaft ('ARA'). It appears from the file that undertakings which join the collection and recovery system set up by that company 'the ARA system') must pay a fee for doing so.

19 Instead of joining the ARA system, Plato Plastik concluded an agreement transferring to Caropack its obligation to take back plastic bags. Plato Plastik considers that, on the basis of that agreement, Caropack undertook to give it in each case written confirmation that it had joined the collection and recovery system for the goods delivered to it.

20 When the Austrian administrative authorities prosecuted Plato Plastik for not joining the ARA system, Plato Plastik requested confirmation from Caropack that the latter participated in the said system for plastic bags delivered to it. Caropack refused to give such confirmation on the ground that carrier bags are not packaging within the meaning of the Verpackungsverordnung and Directive 94/62 and that, therefore, it had no obligation to take them back. Caropack also questioned whether the ARA system was compatible with Community law.

21 Plato Plastik appealed to the Landesgericht Korneuburg, seeking an order requiring Caropack, on the basis of the abovementioned agreement, to give it the confirmation in question.

The questions referred

22 The Landesgericht Korneuburg considers that Caropack is not required to give the confirmation requested by Plato Plastik because the carrier bags referred to in the main proceedings are not packaging within the meaning of Directive 94/62 or because Plato Plastik is not deemed to be a packaging producer. In any case, according to the national court, there is no obligation to participate in the ARA system or to pay the fee in question in so far as the provisions of the Verpackungsverordnung are contrary to Community law.

23 In those circumstances the Landesgericht Korneuburg decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) (a) Are plastic carrier bags packaging within the meaning of ... Directive 94/62 ... , particularly Article 3(1) thereof,

— if a retailer offers them as an article in the cash desk area and hands them over to customers upon request against payment so that the purchased goods can be taken away, or

— if a retailer hands them over to customers for the same purpose after the price has been paid for the purchased goods, regardless of whether customers ask for them and without having to pay an extra charge, and they are then filled with the purchased goods?

(b) First additional question, in the event that one of the above questions is answered in the affirmative on the basis of the German version:

Is the result different if, for the definition of the word "packaging" in Article 3(1) of the directive, not the German text, which only has the words "von Waren" (goods), but the French or Italian text is deemed decisive, which both refer to *specific* goods ("marchandises données" and "determinate merci"), and are the plastic carrier bags made by Plato Plastik thus not packaging for the purposes of the directive because they are filled with any goods at all (rather than with predetermined goods), and in this case which text applies?

— Second additional question, in the event that one of the above questions is answered in the negative:

May the Austrian legislature or the Commission make products which are not packaging under the directive subject to the rules governing packaging laid down in the directive or to similar rules?

(2) Is it in conformity with Community law for the operator of the collection and recovery system set up in Austria to charge a fee ("Lizenzgebühr") even for carrier bags not covered by Directive 94/62 solely on the ground that the bags

bear a mark (Grüner Punkt) in respect of which the operator has a right of disposal?

(3) (a) Is a "producer", within the meaning of Article 3(1) of the directive, only someone who puts goods together with, or causes them to be put together with, the product used as packaging, and not also an undertaking which makes a product intended for use as packaging, and is this product then to be regarded as packaging material?

(b) Second additional question, in the event that one of the above questions is answered in the affirmative:

May the Austrian legislature or the Commission compel traders who merely make packaging material, that is to say a product which is intended to be filled with goods, to participate in a collection and recovery system set up pursuant to Article 7(1) of Directive 94/62?

(4) Is it contrary to the "polluter pays" principle referred to in the preamble to Directive 94/62 for a law to provide, as does the first sentence of Paragraph 3(1) of the Austrian ... Verpackungsverordnung, that producers, in particular producers of packaging material (see Paragraph 3(1) in conjunction with Paragraph 1(1) of the Austrian ... Verpackungsverordnung), importers, packagers and distributors must take back free of charge sales and transport packaging after they have been used, in that the group of persons affected by this obligation is defined too narrowly and does not include consumers, and/or does such a provision conflict with Article 1(1) of the directive in so far as it is stated there that the directive's aim is to avoid obstacles to trade, whereas an obligation for a producer to take back packaging materials is the greatest imaginable obstacle to trade?

(5) Does a collection and recovery system such as that operated in Austria by Altstoff Recycling Austria Aktiengesellschaft pursuant to Paragraph 11 of the Austrian Verpackungsverordnung conflict with the principle of proportionality if it is disproportionate to the needs of effective environmental protection?

(6) Is it contrary to the principles laid down in Article 30 et seq. EC, in particular Article 37 EC, for a Member State to set up, in implementation of Article 7 of the directive, as has happened in Austria pursuant to Paragraph 11 of the Austrian Verpackungsverordnung, a collection and recovery system occupying a monopoly position (in Austria, Altstoff Recycling Austria Aktiengesellschaft) so that competition and the fundamental freedoms are disproportionately and excessively restricted, this interference is out of proportion to any effective contribution towards increasing the level of environmental protection and moreover this system, set up in parallel with the municipal system, is not compatible with the objective of sorting waste at source, which, according to the preamble to the directive, is essential, because everything marked with the Grüner Punkt symbol is mixed together and, above all, takes away from consumers the right, granted and guaranteed to consumers by the Sixth VAT Directive, to a VAT rate reduced by half or a lower rate for the disposal of their household waste?

(7) May the Austrian Verpackungsverordnung arrange the collection and recovery systems required by Article 7(1) of the directive in such a way that a monopoly or an oligopoly alone has the power of disposition over all packaging waste to be recycled into raw materials and so, by providing subsidies to particular businesses, to particular branches of industry (for example, the cement industry) or to certain local authorities (for example, the City of Vienna), can control and subsidize the recycling of waste as it wishes, thereby producing distortions of competition, or is such a system contrary to Community law, in particular Article 30 et seq. EC and especially Article 37 EC?'

Admissibility

Observations submitted to the Court

24 The Austrian Government is uncertain whether the second, fifth, sixth and seventh questions, and the additional question under the third question, are admissible. The second question is hypothetical. The second and fifth questions and the additional question under the third question concern the compatibility of a national provision with Community law. Finally, the factual and legal contexts of the second, fifth, sixth and seventh questions are not set out in the order for reference.

25 The Commission is in doubt as to whether the reference for a preliminary ruling is admissible as a whole and, in particular, with regard to the second and the fourth to the seventh questions, as well as the additional question under the third question. It appears that the parties to the main proceedings agree on the existence of the right in question and that they wish to use the preliminary ruling procedure to obtain a decision from the Court on, first, the compatibility of the national provisions transposing Directive 94/62 and, second, the operation of the ARA system. However, the Court cannot give a ruling on a fictitious dispute (Case 104/79 *Foglia* [1980] ECR 745, paragraph 11). Moreover, the order for reference does not contain sufficient information on the factual and legal context of the questions referred to the Court.

The Court's reply

26 It has consistently been held that it is 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. Consequently, where the questions submitted by the national court concern the interpretation of Community law, the Court of Justice is, in principle, bound to give a ruling (see in particular Case C-415/93 *Bosman* [1995] ECR I-4921, paragraph 59; Case C-379/98 *PreussenElektra* [2001] ECR I-2099, paragraph 38; Case C-153/00 *Der Weduwe* [2002] ECR I-11319, paragraph 31; and Case C-318/00 *Bacardi-Martini and Cellier des Dauphins* [2003] ECR I-905, paragraph 40).

27 However, the Court has also held that, in exceptional circumstances, it should examine the conditions in which the case was referred to it by the national court (see, to that effect, *PreussenElektra*, paragraph 39). The spirit of cooperation which must prevail in the preliminary ruling procedure requires the national court, for its part, to have regard to the function entrusted to the Court of Justice, which is to assist in the administration of justice in the Member States and not to deliver advisory opinions on general or hypothetical questions (see *Bosman*, paragraph 60, *Der Weduwe*, paragraph 32, and *Bacardi-Martini and Cellier des Dauphins*, paragraph 41).

28 The Court has accordingly 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 or assessment of the validity of a Community rule sought by that court bears no relation to the facts or purpose of the main action, where the problem is hypothetical or where the Court does not have before it the factual or legal material necessary to enable it to give a useful answer to the questions submitted to it (see *Bosman*, cited above, paragraph 61; Case C-437/97 *EKW and Wein & Co* [2000] ECR I-1157, paragraph 52, and Case C-36/99 *Idéal tourisme* [2000] ECR I-6049, paragraph 20).

29 In order that the Court of Justice may perform its task in accordance with the EC Treaty it is essential for national courts to explain, when the reasons do not emerge beyond any doubt from the file, why they consider that a reply to their

questions is necessary to enable them to give judgment (Case 244/80 *Foglia* [1981] ECR 3045, paragraph 17). Thus the Court has also on various occasions stressed that it is important for the national court to state the precise reasons for which it is in doubt as to the interpretation of Community law and which led it to consider it necessary to refer questions to the Court for a preliminary ruling (see inter alia the orders in Case C-101/96 *Italia Testa* [1996] ECR I-3081, paragraph 6, Joined Cases C-128/97 and C-137/97 *Testa and Modesti* [1998] ECR I-2181, paragraph 15, and Case C-116/00 *Laguillaumie* [2000] ECR I-4979, paragraph 16).

30 In the present case, the action before the national court seeks, on an application by Plato Plastik, an order that Caropack must provide the latter with confirmation of its participation in the ARA system relating to the plastic bags delivered to it. It is not manifestly apparent from the facts set out in the order for reference that the dispute is in fact fictitious (see, to that effect, Case 267/86 *Van Eycke* [1988] ECR 4769). The fact that the parties to the main proceedings are in agreement as to the interpretation of the Community provisions in question does not affect the reality of the dispute in the main proceedings (see, to that effect, Case C-412/93 *Leclerc-Siplec* [1995] ECR I-179).

31 Consequently, the argument that the dispute is fictitious cannot succeed.

32 In these circumstances, it is necessary to consider whether the questions referred by the national court are relevant to the outcome of the main proceedings and whether the Court is in possession of the factual and legal material necessary to enable it to give a useful answer to those questions.

33 By the first and third questions, and the additional questions under the first question, the national court seeks an interpretation of the words 'packaging' and 'producer' in Article 3(1) of Directive 94/62 in order to determine whether the plastic carrier bags in question in the main proceedings must be regarded as packaging and whether Plato Plastik must be deemed a packaging producer.

34 It can hardly be denied that these questions are objectively and inherently necessary in order to enable judgment to be given in the main proceedings. In addition, the Court has sufficient information to enable it to give a useful answer to the national court.

35 The second question from the national court seeks to ascertain whether an operator of a collection and recovery system is authorised to claim payment for plastic bags which are not packaging within the meaning of Directive 94/62, but which bear a mark in which the operator has a right of disposal, in this case 'Der Grüne Punkt'. The additional question under the third question asks whether the Commission or the Member States have authority to compel packaging producers to take part in a collection and recovery system. The fourth question relates, in particular, to the role of consumers in the system for the collection and recovery of packaging and packaging waste.

36 It must be observed that, as the Commission rightly points out in paragraphs 33 and 46 of its observations, these questions are manifestly not the subject of the main proceedings.

37 By the fifth to the seventh questions, the national court asks whether the ARA system is compatible with Community law in relation to competition rules, fundamental freedoms and the principle of proportionality.

38 It is not clear that these questions have any effect on the outcome of the main proceedings. Consideration of the existence of any such effect and, if necessary, the examination of those questions are complicated by the fact that the order for reference gives little information on the factual situation. As the Advocate General correctly observes at paragraph 33 of his Opinion, the Court has no information on ARA's operation and practices or on its position in the national market or its conduct in relation to the different economic protagonists. Moreover, the national court does not explain the connection between each of the provisions of Community law of which it seeks interpretation and the factual situation. Without this information, it is not possible to ascertain the specific problem of interpretation which could arise in relation to each provision.

39 Therefore, as the particulars in the order for reference are too imprecise with regard to the legal and factual situations to which the fifth to the seventh questions relate, the Court is unable to ascertain the specific problem of interpretation of Community law and to give a useful interpretation in that respect.

40 It follows that it is necessary to reply only to the first question and the additional questions relating to it, and to the third question.

The first question

41 In essence, the first question from the national court asks whether the plastic carrier bags given to customers by retailers for taking their purchases away are packaging within the meaning of Directive 94/62 and whether any importance

attaches to the fact that the customer himself buys the bag or the retailer provides it without additional payment and puts the goods in it, without the customer asking for a bag.

42 First of all, it must be observed that this question relates only to carrier bags and not to tie bags, which are also the subject of the main proceedings.

Observations submitted to the Court

43 According to Plato Plastik and Caropack, plastic carrier bags are not packaging within the meaning of Directive 94/62. They contend that, pursuant to Article 3(1) of the directive, the bag in question must be used to package goods. That is not the case here because the goods are handed to the consumer separately from the bag. Furthermore, according to certain language versions of the provision in question, the goods intended to be contained in the packaging must be specific, that is to say, goods identified beforehand. Plastic bags filled with goods and handed to customers are not used to contain and protect specific goods.

44 Caropack contends that the functions of packaging listed in the first subparagraph of Article 3(1) of Directive 94/62 must all be fulfilled. Carrier bags do not serve for the presentation of specific goods within the meaning of that provision. Such bags are themselves just goods offered to customers like any other product.

45 The Austrian, French, Finnish and Swedish Governments, like the Commission, agree in taking the view that plastic carrier bags are packaging within the meaning of Directive 94/62. This interpretation is corroborated by the wording of Article 3 (1) of the directive, by its context and the purpose of the measures of which it forms part. The Community legislature intended to create a broad definition of packaging. Furthermore, it was necessary not to undermine the principle of recycling. Finally, the memorandum of the committee referred to in Article 21 of the directive expressly referred to checkout bags among packaging.

46 Those Governments and the Commission submit that no importance should be attached to whether the customer himself buys the plastic carrier bag or whether the retailer supplies it without additional payment, nor to the question whether the goods are put in the bag by the customer or by the retailer.

The Court's reply

47 It must be observed that, under Article 3(1) of Directive 94/62, any product which meets two conditions must be deemed to be packaging.

48 First, pursuant to the first subparagraph of the abovementioned provision, the product in question must be used for the containment, protection, handling, delivery and presentation of goods from the producer to the user or the consumer. The second subparagraph states that 'non-returnable' items used for the same purposes must be considered to constitute packaging.

49 As the Advocate General correctly observes at paragraph 41 of his Opinion, the possible functions of packaging are not listed in the first subparagraph of Article 3 (1) of Directive 94/62 in such a way as to mean that they are cumulative. This interpretation is confirmed, as appears from paragraphs 54 to 58 of this judgment, by the purpose of Directive 94/62.

50 Second, the product must fall within one of the three categories of packaging listed and defined in Article 3(1)(a) to (c), namely sales packaging, grouped packaging and transport packaging. Article 3(1)(c) defines transport packaging as packaging designed to facilitate the handling and transport of a number of sales units in order to prevent physical handling and transport damage.

51 On the other hand, Article 3(1) of the directive does not make relevant matters such as whether the customer himself buys the product which may be used for packaging or whether the retailer supplies it to him and puts the goods in it without being asked to do so and without additional payment.

52 In the present case, the plastic carrier bags handed to customers in shops are intended to contain and protect the goods purchased by them and to facilitate their transport from the shop to the place of consumption. In particular, they are designed to facilitate the transport of sales units in order to prevent physical handling and transport damage. After they have been used, these bags are normally disposed of, whether empty or containing waste.

53 It must be concluded that the plastic carrier bags handed to customers in shops meet the two conditions laid down in Article 3(1) of Directive 94/62. Therefore they are, in principle, covered by the definition of packaging in Article 3(1).

54 This interpretation is confirmed by the context and purpose of that provision.

55 On this point, it must be observed that Directive 94/62 aims to prevent and reduce the impact of packaging and waste packaging on the environment of Member States and non-member countries and thus to provide a high level of environmental protection. For this purpose, it provides that the Member States are to set up a system for the collection and recovery of packaging and packaging waste.

56 According to the fifth recital in the preamble to the directive and Article 2 thereof, Directive 94/62 is intended to cover all packaging placed on the market in the Community.

57 The exclusion of plastic carrier bags from the definition of packaging would run counter to a broad interpretation of that term. Furthermore, such a limitation would be likely to impede the attainment of the aims of Directive 94/62. It can hardly be disputed that, as the Advocate General rightly points out in paragraph 68 of his Opinion, the widespread use of plastic bags in everyday life gives rise to a major environmental problem because of the high number of plastic bags in circulation and because they have a long life.

58 This finding is not affected by whether the customer buys the carrier bag himself or the retailer gives him the bag and puts the goods in it without being asked to do so, or by whether the bag is supplied to him free of charge or not. In order to ensure that the obligations arising from Directive 94/62 are fulfilled, the producers and users of carrier bags must be able to ascertain whether such bags constitute packaging within the meaning of the directive even when they are empty, without knowing how they are handed to customers and whether there is an additional charge. It should also be pointed out that, if these circumstances were to be taken into account, producers and users could easily try to avoid the obligations arising from the directive, in particular by making a nominal charge for the bags in question.

59 Consequently the reply to the first question must be that Article 3(1) of Directive 94/62 must be interpreted as meaning that the plastic carrier bags handed to customers in shops, whether free of charge or not, constitute packaging within the meaning of the directive.

The additional questions under the first question

60 The first additional question under the first question asks whether the reply to the first question varies according to the interpretation of the different language versions of Article 3(1) of Directive 94/62.

61 To begin with, it must be observed that the French, Italian and Finnish versions of Article 3(1) connect 'packaging' with specific goods ('*marchandises données*',

'*determinate merci*' and '*tiettyjen tavaroiden*'), whereas the other language versions refer only to goods.

Observations submitted to the Court

62 Plato Plastik and Caropack submit that, among the different language versions of the first subparagraph of Article 3(1) of Directive 94/62, priority should be given to the French and Italian versions, which are such as to ensure the effectiveness of the provision in question. Consequently, it is necessary for the goods which are to be contained in the packaging to be identified beforehand.

63 The other parties which have submitted observations agree that the qualifier 'specific' in certain language versions has no particular significance and does not really add anything to the word 'goods'.

The Court's reply

64 The Court has consistently held that the different language versions of a Community text must be given a uniform interpretation and hence in the case of

divergence between the versions the provision in question must be interpreted by reference to the purpose and general scheme of the rules of which it forms part (Case 30/77 *Bouchereau* [1977] ECR 1999, paragraph 14; Case C-449/93 *Rockfon* [1995] ECR I-4291, paragraph 28; Case C-236/97 *Codan* [1998] ECR I-8679, paragraph 28, and Case C-127/00 *Hässle* [2003] ECR I-14781, paragraph 70).

65 As shown in paragraph 54 of the present judgment, the interpretation to the effect that plastic carrier bags are covered by the definition of packaging in Article 3(1) of Directive 94/62 is confirmed by the context and purpose of that provision. The qualifier 'specific' in three language versions does not really appear to add anything to the word 'goods'.

66 Therefore, the fact that certain language versions appear to connect 'goods' with specific goods does not mean that the reply to the first question should be different from the reply given in paragraph 59 of this judgment.

67 In view of the replies to the first question and the first additional question, it is unnecessary to reply to the second additional question, which calls for a reply only if the plastic carrier bags handed to customers in shops were not deemed to be packaging within the meaning of Article 3(1) of Directive 94/62.

The third question

68 In essence, the third question from the national court seeks clarification of the meaning of 'producer' in the first subparagraph of Article 3(1) of Directive 94/62.

Observations submitted to the Court

69 Plato Plastik considers that it is necessary to determine whether it must be deemed to be a supplier of packaging materials within the meaning of Directive 94/62 with regard to tie bags which, unlike plastic carrier bags, must be considered to be packaging.

70 Caropack submits that the person who puts goods together with, or causes them to be put together with, the product used as packaging, and not the undertaking which makes the product intended for use as packaging, must be regarded as the producer within the meaning of the first subparagraph of Article 3(1) of Directive 94/62.

71 The French Government and the Commission submit that, in the context of Article 3(1) of Directive 94/62, 'producer' refers to the producer of the goods which are to be packed. According to the Austrian Government, it refers not only to the person who puts the goods in question together with the packaging, but also to the maker of the material which is then used as packaging.

The Court's reply

72 The word 'producer' in the first subparagraph of Article 3(1) of Directive 94/62 is used in that context to describe one of the functions of packaging, which is to facilitate the transport of goods from the producer, that is to say the producer of the goods, to the consumer or user of those goods.

73 It is perfectly clear from the terms of the provision that 'producer' relates to the goods to be packaged, not to the packaging or the packaging material.

74 Therefore it must be held that, in the context of the first subparagraph of Article 3 (1) of Directive 94/62, 'producer' refers to the producer of the goods, not the manufacturer of the packaging products.

Costs

75 The costs incurred by the Austrian, French, Finnish and Swedish Governments and by 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 proceedings 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 Landesgericht Korneuburg by order of 4 September 2001, hereby rules:

1. **Article 3(1) of European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste must be interpreted as meaning that the plastic carrier bags handed to customers in shops, whether free of charge or not, constitute packaging within the meaning of that directive.**

2. **In the context of the first subparagraph of Article 3(1) of Directive 94/62, 'producer' refers to the producer of the goods, not the manufacturer of the packaging products.**

Timmermans Rosas von Bahr

Delivered in open court in Luxembourg on 29 April 2004.

R. Grass V. Skouris

Registrar President