Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

21 January 2025 *

(Reference for a preliminary ruling – Environment – Shipment of waste – Directive 2006/12/EC – Directive 2008/98/EC – Concept of 'waste' – Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal – Article 1(4) – Regulation (EC) No 1013/2006 – Waste subject to the prior written notification and consent procedure – Shipments of waste within the European Union – Article 1(3)(b) – Validity – Interpretation in conformity with the Basel Convention – Waste generated on board a ship following damage sustained by it on the high seas – Concept of 'offloading of waste' – Partial offloading of waste in a safe port)

In Case C-188/23,

REQUEST for a preliminary ruling under Article 267 TFEU from the Oberlandesgericht München (Higher Regional Court, Munich, Germany), made by decision of 14 March 2023, received at the Court on 23 March 2023, in the proceedings

Land Niedersachsen

v

Conti 11. Container Schiffahrts-GmbH & Co. KG MS 'MSC Flaminia',

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, F. Biltgen, K. Jürimäe, C. Lycourgos, I. Jarukaitis, M.L. Arastey Sahún, S. Rodin, A. Kumin, N. Jääskinen and D. Gratsias, Presidents of Chambers, E. Regan, I. Ziemele (Rapporteur) and J. Passer, Judges,

Advocate General: T. Ćapeta,

Registrar: A. Juhász-Tóth, Administrator,

having regard to the written procedure and further to the hearing on 27 February 2024,

after considering the observations submitted on behalf of:

– the Land Niedersachsen, by H. Jacobj, R. van der Hout and S. Walter, Rechtsanwälte,

* Language of the case: German.

– Conti 11. Container Schiffahrts-GmbH & Co. KG MS ‘MSC Flaminia’, by J.-E. Pötschke and W. Steingröver, Rechtsanwälte,

– the French Government, by B. Fodda, B. Herbaut and M. Raux, acting as Agents,

– the European Parliament, by G.C. Bartram and W.D. Kuzmienko, acting as Agents,

– the Council of the European Union, by T. Haas and A. Maceroni, acting as Agents,

– the European Commission, by M. Escobar Gomez, M. Bruti Liberati, L. Haasbeek and M. Noll-Ehlers, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 16 May 2024,

gives the following

Judgment

1 This request for a preliminary ruling concerns the validity and interpretation of Article 1(3)(b) 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).

2 The request has been made in proceedings between the Land Niedersachsen (Land of Lower Saxony, Germany) and Conti 11. Container Schiffahrts-GmbH & Co. KG MS ‘MSC Flaminia’ (‘Conti’) concerning compensation for the damage that Conti claims to have suffered as a result of the obligation, imposed by the Land of Lower Saxony, to implement a prior written notification and consent procedure relating to the transport of waste on board the ship MSC *Flaminia* (‘the *Flaminia*’) after that ship sustained damage on the high seas.

Legal context

International law

Vienna Convention on the Law of Treaties

3 Article 31 of the Vienna Convention on the Law of Treaties of 23 May 1969 (*United Nations Treaty Series*, Vol. 1155, p. 331), entitled ‘General rule of interpretation’, states:

‘1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:

(a) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty;

(b) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.

…'

Basel Convention

4 The preamble to the Convention on the control of transboundary movements of hazardous wastes and their disposal, signed in Basel on 22 March 1989, approved on behalf of the European Economic 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'), states, in the first, third to fifth, tenth, eleventh and fifteenth recitals thereof:

'[the Parties to the Convention are] aware of the risk of damage to human health and the environment caused by hazardous wastes and other wastes and the transboundary movement thereof,

…

… the most effective way of protecting human health and the environment from the dangers posed by such wastes is the reduction of their generation to a minimum in terms of quantity and/or hazard potential,

… States should take necessary measures to ensure that the management of hazardous wastes and other wastes including their transboundary movement and disposal is consistent with the protection of human health and the environment whatever the place of disposal,

… States should ensure that the generator should carry out duties with regard to the transport and disposal of hazardous wastes and other wastes in a manner that is consistent with the protection of the environment, whatever the place of disposal,

…

… enhanced control of transboundary movement of hazardous wastes and other wastes will act as an incentive for their environmentally sound management and for the reduction of the volume of such transboundary movement,

… States should take measures for the proper exchange of information on and control of the transboundary movement of hazardous wastes and other wastes from and to those States,

…

… States are responsible for the fulfilment of their international obligations concerning the protection of human health and protection and preservation of the environment, and are liable in accordance with international law'.

5 Article 1 of that convention, entitled ‘Scope of the Convention’, provides:

‘1. 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; and

(b) Wastes that are not covered under paragraph (a) but are defined as, or are considered to be, hazardous wastes by the domestic legislation of the Party of export, import or transit.

2. Wastes that belong to any category contained in Annex II that are subject to transboundary movement shall be “other wastes” for the purposes of this Convention.

…

4. Wastes which derive from the normal operations of a ship, the discharge of which is covered by another international instrument, are excluded from the scope of this Convention.’

6 Article 4 of the Basel Convention, entitled ‘General Obligations’, provides:

‘…

2. Each Party shall take the appropriate measures to:

(a) Ensure that the generation of hazardous wastes and other wastes within it is reduced to a minimum, taking into account social, technological and economic aspects;

(b) Ensure the availability of adequate disposal facilities, for the environmentally sound management of hazardous wastes and other wastes, that shall be located, to the extent possible, within it, whatever the place of their disposal;

…

(d) Ensure that the transboundary movement of hazardous wastes and other wastes is reduced to the minimum consistent with the environmentally sound and efficient management of such wastes, and is conducted in a manner which will protect human health and the environment against the adverse effects which may result from such movement;

…

(f) Require that information about a proposed transboundary movement of hazardous wastes and other wastes be provided to the States concerned, according to Annex V A, to state clearly the effects of the proposed movement on human health and the environment;

…

(h) Co-operate in activities with other Parties and interested organizations, directly and through the Secretariat, including the dissemination of information on the transboundary movement of hazardous wastes and other wastes, in order to improve the environmentally sound management of such wastes and to achieve the prevention of illegal traffic.

…'

7 Article 6 of that convention, entitled 'Transboundary Movement between Parties', provides:

'1. The State of export shall notify, or shall require the generator or exporter to notify, in writing, through the channel of the competent authority of the State of export, the competent authority of the States concerned of any proposed transboundary movement of hazardous wastes or other wastes. Such notification shall contain the declaration and information specified in Annex V A, written in a language acceptable to the State of import. Only one notification needs to be sent to each State concerned.

2. The State of import shall respond to the notifier in writing, consenting to the movement with or without conditions, denying permission for the movement, or requesting additional information. A copy of the final response of the State of import shall be sent to the competent authorities of the States concerned which are Parties.

3. The State of export shall not allow the generator or exporter to commence the transboundary movement until it has received written confirmation that:

(a) The notifier has received the written consent of the State of import; and

(b) The notifier has received from the State of import confirmation of the existence of a contract between the exporter and the disposer specifying environmentally sound management of the wastes in question.

…'

8 Article 10(1) of the said convention is worded as follows:

'The Parties shall co-operate with each other in order to improve and achieve environmentally sound management of hazardous wastes and other wastes.'

9 Annex I to the same convention contains a list of the categories of waste subject to the control provided for by that convention.

10 Annex II to the Basel Convention specifies the categories of waste requiring special consideration.

11 Annex VIII to that convention sets out a list of waste regarded as hazardous under Article 1(1)(a) of the same convention.

European Union law

Directive 2006/12/EC

12 Article 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, in paragraph 1(a) thereof:

'For the purposes of this Directive:

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

…'

13 Directive 2006/12 was 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). Article 1(1)(a) of Directive 2006/12 is reproduced, in essence, in Article 3(1) of Directive 2008/98.

Regulation No 1013/2006

14 Recitals 1, 3, 7, 8, 14, 18, 35 and 36 of Regulation No 1013/2006 state:

'(1) The main and predominant objective and component of [Regulation No 1013/2006] is the protection of the environment, its effects on international trade being only incidental.

…

(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. By adopting [Council] Regulation (EEC) No 259/93 [of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community (OJ 1993 L 30, p. 1)], the Council [of the European Union] has established rules to curtail and to control such movements designed, inter alia, to make the existing Community system for the supervision and control of waste movements comply with the requirements of the Basel Convention.

…

(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 destined for disposal operations and 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. Such a procedure should in turn entail prior notification, which enables the competent authorities to be duly informed so that they can take all necessary measures for the protection of human health and the environment. It should also enable those authorities to raise reasoned objections to such a shipment.

…

(18) Considering the responsibility of waste producers for the environmentally sound management of waste, the notification and movement documents for waste shipments should, where practicable, be filled in by the waste producers.

…

(35) It is necessary to ensure the safe and environmentally sound management of ship dismantling in order to protect human health and the environment. …

(36) Efficient international cooperation regarding control of shipments of waste is instrumental in ensuring that shipments of hazardous waste are controlled. Information exchange, shared responsibility and cooperative efforts between the Community and its Member States and third countries should be promoted with a view to ensuring sound management of waste.'

15 Article 1 of that regulation provides:

'1. This Regulation establishes procedures and control regimes for the shipment of waste, depending on the origin, destination and route of the shipment, the type of waste shipped and the type of treatment to be applied to the waste at its destination.

…

3. The following shall be excluded from the scope of this Regulation:

(a) the offloading to shore of waste, including waste water and residues, generated by the normal operation of ships and offshore platforms, provided that such waste is subject to the requirements of the International Convention for the Prevention of Pollution from Ships, [signed in London on 2 November 1973, as supplemented by the Protocol of 17 February 1978] (Marpol 73/78), or other binding international instruments;

(b) waste generated on board vehicles, trains, aeroplanes and ships, until such waste is offloaded in order to be recovered or disposed of;

…'

16 Article 2 of that regulation provides:

‘For the purposes of this Regulation:

…

1. “waste” is as defined in Article 1(1)(a) of Directive [2006/12];

2. “hazardous waste” is as defined in Article 1(4) of Council Directive 91/689/EEC of 12 December 1991 on hazardous waste [(OJ 1991 L 377, p. 20), as amended by Directive 94/31/EC of 27 June 1994 (OJ 1994 L 168, p. 28)];

…

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;

…

34. “shipment” means the transport of waste destined for recovery or disposal which is planned or takes place:
   (a) between a country and another country; or
   (b) between a country and overseas countries and territories or other areas, under that country’s protection; or
   (c) between a country and any land area which is not part of any country under international law; or
   (d) between a country and the Antarctic; or
   (e) from one country through any of the areas referred to above; or
   (f) within a country through any of the areas referred to above and which originates in and ends in the same country; or
   (g) from a geographic area not under the jurisdiction of any country, to a country;

…’

17 Article 3(1) of the same regulation, which appears in Title II thereof, entitled ‘Shipments within the Community with or without transit through third countries’, provides:

‘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:

(a) if destined for disposal operations:

   all wastes;

(b) if destined for recovery operations:
   (i) wastes listed in Annex IV, which include, inter alia, wastes listed in Annexes II and VIII to the Basel Convention,
   (ii) wastes listed in Annex IVA,
   (iii) wastes not classified under one single entry in either Annex III, IIIB, IV 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.'

18 Chapter 1 of Title II of Regulation No 1013/2006, which comprises Articles 4 to 17, describes the prior written notification and consent procedure.

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

19 The *Flaminia* is a container ship belonging to Conti, which flew the German flag during the period at issue in the main proceedings.

20 On 14 July 2012, during a voyage from Charleston (United States) to Antwerp (Belgium), a fire broke out and explosions occurred on board that ship while it was transporting 4 808 containers, 151 of which were 'hazardous substance' containers. After the fire was brought under control, Conti obtained, on 21 August 2012, authorisation to tow the ship into German territorial waters. In accordance with the letter of the Havariekommando (Central Command for Maritime Emergencies, Germany) of 25 August 2012, Conti was required to draw up an action plan and to specify possible contractual partners to undertake the corresponding measures.

21 On 9 September 2012, the said ship was towed to Wilhelmshaven (Germany).

22 Conti inter alia undertook with the German authorities to ensure the safe transfer of the same ship to a repair yard in Mangalia (Romania) and appropriate treatment of the substances on board the ship.

23 By letter of 30 November 2012, the Niedersächsisches Umweltministerium (Ministry of the Environment of the Land of Lower Saxony, Germany) informed Conti that the ship itself 'and the water on board used to extinguish the fire as well as the sludge and scrap metal [were] to be classified as waste' and that, consequently, their shipment was subject to a prior written notification and consent procedure. By letter of 3 December 2012, Conti challenged that assessment.

24 By decision of 4 December 2012, the Gewerbeaufsichtsamt Oldenburg (Trade and Industry Inspectorate, Oldenburg, Germany) obliged Conti to initiate such a procedure on account of the presence on board the *Flaminia* of scrap metal and fire-extinguishing water mixed with sludge and cargo residues. Conti was also prohibited from moving the ship before the said procedure had been completed and a verifiable waste disposal plan had been submitted in the German language.

25 On 21 December 2012, the intact cargo was unloaded and the seaworthiness of the ship up to a wave height of 6 metres was confirmed.

26 A prior written notification and consent procedure for the shipment of the fire-extinguishing water to the port of Odense (Denmark) was initiated and completed. The pumping of the fire-extinguishing water commenced on 18 February 2013. Once it was possible to estimate the quantity of extinguishing sludge that could not be pumped, the continuation of that procedure was initiated, on 26 February 2013, with the Romanian authorities.

27 Authorisation to leave, which had been requested for 4 March 2013, was issued on 1 March 2013. However, before the *Flaminia* could set sail from the port, 30 containers with waste had to be unloaded, an operation which lasted until 7 March 2013. After the closure of the prior written notification and consent procedure initiated with the Romanian authorities, that ship containing 24 000 tonnes of waste was able to embark on its voyage on 15 March 2013.

28 Following the action brought by Conti before the Landgericht München I (Regional Court, Munich I, Germany) seeking an order that the Land of Lower Saxony pay compensation for the damage resulting in particular from the costs incurred by the notification procedures that it had to implement, that court made a request for a preliminary ruling to the Court seeking to determine whether residues attributable to the damaging of a ship, in the form of scrap metal and fire-extinguishing water mixed with sludge and cargo residues, had to be regarded as 'waste generated on board vehicles, trains, aeroplanes and ships' within the meaning of Article 1(3)(b) of Regulation No 1013/2006.

29 In its judgment of 16 May 2019, *Conti 11. Container Schiffahrt* (C-689/17, 'the judgment in *Conti 11*', EU:C:2019:420), the Court held that such residues must be regarded as waste generated on board ships, within the meaning of that provision, which is excluded from the scope of that regulation until it is offloaded in order to be recovered or disposed of.

30 Following that judgment, the Landgericht München I (Regional Court, Munich I) partially upheld Conti's claim for compensation.

31 The Land of Lower Saxony lodged an appeal against that decision before the Oberlandesgericht München (Higher Regional Court, Munich, Germany), which is the referring court, which expresses doubts as to the validity of Article 1(3)(b) of Regulation No 1013/2006 in the light of Article 1(4) of the Basel Convention, in so far as hazardous waste which is not generated in the course of the normal operation of a ship, which has not yet been offloaded and which must be shipped from one Member State to another Member State, is, by virtue of that provision of Regulation No 1013/2006, also exempted from the need to be subject to a prior written notification and consent procedure.

32 It takes the view that Article 1(4) of the Basel Convention excludes only from the scope of that convention waste, within the meaning of Annex I thereto, which is generated in the course of the 'normal' operation of a ship. Waste generated on board a ship following damage sustained by it on the high seas, however, cannot be attributed to the 'normal' operation of that ship.

33 That being so, it follows from the judgment in *Conti 11* that Article 1(3)(b) of Regulation No 1013/2006 provides for a more extensive derogation from the prior written notification and consent procedure than that provided for by the Basel Convention, since, under that provision, waste which does not result from the 'normal' operation of a ship, within the meaning of Article 1(4) of that convention, which has not yet been offloaded and which must be shipped from one Member State to another Member State does not fall within the scope of that regulation.

34 The referring court recalls that the European Union is a party to that convention and that it is, as such, bound by the obligations arising from it.

35 In those circumstances, the Oberlandesgericht München (Higher Regional Court, Munich) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Is the exemption from the obligation to notify, set out in Article 1(3)(b) of Regulation [No 1013/2006] invalid, as being contrary to the provisions of the Basel Convention …, in so far as the exemption would also remove the obligation to notify hazardous waste that is attributable to damage incurred by a ship at sea and that is to be regarded as waste within the meaning of that exemption provision in accordance with the judgment [in *Conti 11*]?

(2) In the event that Question [1] is answered in the negative, is the exemption provided for in Article 1(3)(b) of Regulation [No 1013/2006], to be interpreted, in the light of the requirements of the Basel Convention …, restrictively as meaning that residues in the form of scrap metal and fire-extinguishing water mixed with sludge and cargo residues such as those in the present case that are attributable to damage incurred at sea are not to be regarded as waste generated on board ships within the meaning of that provision?'

Consideration of the questions referred

The first question

Admissibility

36 Without directly raising the inadmissibility of the first question, Conti considers that the validity of Article 1(3)(b) of Regulation No 1013/2006 in the light of Article 1(4) of the Basel Convention was confirmed – at least incidentally – by the Court in the judgment in *Conti 11*. In particular, it considers that, in paragraph 30 of that judgment, the Court gave reasons for its decision not to grant the request of the Land of Lower Saxony to reopen the oral part of the procedure following the delivery of the Advocate General's Opinion in the case which gave rise to the said judgment by the absence of any new fact after the close of that oral part, thus suggesting that it endorsed the considerations, set out in that Opinion, relating to the validity of Article 1(3)(b) of Regulation No 1013/2006 in the light of Article 1(4) of the Basel Convention.

37 In that regard, it should be borne in mind that, according to settled case-law of the Court, in the context of the cooperation between the Court and the national courts provided for in Article 267 TFEU, it is solely for the national court before which a 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. It follows that questions referred for a preliminary ruling relating to EU law enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court for a preliminary ruling only where it is quite obvious that the interpretation or the assessment of validity of a rule of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (see, to that effect, judgment of 4 October 2024, *Confédération paysanne (Melons and tomatoes from Western Sahara)*, C-399/22, EU:C:2024:839, paragraphs 60 and 61 and the case-law cited).

38 In the case at hand, the referring court justifies the need for an answer to the first question by the fact that the judgment in *Conti 11* did not rule on the validity of Article 1(3)(b) of Regulation No 1013/2006 in the light of Article 1(4) of the Basel Convention. An answer from the Court to that question, however, is decisive for the resolution of the dispute in the main proceedings. After all, in so far as Conti's claim in the dispute in the main proceedings seeks compensation for the damage suffered as a result of the Land of Lower Saxony's imposition of compliance with the prior written notification and consent procedure, the question of the validity of Article 1(3)(b) of Regulation No 1013/2006 – which Conti claims applies to the shipment of waste at issue in the main proceedings – is decisive for the purposes of deciding whether that claim is well founded.

39 In such circumstances, there can be no doubt that the question asked is relevant to the resolution of the dispute in the main proceedings and that the conditions of admissibility, recalled in paragraph 37 of the present judgment, are satisfied.

40 It should also be noted that, contrary to what Conti claims, the judgment in *Conti 11* cannot be understood as meaning that the Court implicitly confirmed in it the validity of Article 1(3)(b) of Regulation No 1013/2006 in the light of Article 1(4) of the Basel Convention. After all, in paragraph 30 of that judgment, the Court explicitly noted that that question of validity had not been raised by the referring court, meaning that it was not for it to answer it.

41 It follows that the first question is admissible.

Substance

42 By its first question, the referring court asks the Court to examine, in the light of Article 1(4) of the Basel Convention, the validity of Article 1(3)(b) of Regulation No 1013/2006, as interpreted by the Court in the judgment in *Conti 11*, according to which the exclusion from the scope of that regulation provided for by that provision covers the waste generated on board a ship following damage sustained by that ship on the high seas until that waste is offloaded in order to be recovered or disposed of.

43 In order to provide the referring court with a useful answer, it is necessary to examine, in the first place, whether that exclusion from the scope of Regulation No 1013/2006 is applicable where the waste generated on board that ship following such damage has remained on the ship in order for it to be shipped, together with the same ship, for recovery or disposal, after part of that waste has been offloaded in order to be recovered or disposed of.

44 By virtue of Article 216(2) TFEU, where international agreements are concluded by the European Union, their provisions form an integral part of the EU legal order, such that the EU institutions are bound by such agreements. Thus, the Court has jurisdiction to interpret the provisions of those agreements which prevail over secondary EU legislation, which must be interpreted, as far as possible, in accordance with those agreements (see, to that effect, judgment of 27 February 2024, *EUIPO* v *The KaiKai Company Jaeger Wichmann*, C-382/21 P, EU:C:2024:172, paragraph 70 and the case-law cited).

45 In the case at hand, by Decision 93/98, the European Economic Community became a party to the Basel Convention, meaning that that convention has been an integral part of the EU legal order since 1994 (see, to that effect, judgment of 28 May 2020, *Interseroh*, C-654/18, EU:C:2020:398, paragraph 44 and the case-law cited).

46 As recital 3 of Regulation No 1013/2006 states, by adopting Regulation No 259/93, which was repealed and replaced by Regulation No 1013/2006, the EU legislature established rules to curtail and control shipments of waste designed, inter alia, to make the existing Community system for the supervision and control of waste movements comply with the requirements of the Basel Convention. It is also apparent from recital 8 of Regulation No 1013/2006 that the EU legislature also pursued that objective of compliance of EU law with that convention when adopting that regulation.

47 It is therefore necessary to determine the scope of the relevant provisions of the Basel Convention. In that regard, as is provided for in Article 31(1) of the Vienna Convention on the Law of Treaties, those provisions must be interpreted in good faith in accordance with the ordinary meaning of the terms of the Basel Convention in their context and in the light of that convention's object and purpose.

48 Article 1 of that convention, entitled 'Scope of the Convention', contains a paragraph 1 which explains what is meant by 'hazardous wastes' for the purposes of that convention.

49 For those wastes, Article 4(2) of the Basel Convention provides, first, that the parties thereto are to take the appropriate measures to ensure that the generation of hazardous wastes is reduced to a minimum, taking into account social, technological and economic aspects, and to promote the environmentally sound management of such wastes whatever the place of their disposal (see, in particular, points (a) and (b)). Second, under that provision, those parties are to take the appropriate measures to restrict the transboundary movement of hazardous wastes except where they are deemed to be in accordance with the principles of efficient and environmentally sound management and are conducted in a manner which will protect human health and the environment against the adverse effects which may result therefrom (see, in particular, point (d)). Third, under the same provision, those parties require that information about the proposed transboundary movement of hazardous wastes be provided to the States concerned, so that they may assess the consequences of such movements for human health and the environment and cooperate with a view to disseminating information on that movement, in order to improve the environmentally sound management of such wastes and to prevent illegal traffic (see, in particular, points (f) and (h)).

50 In particular, Article 6 of that convention describes the procedure for prior written notification and consent which applies to any shipment of waste falling within the scope of the said convention.

51 Article 1(4) of the Basel Convention nevertheless provides that wastes which derive from the 'normal operations' of a ship, the discharge of which is covered by another international instrument, are excluded from the scope of that convention and therefore are exempted from the prior written notification and consent procedure provided for in Article 6 of that convention.

52 In that regard, it is important to note that, according to the first paragraph of the preamble to that convention, hazardous wastes and other wastes and the transboundary movement thereof risk causing damage to human health and the environment and that, according to the fourth paragraph thereof, Member States should take necessary measures to ensure that the management of hazardous wastes and other wastes, including their transboundary movement and disposal, is consistent with the protection of human health and the environment whatever the place of disposal. The tenth paragraph of that preamble states, moreover, that enhanced control

of transboundary movement of hazardous wastes and other wastes will act as an incentive for their environmentally sound management and for the reduction of the volume of such transboundary movement.

53 Accordingly, as Article 1(4) of the Basel Convention is in the nature of an exception to the application of the procedure for written notification and consent prior to the shipment of hazardous wastes or other wastes, as is provided for by that convention, that provision cannot be interpreted in such a way as to call into question the achievement of the objectives pursued by that convention, namely the protection of human health and the environment.

54 In paragraph 53 of the judgment in *Conti 11*, to which the referring court refers, the Court held that, under Article 1(3)(b) of Regulation No 1013/2006, the waste generated on board a ship following the sustaining of damage is excluded from that regulation's scope 'until [that waste] is offloaded in order to be recovered or disposed of'.

55 First, however, it must be pointed out that, in paragraph 48 of that judgment, the Court inter alia explained the reason justifying the exclusion provided for in that provision as regards the waste generated on board a ship following the sustaining of damage on the high seas, namely the sudden and unforeseeable nature of the generation of that type of waste, making it in practice impossible or excessively difficult for the person responsible for the ship concerned to be able to be acquainted in sufficient time with the information necessary for the correct application of the rules of that regulation relating to the prior written notification and consent procedure, which are intended to ensure that the shipment of that waste is supervised and is controlled effectively, within the meaning of the said regulation.

56 Second, in paragraph 42 of the judgment in *Conti 11*, the Court specified that, in so far as the exclusion provided for in Article 1(3)(b) of the same regulation is applicable only 'until such waste is offloaded in order to be recovered or disposed of', that provision applies only as long as the waste concerned has not left the ship in order to be shipped for recovery or disposal.

57 That being so, where, as in the dispute in the main proceedings, part of the waste generated following damage sustained by a ship on the high seas is offloaded in a safe port, as the case may be with a view to being the subject of a shipment itself subject to a prior written notification and consent procedure, the question arises whether the exclusion provided for in Article 1(3)(b) of Regulation No 1013/2006 is maintained as regards the subsequent shipment of the part of the waste which has not been offloaded from that ship.

58 In that regard, it should be borne in mind that, in interpreting a provision of EU law, it is necessary to consider not only its wording but also its context and the objectives pursued by the legislation of which it forms part (judgment of 4 October 2024, *Lindenapotheke*, C-21/23, EU:C:2024:846, paragraph 52 and the case-law cited).

59 So far as concerns the context of Article 1(3)(b) of Regulation No 1013/2006, it should be noted that, by virtue of Article 1(1) thereof, that regulation establishes procedures and control regimes for the shipment of waste. It follows that the said regulation institutes a system in which the prior written notification and consent procedure applies in principle, in accordance with the detailed rules laid down in Chapter 1 of Title II of that regulation, to any shipment of waste falling within the scope of that regulation.

60 First, the concept of 'waste', within the meaning of Article 2(1) of the same regulation, which includes the more specific concept of 'hazardous waste', as is defined in Article 2(2) of Regulation No 1013/2006, refers to Article 1(1)(a) of Directive 2006/12, the wording of which has been reproduced in Article 3(1) of Directive 2008/98. Article 1(1)(a) of Directive 2006/12, read in conjunction with Annex I thereto, uses a particularly broad definition of 'waste', namely any substance or object which the holder discards or intends or is required to discard and which falls within one of the categories referred to in that annex. Second, Article 2(34) of that regulation defines the concept of 'shipment' as 'the transport of waste destined for recovery or disposal'. Thus, those definitions attest to the intention of the EU legislature to confer a very broad scope on the prior written notification and consent procedure provided for in Regulation No 1013/2006.

61 Thus, Article 1(3)(b) of that regulation is in the nature of an exception to the principle of the widest possible application of that procedure and must, consequently, be given a restrictive interpretation.

62 In terms of the objectives pursued by Regulation No 1013/2006, it should be recalled that recital 1 thereof states that its main objective is the protection of the environment. That objective is also apparent from the fourth paragraph of the preamble to the Basel Convention, which states that States Parties should take necessary measures to ensure that the management of hazardous wastes and other wastes, including their transboundary movement and disposal, is consistent with the protection of human health and the environment whatever the place of disposal.

63 To that end, recital 7 of that regulation highlights the importance of organising and regulating the supervision and control of shipments of waste in a way which takes account of the need to preserve, protect and improve the quality of the environment and human health. Likewise, recital 8 of that regulation, recalling the requirement laid down in Article 4(2)(d) of the Basel Convention, notes the importance of reducing shipments of hazardous waste to a minimum, consistent with the environmentally sound and efficient management of such waste.

64 Recital 14 of the same regulation states, moreover, that the obligation of prior written notification and consent in the case of shipments of waste is intended to ensure optimum supervision and control of waste not listed in Annexes III, IIIA or IIIB to Regulation No 1013/2006 destined for recovery operations. As follows, in essence, from recital 36 of that regulation, effective control of shipments of hazardous waste requires efficient international cooperation and information exchange, which is also apparent from the eleventh paragraph of the preamble to the Basel Convention as well as from Article 10(1) thereof.

65 Achieving those objectives, however, necessarily involves considering that, where part of the waste generated following damage sustained by a ship on the high seas has been offloaded in a safe port in order to be recovered or disposed of, the other waste attributable to that damage remaining on the ship, with a view to being shipped, together with that ship, to another port in order for it to be disposed of or recovered, no longer benefits, for the latter shipment, from the derogation which results from the application of Article 1(3)(b) of Regulation No 1013/2006.

66 First of all, that regulation establishes, for the purpose of implementing the European Union's obligations under the Basel Convention, the prior written notification and consent procedure as a central element of the supervision and control of shipments of waste. That procedure makes it possible to record data concerning the very existence of that waste and its hazardousness, as follows from Article 4 of that regulation, which requires the notifier to provide information relating, inter alia, to the quantity, name, composition and destination of the waste. As is

apparent from recital 14 of the same regulation, that procedure also enables the competent national authorities to be duly informed of shipments of waste so that they can take all necessary measures for the protection of human health and the environment, but also to raise reasoned objections to such shipments. Maintaining the benefit of the derogation which results from the application of Article 1(3)(b) of Regulation No 1013/2006 to the waste remaining on the ship concerned, in circumstances where the person responsible for the ship is reasonably in a position to know the information necessary for a correct application of the prior written notification and consent procedure provided for by that regulation, however, would not only create a lacuna in the supervision and control that it requires, but would also risk depriving that procedure of any useful effect.

67 In view of the special responsibility of waste producers, as is recalled in recital 18 of Regulation No 1013/2006, once that ship has docked in a safe port in order to offload part of the waste there, it may reasonably be considered that the person responsible for the ship has the information necessary to apply the rules laid down by that regulation correctly.

68 Furthermore, the objective of ensuring the sound management of waste and reducing shipments of it to a minimum consistent with the environmentally sound and efficient management of it, laid down in recital 8 of that regulation, which refers explicitly to Article 4(2)(d) of the Basel Convention, would be compromised if the person responsible for the ship concerned, on board which waste has been generated following damage sustained by it on the high seas, had, after the offloading of part of that waste in a safe port, a margin of discretion as to whether to trigger the prior written notification and consent procedure in respect of the subsequent shipment of the waste remaining on that ship. In particular, Regulation No 1013/2006 must be given an interpretation which guarantees that the said person responsible can take account of no considerations other than those relating to the protection of the environment and human health by effecting unnecessary movements of waste which are incompatible with the objective of reducing shipments of waste to a minimum, consistent with the environmentally sound and efficient management of it.

69 Next, Regulation No 1013/2006 defines with precision, in Articles 4 to 17 thereof, the conditions under which the prior written notification and consent procedure must be initiated and completed. Such a framework helps to ensure legal certainty for operators by allowing the producers and carriers of waste which is being shipped to know the extent of their obligations. That framework also enables the competent national authorities to exercise their supervisory and control powers. The interpretation of Article 1(3)(b) of that regulation according to which, where part of the waste generated following damage sustained by a ship on the high seas is offloaded in a safe port in order to be recovered or disposed of, the derogation which results from the application of that provision ceases to apply to the subsequent shipment of the waste which has remained on that ship has the effect of dispelling any uncertainty as to the need to initiate that procedure as regards that shipment.

70 Finally, the application of the written notification and consent procedure prior to the shipment of the waste remaining on the ship concerned contributes to the achievement of the objective of making waste producers accountable for their environmentally sound management, as is recalled, in essence, in recital 18 of Regulation No 1013/2006. After all, the person responsible for the ship having offloaded part of the waste will have to opt for a shipment of the waste remaining on that ship which best meets the requirements of protection of the environment and human health, as that regulation requires.

71 The interpretation reflected in paragraphs 65 to 70 of the present judgment is all the more compelling where, following a fire, waste has merged with the ship, making it particularly difficult – if not impossible – to separate that waste strictly. In that situation, the application of the prior written notification and consent procedure to the ship itself requires the person responsible for the ship to opt for a shipment enabling its dismantling in a safe and environmentally sound manner, as is provided for in recital 35 of that regulation.

72 In those circumstances, it is appropriate to find that the waste generated on board a ship following its sustaining of damage on the high seas which, after part of that waste has been offloaded in a safe port in order to be recovered or disposed of, remains on that ship in order to be shipped, together with that ship, for recovery or disposal, cannot be excluded from the scope of Regulation No 1013/2006, on the basis of Article 1(3)(b) of that regulation.

73 Such an interpretation of that provision, to the effect that the exception which is provided for therein applies only until the offloading in a safe port of all or part of the waste generated on board a ship following damage on the high seas, is in conformity with what is provided for in Article 1(4) of the Basel Convention, since it does not compromise the objective of protecting human health and the environment pursued by that convention.

74 In the second place, in view of the fact that Article 1(3)(b) of Regulation No 1013/2006 can be interpreted in conformity with the Basel Convention, it is not necessary to assess, first, whether the nature and the broad logic of that convention preclude the Court from examining the validity of an act of EU law in the light of the said convention and, second, whether the provisions of the same convention which are relied upon for the purposes of that examination appear, as regards their content, to be unconditional and sufficiently precise (judgments of 21 December 2011, *Air Transport Association of America and Others*, C-366/10, EU:C:2011:864, paragraphs 53 and 54 and the case-law cited, and of 4 October 2024, *Lithuania and Others* v *Parliament and Council (Mobility package)*, C-541/20 to C-555/20, EU:C:2024:818, paragraph 1036).

75 In the case at hand, it is apparent from the order for reference that part of the waste generated on board the *Flaminia* following its sustaining of damage on the high seas, which is not disputed to constitute hazardous waste within the meaning of Article 2(2) of Regulation No 1013/2006, was offloaded following that ship's docking in the port of Wilhelmshaven. The referring court indicates that that part of the waste consists of the water used to extinguish the fire which broke out on that ship, which could have been pumped in order to be shipped to the port of Odense for recovery or disposal, as well as part of the fire-extinguishing sludge.

76 It is also apparent from the order for reference that the other waste attributable to that fire which could not be pumped or offloaded, including, inter alia, residues in the form of scrap metal, sludge and cargo residues, remained on board the *Flaminia* in order to be shipped, together with that ship, to the port of Mangalia for recovery or disposal.

77 It follows that the waste shipped from the port of Wilhelmshaven to the port of Mangalia fell within the scope of Regulation No 1013/2006, with the result that that shipment had to be subject to the prior written notification and consent procedure provided for by that regulation.

78 Thus, contrary to the circumstances envisaged in paragraph 48 of the *Conti 11* judgment, it may be presumed that, following the offloading of part of the overall mass of waste generated on the *Flaminia*, the person responsible for the *Flaminia* was reasonably in a position to have

information concerning the quantity and nature of the waste remaining on that ship, with a view to organising its environmentally sound management and ensuring that shipments of it are reduced to a minimum, consistent with such management.

79 In the light of all of the foregoing considerations, the answer to the first question is that Article 1(3)(b) of Regulation No 1013/2006 must be interpreted as meaning that the exclusion from the scope of that regulation that that provision provides for, pertaining to the waste generated on board a ship following damage sustained by that ship on the high seas until that waste is offloaded in order to be recovered or disposed of, no longer applies to the waste which remains on board that ship in order for it to be shipped, together with that ship, for recovery or disposal, after part of that waste has been offloaded in a safe port in order to be recovered or disposed of, that interpretation being in conformity with Article 1(4) of the Basel Convention.

The second question

80 The answer to the second question follows from the answer given to the first question.

Costs

81 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Grand Chamber) hereby rules:

Article 1(3)(b) of Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste

must be interpreted as meaning that the exclusion from the scope of that regulation that that provision provides for, pertaining to the waste generated on board a ship following damage sustained by that ship on the high seas until that waste is offloaded in order to be recovered or disposed of, no longer applies to the waste which remains on board that ship in order for it to be shipped, together with that ship, for recovery or disposal, after part of that waste has been offloaded in a safe port in order to be recovered or disposed of, that interpretation being in conformity with Article 1(4) of the Convention on the control of transboundary movements of hazardous wastes and their disposal, signed in Basel on 22 March 1989, approved on behalf of the European Economic Community by Council Decision 93/98/EEC of 1 February 1993.

[Signatures]