Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber) [i]

28 May 2020 *

(Reference for a preliminary ruling – Environment – Shipment of waste – Regulation (EC) No 1013/2006 – Prior written notification and consent procedure – General information requirements – Annex IIIA – Mixture of paper, paperboard and paper products – Code B3020 of Annex IX to the Basel Convention – Impurities – Mixture contaminated by other materials – Recovery in an environmentally sound manner)

In Case C-654/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Verwaltungsgericht Stuttgart (Administrative Court, Stuttgart, Germany), by a decision of 10 October 2018, received at the Court on 18 October 2018, in the proceedings

Interseroh Dienstleistungs GmbH

v

SAA Sonderabfallagentur Baden-Württemberg GmbH,

THE COURT (Fifth Chamber)

composed of E. Regan, President, I. Jarukaitis, E. Juhász, M. Ilešič and C. Lycourgos (Rapporteur), Judges,

Advocate General: E. Sharpston,

Registrar: M. Krausenböck, Administrator,

having regard to the written procedure and further to the hearing on 18 September 2019,

after considering the observations submitted on behalf of:

– Interseroh Dienstleistungs GmbH, by A. Oexle and T. Lammers, Rechtsanwälte,

– SAA Sonderabfallagentur Baden-Württemberg GmbH, by H.S. Wirsing and E. Beathalter, Rechtsanwälte,

– the Netherlands Government, by M. Bulterman and M.A.M. de Ree, acting as Agents,

* Language of the case: German.

– the Polish Government, by B. Majczyna, acting as Agent,

– the European Commission, by L. Haasbeek and A.C. Becker, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 30 January 2020,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 3(2) 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 (EU) 2015/2002 of 10 November 2015 (OJ 2015 L 294, p. 1) ('Regulation No 1013/2006').

2 The request has been made in proceedings between Interseroh Dienstleistungs GmbH ('Interseroh') and SAA Sonderabfallagentur Baden-Württemberg GmbH (the agency responsible for special waste in Land Baden-Wüttemberg, 'SAA'), concerning SAA's refusal to exempt shipments of a mixture of paper, paperboard and paper product waste and other materials from the notification procedure under Regulation No 1013/2006.

Legal framework

International law

3 Article 1 of the Convention on the control of transboundary movements of hazardous wastes and their disposal, signed in Basel on 22 March 1989 and approved on behalf of the European Community by Council Decision 93/98/EEC of 1 February 1993 (OJ 1993 L 39, p. 1) in the version applicable to the dispute in the main proceedings ('the Basel Convention'), entitled 'Scope of the Convention', provides in subparagraph (1)(a) that:

'The following wastes that are subject to transboundary movement shall be "hazardous wastes" for the purposes of this Convention:

(a) wastes that belong to any category contained in Annex I, unless they do not possess any of the characteristics contained in Annex III …

…'

4 The introductory sentence of Annex IX to that convention reads as follows:

'Wastes contained in the Annex will not be wastes covered by Article 1, paragraph 1(a), of this Convention unless they contain Annex I material to an extent causing them to exhibit an Annex III characteristic.'

5 List B3 of that annex concerns 'Wastes containing principally organic constituents, which may contain metals and inorganic materials'. List B3 includes Code B3020 which reads as follows:

'B3020 Paper, paperboard and paper product wastes

The following materials, provided they are not mixed with hazardous wastes:

Waste and scrap of paper or paperboard of:

– unbleached paper or paperboard or of corrugated paper or paperboard

– other paper or paperboard, made mainly of bleached chemical pulp, not coloured in the mass

– paper or paperboard made mainly of mechanical pulp (for example, newspapers, journals and similar printed matter)

– other, including but not limited to

1. laminated paperboard
2. unsorted scrap'.

EU law

Directive 2006/12/EC

6 Article 4(1) of Directive 2006/12/EC of the European Parliament and of the Council of 5 April 2006 on waste (OJ 2006 L 114, p. 9) provided:

'Member States shall take the necessary measures to ensure that waste is recovered or disposed of without endangering human health and without using processes or methods which could harm the environment, and in particular:

(a) without risk to water, air or soil, or to plants or animals;

(b) without causing a nuisance through noise or odours;

(c) without adversely affecting the countryside or places of special interest.'

Regulation No 1013/2006

7 Recitals 1, 3, 5, 7, 8, 14, 15, 33 and 39 of Regulation No 1013/2006 read as follows:

'(1) The main and predominant objective and component of this Regulation is the protection of the environment …

…

(3) [Decision 93/98] concerned the conclusion, on behalf of the Community, of the Basel Convention … to which the Community has been a party since 1994. …

…

(5) In view of the fact that the Community has approved Decision C(2001)107/Final of the [Organisation for Economic Co-operation and Development (OECD)] Council concerning the revision of Decision C(92)39/Final on the control of transboundary movements of wastes destined for recovery operations (OECD Decision), in order to harmonise waste lists with the Basel Convention and revise certain other requirements, it is necessary to incorporate the content of that Decision in Community legislation.

…

(7) It is important to organise and regulate 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 the Regulation throughout the Community.

(8) It is also important to bear in mind the requirement laid down in Article 4(2)(d) of the Basel Convention that shipments of hazardous waste are to be reduced to a minimum, consistent with environmentally sound and efficient management of such waste.

…

(14) In the case of shipments of … waste not listed in Annex III, IIIA or IIIB destined for recovery operations, it is appropriate to ensure optimum supervision and control by requiring prior written consent to such shipments. …

(15) In the case of shipments of waste listed in Annex III, IIIA or IIIB destined for recovery operations, it is appropriate to ensure a minimum level of supervision and control by requiring such shipments to be accompanied by certain information.

…

(33) The necessary steps should be taken to ensure that, in accordance with Directive [2006/12] and other Community legislation on waste, waste shipped within the Community and waste imported into the Community is managed, throughout the period of shipment and including recovery or disposal in the country of destination, without endangering human health and without using processes or methods which could harm the environment. …

…

(39) In considering the mixtures of wastes to be added in Annex IIIA, the following information should be considered, inter alia: the properties of the waste, such as its possible hazardous characteristics, its potential for contamination and its physical state; the management aspects, such as the technological capacity to recover the waste, and the environmental benefits arising from the recovery operation, including whether the environmentally sound management of the waste may be impaired. …'

8 Article 2(3) and (8) of that regulation provides:

‘For the purposes of this Regulation:

…

3. “mixture of wastes” means waste that results from an intentional or unintentional mixing of two or more different wastes and for which mixture no single entry exists in Annexes III, IIIB, IV and IVA. Waste shipped in a single shipment of wastes, consisting of two or more wastes, where each waste is separated, is not a mixture of wastes;

…

8. “environmentally sound management” means taking all practicable steps to ensure that waste is managed in a manner that will protect human health and the environment against adverse effects which may result from such waste’.

9 Article 3 of that regulation, entitled ‘Overall procedural framework’, provides:

‘1. Shipments of the following wastes shall be subject to the procedure of prior written notification and consent as laid down in the provisions of this Title:

…

(b) if destined for recovery operations:

…
(iii) wastes not classified under one single entry in either Annex III, IIIB, III or IVA,
(iv) mixtures of wastes not classified under one single entry in either Annex III, IIIB, IV or IVA unless listed in Annex IIIA.

2. Shipments of the following wastes destined for recovery shall be subject to the general information requirements laid down in Article 18, if the amount of waste shipped exceeds 20 kg:

(a) waste listed in Annex III or IIIB;

(b) mixtures, not classified under one single entry in Annex III, of two or more wastes listed in Annex III, provided that the composition of these mixtures does not impair their environmentally sound recovery and provided that such mixtures are listed in Annex IIIA, in accordance with Article 58.

…’

10 Article 4 et seq. of Regulation No 1013/2006 lay down the detailed arrangements for the prior written notification and consent procedure.

11 Article 18 of that regulation establishes the general information requirements, according to which the wastes referred to in Article 3(2) of the regulation must be accompanied by certain information including the form reproduced in Annex VII to the regulation.

12 Article 28 of Regulation No 1013/2006, entitled 'Disagreement on classification issues', provides as follows in paragraph 2:

'If the competent authorities of dispatch and of destination cannot agree on the classification of the notified waste as being listed in Annex III, IIIA, IIIB or IV, the waste shall be regarded as listed in Annex IV.'

13 Article 49 of that regulation, entitled 'Protection of the environment', provides as follows in paragraph 1:

'The producer, the notifier and other undertakings involved in a shipment of waste and/or its recovery or disposal shall take the necessary steps to ensure that any waste they ship is managed without endangering human health and in an environmentally sound manner throughout the period of shipment and during its recovery and disposal. In particular, when the shipment takes place in the Community, the requirements of Article 4 of Directive [2006/12] and other Community legislation on waste shall be respected.'

14 Annex III to that regulation is entitled 'List of wastes subject to the general information requirements laid down in Article 18 ("Green" listed waste)'. The introductory part of the annex states:

'Regardless of whether or not wastes are included on this list, they may not be subject to the general information requirements laid down in Article 18 if they are contaminated by other materials to an extent which

(a) increases the risks associated with the wastes sufficiently to render them appropriate for submission to the procedure of prior written notification and consent, when taking into account the hazardous characteristics listed in Annex III to [Council Directive 91/689/EEC of 12 December 1991 on hazardous waste (OJ 1991 L 377, p. 20), repealed by Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (OJ 2008 L 312, p. 3)]; or

(b) prevents the recovery of the wastes in an environmentally sound manner.'

15 In Part I, Annex III provides inter alia that wastes listed in Annex IX to the Basel Convention, which is reproduced in Part 1, List B of Annex V to Regulation No 1013/2006 and contains Code B3020, are subject to the general information requirements laid down in Article 18 of that regulation.

16 Annex IIIA to that regulation, entitled 'Mixtures of two or more wastes listed in Annex III and not classified under one single entry as referred to in Article 3(2)', provides:

'1. Regardless of whether or not mixtures are included on this list, they may not be subject to the general information requirements laid down in Article 18 if they are contaminated by other materials to an extent which:

(a) increases the risks associated with the wastes sufficiently to render them appropriate for submission to the procedure of prior written notification and consent, when taking into account the hazardous characteristics listed in Annex III to Directive [91/689]; or

(b) prevents the recovery of the wastes in an environmentally sound manner.

…

3. The following mixtures of wastes classified under separate indents or sub-indents of one single entry are included in this Annex:

…

(g) mixtures of wastes classified under Basel entry B3020 restricted to unbleached paper or paperboard or of corrugated paper or paperboard, other paper or paperboard, made mainly of bleached chemical pulp, not coloured in the mass, paper or paperboard made mainly of mechanical pulp (for example, newspapers, journals and similar printed matter);

…'

17 In Part I, List B, Annex V to that regulation, which is entitled, 'Waste subject to the export prohibition in Article 36', reproduces Annex IX to the Basel Convention. Code B3020, which appears under Title B3, entitled 'Wastes containing principally organic constituents, which may contain metals and inorganic materials', reads as follows:

'B3020 Paper, paperboard and paper product wastes

The following materials, provided they are not mixed with hazardous wastes:

Waste and scrap of paper or paperboard of:

– unbleached paper or paperboard or of corrugated paper or paperboard

– other paper or paperboard, made mainly of bleached chemical pulp, not coloured in the mass

– paper or paperboard made mainly of mechanical pulp (for example, newspapers, journals and similar printed matter)

– other, including but not limited to

1. laminated paperboard
2. unsorted scrap'.

Directive 2008/98

18 Article 13 of Directive 2008/98 provides:

'Member States shall take the necessary measures to ensure that waste management is carried out without endangering human health, without harming the environment and, in particular:

(a) without risk to water, air, soil, plants or animals;

(b) without causing a nuisance through noise or odours; and

(c) without adversely affecting the countryside or places of special interest.'

19 Annex III to that directive contains explanations relating to the various properties of waste which render it hazardous.

The main proceedings and the questions referred for a preliminary ruling

20 Interseroh is a company based in Germany. It collects used sales packaging, that is to say, lightweight paper packaging, for recovery. It ships the prepared waste paper for recycling to a factory in the Netherlands operated by ESKA Graphic Board BV ('ESKA').

21 It can be seen from the order for reference that the waste shipped must consist of a mixture of paper, paperboard and paper product wastes in which each type of waste comprising the mixture falls under the first, second or third indents of Code B3020 of Annex IX to the Basel Convention, and which furthermore contains up to 10% impurities, comprising liquid packaging board (up to 4%), plastic (up to 3%), metal (up to 0.5%) and other foreign materials such as glass, stones, textiles or rubber (up to 3.5%) ('the mixture of wastes at issue'). Those figures are the upper thresholds laid down by ESKA.

22 SAA, which is the authority responsible for implementing the rules on the shipment of waste in Land Baden-Württemberg (*Land* of Baden-Württemberg, Germany), performs, amongst others, the tasks established by Regulation No 1013/2006.

23 The referring court states that shipments of mixtures of wastes of the type at issue have been carried out on the basis of the export control permits issued by SAA and the competent Netherlands authority, in accordance with the notification procedure under Article 4 et seq. of Regulation No 1013/2006.

24 On 20 May 2015, ESKA obtained a judgment from the Chamber for Contentious Administrative Proceedings of the Raad van State (Council of State, Netherlands) according to which a mixture of wastes of the type at issue, regardless of the presence of impurities, comes under Code B3020 of Annex IX to the Basel Convention, to which Annex III to Regulation No 1013/2006 refers, and, accordingly, is on the list of wastes subject to the general information requirements under Article 18 of that regulation.

25 Relying on that judgment, Interseroh asked SAA to classify the mixture of wastes at issue as being one of the wastes listed in Annex III to Regulation No 1013/2006.

26 SAA rejected that request, first, on the grounds that the mixture of wastes in question did not fall fully under any of the four single entries of Code B3020 of Annex IX to the Basel Convention. In particular, the mixture did not in its view fall under the fourth indent of Code B3020 because that indent is not a catch-all provision for mixtures of varying provenance and composition. Secondly, SAA held that the mixture could not be classified under Annex IIIA to Regulation No 1013/2006 owing to the excessive proportion of foreign matter present in the mixture.

27 On 1 June 2016, Interseroh brought an action before the Verwaltungsgericht Stuttgart (Administrative Court, Stuttgart, Germany) seeking a declaration that, for the purposes of shipments of the mixture of wastes at issue, it is subject only to the general information requirements under Article 18 of Regulation No 1013/2006, instead of the notification obligation.

28 The referring court is uncertain in that respect whether Code B3020 of Annex IX to the Basel Convention covers mixtures of wastes obtained from wastes listed in the first three indents of that code and which also contain up to 10% impurities, or whether that code relates exclusively to wastes composed of one type of waste, with the effect that such mixtures are governed solely by point 3(g) of Annex IIIA to Regulation (EC) No 1013/2006.

29 In those circumstances, the Verwaltungsgericht Stuttgart (Administrative Court, Stuttgart) stayed the proceedings and referred the following questions to the Court of Justice for a preliminary ruling:

'(1) Is Article 3(2) of Regulation [No 1013/2006] … to be interpreted as meaning that mixtures of paper, paperboard and paper product wastes, which – being composed in such a way that the fractions of the waste considered individually – come within the first three indents of entry B3020 of Annex IX to the Basel Convention, and which also contain up to 10% impurities, come under [Code B3020 of Annex IX to the Basel Convention] and are accordingly subject to the general information requirements laid down in Article 18, and not to the notification requirement under Article 4?

If Question 1 is answered in the negative:

(2) Is Article 3(2) of Regulation [No 1013/2006] … to be interpreted as meaning that mixtures of paper, paperboard and paper product wastes, which – being composed in such a way that the fractions of the waste considered individually – come within the first three indents of entry B3020 of Annex IX to the Basel Convention, and which also contain up to 10% impurities, are not covered by point 3(g) of Annex IIIA and accordingly are subject, not to the general information requirements laid down in Article 18, but instead to the notification requirement under Article 4?'

The request to reopen the oral procedure

30 After the Advocate General had delivered her Opinion, Interseroh, by a document lodged at the Court Registry on 18 February 2020, requested an order under Article 83 of the Rules of Procedure of the Court of Justice reopening the oral part of the procedure.

31 In support of its request, Interseroh claimed, in essence, that the Advocate General's Opinion was based on new matters that had not yet been debated between the parties. Interseroh refers, in particular, to points 35 to 48, 59, 68 and 74 of that Opinion. It adds that the issues concerning the need to interpret the legislation on waste consistently were not raised at the hearing. In addition, in its request to reopen the oral part of the procedure, Interseroh takes issue with several aspects of the manner in which the Advocate General interpreted Regulation No 1013/2006 in her Opinion.

32 It should be noted, first, that under the second paragraph of Article 252 TFEU it is the duty of the Advocate General, acting with complete impartiality and independence, to make, in open court, reasoned submissions on cases which, in accordance with the Statute of the Court of Justice, require his involvement. The Court is not bound either by the Advocate General's Opinion or by the reasoning on which it is based (judgment of 19 December 2019, *Exportslachterij J. Gosschalk and Others*, C-477/18 and C-478/18, EU:C:2019:1126, paragraph 43 and the case-law cited).

33 It should also be recalled that neither the Statute of the Court of Justice of the European Union nor the Rules of Procedure make provision for the interested parties to respond to an Advocate General's Opinion. As a consequence, the fact that a party disagrees with the Advocate General's Opinion, irrespective of the questions examined in the Opinion, cannot in itself constitute grounds justifying the reopening of the oral procedure (judgment of 19 December 2019, *Exportslachterij J. Gosschalk and Others*, C-477/18 and C-478/18, EU:C:2019:1126, paragraph 44 and the case-law cited).

34 Moreover, pursuant to Article 83 of its Rules of Procedure, the Court may, at any time, after hearing the Advocate General, order that the oral part of the procedure be reopened, in particular if it considers that it lacks sufficient information or where a party has, after the close of that part of the procedure, submitted a new fact which is of such a nature as to be a decisive factor for the decision of the Court, or where the case must be decided on the basis of an argument which has not been debated between the parties or the interested persons referred to in Article 23 of the Statute of the Court of Justice of the European Union.

35 In the present case, in contrast to Interseroh's claim, Interseroh as well as the interested persons who participated in these proceedings were able, during both the written and oral phases of the procedure, to set out the matters of law which they considered relevant to enable the Court to answer the questions raised by the referring court.

36 Accordingly, none of the matters on which Interseroh relies in support of its request to reopen the oral part of the procedure constitutes grounds to reopen the procedure under Article 83 of the Rules of Procedure.

37 In those circumstances, after hearing the Advocate General, the Court does not find it appropriate to order the reopening of the oral part of the procedure.

The questions referred

38 By its two questions, which should be examined together, the referring court asks, in essence, whether Article 3(2)(a) and (b) of Regulation No 1013/2006 must be interpreted as meaning that it covers a mixture of paper, paperboard and paper product waste in which each fraction of waste falls under one of the first three indents of Code B3020 of Annex IX to the Basel Convention, reproduced in List B of Part 1 of Annex V to that regulation, and which contains up to 10% impurities.

39 Article 3(2) of Regulation No 1013/2006 provides that shipments of waste destined for disposal and where the amount of waste shipped exceeds 20 kg are subject to the general information requirements laid down in Article 18 of that regulation, provided either that the waste is listed in, inter alia, Annex III to that regulation (Article 3(2)(a)) or otherwise that mixtures of two or more wastes listed in Annex III and not classified under one single entry in that annex are composed in a way that does not impair their environmentally sound recovery and are listed in Annex IIIA to Regulation No 1013/2006 (Article 3(2)(b)).

40 Since subparagraphs (a) and (b) of Article 3(2) of Regulation No 1013/2006 refer to Annexes III and IIIA to that regulation respectively, it is necessary to examine, first, the scope of Annex III to that regulation and secondly, if necessary, the scope of Annex IIIA.

41 In the first place, concerning Annex III to Regulation No 1013/2006, that annex contains a 'green' list of wastes, Part I of which refers to Annex IX to the Basel Convention, which is reproduced in List B of Part 1 of Annex V to that regulation and contains Code B3020, entitled 'Paper, paperboard and paper product wastes'.

42 It is apparent from the order for reference that, in order to be shipped for recycling to the factory in the Netherlands operated by ESKA, the mixtures of paper and paperboard wastes collected by Interseroh must, amongst other requirements, be composed in respect of at least 90% of wastes falling within one of the first three indents of Code B3020 of Annex IX to the Basel Convention. The referring court enquires whether such mixtures can be classified under that code.

43 It is worth noting, at the outset, that in Annex IX to the Basel Convention, Code B3020 has four indents, the fourth of which itself contains two indents, whereas in the French version of List B of Part 1 of Annex V to Regulation No 1013/2006 that code is structured differently in so far as it contains two indents, in turn containing three and two indents respectively.

44 It should be emphasised that, since, as recitals 3 and 5 of Regulation No 1013/2006 state, it is apparent from Decision 93/98 that the European Union approved the Basel Convention and that Regulation No 1013/2006 incorporated the content of the OECD decision harmonising the list of wastes with that convention, the provisions of the Basel Convention became part of the EU legal order from the date on which the European Union became a party to that convention. In that context, and in the light of the principle of the primacy of international agreements concluded by the European Union over instruments of secondary law, Regulation No 1013/2006 must be interpreted, as far as possible, in a manner that is consistent with the Basel Convention (see, to that effect, judgment of 11 April 2013, *HK Danmark*, C-335/11 and C-337/11, EU:C:2013:222, paragraphs 29 and 30 and the case-law cited).

45 In consequence, in order to interpret Code B3020, reproduced in List B of Part 1 of Annex V to Regulation No 1013/2006, it is necessary to bear in mind how the various indents of that code are structured in Code B3020 in Annex IX to the Basel Convention.

46 Having made that preliminary remark, it should be noted that Code B3020 in Annex IX to the Basel Convention covers 'waste and scrap of paper or paperboard' provided it is not mixed with hazardous wastes, and contains four indents. According to the first three indents of that code, which correspond to the three indents contained in the first indent of Code B3020 as reproduced in List B of Part 1 of Annex V to Regulation No 1013/2006 in the French-language version , that waste and scrap may be of 'unbleached paper or paperboard or of corrugated paper or paperboard', 'other paper or paperboard, made mainly of bleached chemical pulp, not coloured in the mass' or 'paper or paperboard made mainly of mechanical pulp (for example, newspapers, journals and similar printed matter)'. The fourth indent of Code B3020 in Annex IX to the Basel Convention, which corresponds to the second indent of Code B3020 as reproduced in List B of Part 1 of Annex V, in the French-language version of Regulation No 1013/2006, is headed 'other' and includes but is not limited to 'laminated paperboard' and 'unsorted scrap'.

47 Accordingly, first, it is apparent from the structure of Code B3020 in Annex IX to the Basel Convention and from the wording of the four indents of that code that those indents cover different types of paper and paperboard waste and scrap but do not mention mixtures of wastes falling within those different types.

48 Moreover, in view of its wording, the fourth and last indent of that code must be understood as referring to types of paper or paperboard waste and scrap other than those falling under the first three indents of that code.

49 Accordingly, in view of its wording, Code B3020 in Annex IX to the Basel Convention, reproduced in List B of Part 1 of Annex V to Regulation No 1013/2006, must be understood as meaning that each of the wastes listed in the four indents of that code corresponds to a type of waste and that mixtures composed of wastes of those various types do not fall within that code.

50 Secondly, that is the only possible interpretation consistent with the general scheme of Regulation No 1013/2006. Article 3(2)(b) of that regulation explicitly covers mixtures of wastes not classified under one single entry in Annex III to that regulation and composed of two or more wastes listed in that annex, and which are listed in Annex IIIA to that regulation. Point 3(g) of Annex IIIA specifically mentions mixtures of wastes falling within the first three indents of Code B3020 in Annex IX to the Basel Convention. It must therefore be found, as the Advocate General noted, in essence, in point 43 of her Opinion, that Annex IIIA would be redundant if Code B3020 as reproduced in List B of Part 1 of Annex V to Regulation No 1013/2006, and in particular the last indent of that code, headed 'other', were to be understood as including mixtures of wastes composed of wastes referred to in the other indents of that code.

51 Thirdly, the interpretation based on the wording of Code B3020, reproduced in List B of Part 1 of Annex V to Regulation No 1013/2006 in the light of the corresponding code in Annex IX to the Basel Convention and of the overall scheme of that regulation is consistent with the objective of environmental protection pursued by that regulation. According to recital 7 of that regulation, the regulation organises and regulates 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.

52 The reason why shipments of wastes destined for recovery and included on the green list of wastes in Annex III to Regulation No 1013/2006 are, by way of exception, usually exempt from the prior written notification and consent procedure under Title II, Chapter I of that regulation is that shipments of those wastes pose fewer risks to the environment and it is therefore possible, as recital 15 of that regulation states, to impose a minimum level of supervision and control by requiring such shipments to be accompanied by certain information.

53 Accordingly, the objective of protecting the environment and human health pursued by Regulation No 1013/2006 militates against Code B3020, reproduced in List B of Part 1 of Annex V of that regulation, being interpreted to the effect that mixtures that are not expressly covered by that code are subject to the general information requirements laid down in Article 18 of that regulation, which are less strict than those established by the prior written notification and consent procedure laid down in Article 3(1) of that regulation.

54 It emerges from the foregoing that Code B3020, reproduced in List B of Part 1 of Annex V to Regulation No 1013/2006, covers only the wastes belonging to each type of paper, paperboard and paper product waste referred to in the various indents of that code. That code therefore does not cover mixtures of wastes composed of wastes that, separately, fall under those various indents. Such mixtures cannot therefore be included on the green list of wastes in Annex III to Regulation No 1013/2006, and therefore cannot be subject, under Article 3(2)(a), to the general information requirements laid down in Article 18 of that regulation.

55 In the light of that interim conclusion, it is necessary, in the second place, to examine the scope of Annex IIIA to Regulation No 1013/2006 in order to ascertain whether the regime laid down in Article 3(2)(b) of that regulation applies to the mixtures of wastes at issue.

56 As recalled in paragraph 48 of this judgment, point 3(g) of Annex IIIA specifically mentions mixtures of wastes composed of wastes falling within the first three indents of Code B3020 in Annex IX to the Basel Convention, restricted to mixtures of wastes referred to in the first three indents of that code.

57 The referring court is uncertain in that regard whether the presence of up to 10% impurities in the composition of the mixtures of wastes, where each waste falls under one of the first three indents of that code, precludes those mixtures from being classified under that code.

58 It should be pointed out, first, that the referring court states that the mixtures of wastes that Interseroh ships to the Netherlands for recycling may contain 4% liquid packaging board. It appears from the information in the file before the Court that this packaging board can fall under Code B3020 in Annex IX to the Basel Convention. Indeed, it is common ground that liquid packaging board, where it constitutes waste, can be classified under the 'paper, paperboard and paper product wastes' code. Nevertheless, since it does not correspond to any of the types of waste referred to in the first three indents of that code, it must be found to fall under the fourth indent of that code, which is a catch-all provision.

59 Accordingly, subject to the verifications which it is for the referring court to carry out as regards the presence of liquid packaging board in the mixtures of wastes at issue, the presence of such board means that those mixtures are composed of wastes that should be classified not only under one of the first three indents of that code but also under the fourth indent, with the effect that such mixtures are not covered by point 3(g) of Annex IIIA to Regulation No 1013/2006, which is clearly worded and refers only to mixtures of wastes composed of waste falling under the first three indents of that code and, therefore, are not among the mixtures listed in that annex. Those mixtures are therefore not covered by the information procedure under Article 18 of that regulation.

60 Secondly, even on the assumption that the mixtures of wastes at issue did not contain liquid packaging board, it is apparent from the request for a preliminary ruling that those mixtures can, in any event, contain up to 7% other impurities.

61 In order to determine whether those mixtures of wastes may fall under Annex IIIA to Regulation No 1013/2006, it should be recalled that according to point 1 of that annex, regardless of whether or not mixtures are included on the list of mixtures of wastes referred to in Annex IIIA, they may not be subject to the general information requirements laid down in Article 18 of that regulation if they are contaminated by other materials to an extent which either increases the risks associated with those wastes sufficiently to render them appropriate for submission to the procedure of prior written notification and consent, when taking into account the hazardous characteristics listed in Annex III of Directive 91/689, or prevents the recovery of those wastes in an environmentally sound manner.

62 Accordingly, first, it is apparent from the wording of point 1 of Annex IIIA to Regulation No 1013/2006 that a mixture of wastes referred to in the list in that annex is not excluded from that list solely because the mixture contains impurities in addition to the wastes expressly

included on that list. As the Advocate General stated in point 53 of her Opinion, the presence of point 1 in fact shows that the EU legislature was aware that it is technically difficult (if not impossible) to ensure that any waste stream is totally pure.

63 Furthermore, it is worth noting that the requirement under point 1(a) of Annex IIIA to Regulation No 1013/2006 is intended to ensure that the mixtures of wastes listed in that annex, where they pose increased risks to the environment on account of the impurities they contain, are subject to the prior written notification and consent procedure. In particular, those risks must be assessed taking into account the hazardous characteristics listed in Annex III to Directive 91/689 which, following the repeal of that directive, formed the basis of Annex III to Directive 2008/98.

64 Moreover, the condition in point 1(b) of Annex IIIA to Regulation No 1013/2006 refers to the requirement concerning recovery 'in an environmentally sound manner'. Although that concept is not expressly defined in the regulation it should nevertheless be noted that, in common with the definition of the concept 'environmentally sound management' in Article 2(8), the environmentally sound recovery of waste refers to any practicable step to ensure that waste is recovered in a manner that will protect human health and the environment against adverse effects which may result from such waste.

65 It should be noted in that context that, as can be seen from Article 49(1) of Regulation No 1013/2006, in conjunction with recital 33 of that regulation, waste must be shipped, in the country of destination and throughout the period of shipment, without endangering human health and without using processes or methods which could harm the environment. Where the shipment takes place in the European Union, under Article 49(1) there must be respect for the requirements laid down, in particular, in Article 4(1) of Directive 2006/12, the provisions of which were included in Article 13 of Directive 2008/98, according to which waste must be recovered without risk to water, air, soil, plants or animals, without causing a nuisance through noise or odours and without adversely affecting the countryside or places of special interest.

66 Taking account of that stipulation, it should be noted that, when applying the requirement under point 1(b) of Annex IIIA to Regulation No 1013/2006, it is necessary to determine on a case-by-case basis whether the type and level of impurities present in a mixture of wastes falling under Annex IIIA prevent the wastes in question from being recovered in an environmentally sound manner. As the Advocate General stated in point 64 of her Opinion, that is in principle an issue of fact that it will fall to the national competent authorities, and perhaps to national courts, to determine.

67 It must be observed here that, as the Netherlands Government and the European Commission, amongst others, have indicated in the preliminary ruling proceedings being heard by the Court, Regulation No 1013/2006 contains no other criteria further clarifying the scope of the requirement referred to in point 1(b) of Annex IIIA to Regulation No 1013/2006.

68 Each Member State must therefore be allowed a certain margin of discretion for the purposes of implementing point 1 of Annex IIIA. For that purpose, the Member States are free to adopt criteria for determining the circumstances in which the presence of impurities in a mixture of wastes prevents that mixture from being recovered in an environmentally sound manner, provided those States do not thereby jeopardise the scope and effectiveness of Regulation No 1013/2006, including the procedure under Article 18 (see, by analogy, judgment of 12 April 2018, *Fédération des entreprises de la beauté*, C-13/17, EU:C:2018:246, paragraph 47).

69 Specifically, where they adopt such criteria, the Member States must bear in mind that the procedure relating to the general information requirements, under Article 18 of Regulation No 1013/2006, is applied by way of a derogation from implementation of the generally applicable prior written notification and consent procedure under Article 3(1) of that regulation. Article 3(2) of that regulation and, in particular, Annex IIIA to that regulation which indicates the scope of Article 3(2) must therefore, in principle, be interpreted strictly.

70 It is also important to note here that point 1 of Annex IIIA is intended, precisely, to ensure that the procedure relating to the general information requirements, under Article 18 of Regulation No 1013/2006, is applied only in so far as is necessary for the purposes of achieving the objectives pursued by the regulation, given that mixtures of waste are only shipped under that procedure where there is no significant risk to the environment and human health, in accordance with the objective referred to in Article 191(2) TFEU of ensuring a high level of environmental protection, and with the precautionary principle and the principle that preventive action should be taken, which form the basis of EU policy in this field.

71 In that regard, recital 39 of Regulation No 1013/2006 is perhaps one element on which to rely in order to identify criteria that would accordingly take into account the type of impurities, the properties of the wastes that comprise the impurities and whether they are hazardous, the amount of impurities and the available technology, as the Advocate General noted in point 59 of her Opinion.

72 In that context, the adoption of criteria that determine the circumstances in which the presence of impurities in a mixture of wastes will prevent that mixture from being recovered in an environmentally sound manner allows the competent national authorities and economic operators to know in advance whether a mixture of waste can be shipped inside the European Union under the procedure relating to general information requirements, laid down in Article 18 of Regulation No 1013/2006, thereby increasing legal certainty and contributing to the full effectiveness of the procedure.

73 It should nevertheless be noted that where there are no such criteria, the competent national authorities can carry out a case-by-case assessment in order to ensure that the regulation is effectively applied, in accordance with its objectives, taking into account the express provision in the regulation that the information procedure under Article 18 can apply to mixtures of wastes.

74 Moreover, if the competent national authorities harbour doubts as to whether the mixture of wastes concerned can be recovered in an environmentally sound manner, within the meaning of point 1(b) of Annex IIIA to that regulation, those authorities must enforce the general prior written notification and consent procedure under Article 3(1), in order to ensure an adequate level of protection of the environment and of human health.

75 Lastly, it should be noted that, as the Advocate General observed in point 74 of her Opinion, unless and until there is an appropriate legislative initiative to establish common criteria for the type and level of contamination by impurities that are tolerable for mixtures of wastes, which will enable the condition laid down in point 1(b) of that annex to be applied uniformly throughout the European Union, Article 28(2) of that regulation can apply. According to that article, where the authorities of the Member State of dispatch and those of the Member State of destination cannot agree on the classification of a consignment of waste and, therefore, on whether the procedure relating to the general information requirements, laid down in Article 18 of that regulation, should

apply, the waste concerned will be regarded as waste listed in Annex IV to that regulation. It will therefore be subject to the prior written notification and consent procedure under Article 3(1) of Regulation No 1013/2006.

76 In the present case, it is for the referring court, having regard to the factors indicated above, to determine whether, in the case in the main proceedings, the presence of impurities in the mixture of wastes at issue means that, in the light of the requirements under point 1 of Annex IIIA to Regulation No 1013/2006, that mixture cannot be classified in the list of mixtures of wastes included in that annex and therefore cannot be subject, under Article 3(2)(b) of that regulation, to the general information requirements within the meaning of Article 18 of that regulation.

77 Having regard to all the foregoing, the questions referred should be answered as follows:

– Article 3(2)(a) of Regulation No 1013/2006 must be interpreted as meaning that it does not apply to a mixture of paper, paperboard and paper product wastes, each of which comes under one of the first three indents of Code B3020 of Annex IX to the Basel Convention, reproduced in List B of Part 1 of Annex V to that regulation, and which contains up to 10% impurities;

– Article 3(2)(b) of Regulation No 1013/2006 must be interpreted as meaning that it applies to such a mixture of wastes provided, first, that mixture does not contain materials which come under the fourth indent of Code B3020 of Annex IX to that convention, reproduced in List B of Part 1 of Annex V to that regulation, and, secondly, the requirements in paragraph 1 of Annex IIIA to that regulation are met, which it is for the referring court to verify.

Costs

78 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 (Fifth Chamber) hereby rules:

Article 3(2)(a) 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 (EU) 2015/2002 of 10 November 2015, must be interpreted as meaning that it does not apply to a mixture of paper, paperboard and paper product wastes, each of which comes under one of the first three indents of Code B3020 of Annex IX to the Convention on the control of transboundary movements of hazardous wastes and their disposal, signed in Basel on 22 March 1989 and approved on behalf of the European Community by Council Decision 93/98/EEC of 1 February 1993, reproduced in List B of Part 1 of Annex V to that regulation, and which contains up to 10% impurities.

Article 3(2)(b) of Regulation No 1013/2006, as amended by Regulation 2015/2002, must be interpreted as meaning that it applies to such a mixture of wastes provided, first, that mixture does not contain materials which come under the fourth indent of Code B3020 of Annex IX to that convention, reproduced in List B of Part 1 of Annex V to that regulation, and, secondly, the requirements in paragraph 1 of Annex IIIA to that regulation are met, which it is for the referring court to verify.

[Signatures]

[i] — The wording of paragraph 54 of this judgment has been amended since it was first put online.