JUDGMENT OF THE COURT (Fifth Chamber)

27 February 2002 *

In Case C-6/00,

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

Abfall Service AG (ASA)

and

Bundesminister für Umwelt, Jugend und Familie,

on the interpretation of Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community (OJ 1993 L 30, p. 1), as amended by Commission Decision No 98/368/EC of 18 May 1998 (OJ 1998 L 165, p. 20), and Council Directive 75/442/EEC of 15 July 1975 on waste (OJ 1975 L 194, p. 39), as amended by Council Directive 91/156/EEC of 18 March 1991 (OJ 1991 L 78, p. 32) and by Commission Decision 96/350/EC of 24 May 1996 (OJ 1996 L 135, p. 32),

* Language of the case: German.

THE COURT (Fifth Chamber),

composed of: P. Jann, President of the Chamber, S. von Bahr and A. La Pergola (Rapporteur), Judges,

Advocate General: F.G. Jacobs,
Registrar: D. Louterman-Hubeau, Head of Division,

after considering the written observations submitted on behalf of:

— Abfall Service AG (ASA), by C. Onz, Rechtsanwalt,

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

— the German Government, by W.-D. Plessing and B. Muttelsee-Schön, acting as Agents,

— the Netherlands Government, by M.A. Fierstra, acting as Agent,

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

having regard to the Report for the Hearing,

after hearing the oral observations of Abfall Service AG (ASA), represented by C. Onz; of the Bundesminister für Umwelt, Jugend und Familie, represented by C. Glasel and A. Moser, acting as Agents; of the German Government, represented by W.-D. Plessing; of the French Government, represented by D. Colas, acting as Agent; and of the Commission, represented by G. zur Hausen, at the hearing on 12 July 2001,

after hearing the Opinion of the Advocate General at the sitting on 15 November 2001,

gives the following

Judgment

1 By order of 16 December 1999, received at the Court on 11 January 2000, the Verwaltungsgerichtshof (Administrative Court) (Austria) referred to the Court for a preliminary ruling under Article 234 EC five questions on the interpretation of Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community (OJ 1993 L 30, p. 1), as amended by Commission Decision No 98/368/EC of 18 May 1998 (OJ 1998 L 165, p. 20, hereinafter 'the Regulation'), and Council Directive 75/442/EEC of 15 July 1975 on waste (OJ 1975 L 194, p. 39), as amended by Council Directive 91/156/EEC of 18 March 1991 (OJ 1991 L 78, p. 32) and Commission Decision 96/350/EC of 24 May 1996 (OJ 1996 L 135, p. 32, hereinafter 'the Directive').

2 Those questions were raised in proceedings between Abfall Service AG (ASA) (hereinafter 'Abfall Service') and the Bundesminister für Umwelt, Jugend und Familie (hereinafter 'the BMU') concerning the legality of a decision by which the BMU had objected to a shipment of waste planned by Abfall Service.

Relevant legislation

The Directive

3 The essential objective of the Directive is the protection of human health and the environment against harmful effects caused by the collection, transport, treatment, storage and tipping of waste. In particular, the fourth recital of the Directive states that the recovery of waste and the use of recovered materials should be encouraged in order to conserve natural resources.

4 In Article 1(e) of the Directive 'disposal' is defined as 'any of the operations provided for in Annex II A' and in Article 1(f) 'recovery' is defined as 'any of the operations provided for in Annex II B'.

5 Article 3(1) states:

'Member States shall take appropriate measures to encourage:

(a) firstly, the prevention or reduction of waste production and its harmfulness ...

(b) secondly:

— the recovery of waste by means of recycling, re-use or reclamation or any other process with a view to extracting secondary raw materials, or

— the use of waste as a source of energy.'

6 Annex II A, headed 'Disposal operations', states:

'NB: This Annex is intended to list disposal operations such as they occur in practice. ...

D 1 Deposit into or onto land (e.g. landfill, etc.)

...

D 3 Deep injection (e.g. injection of pumpable discards into wells, salt domes or naturally occurring repositories, etc.)

...

D 12 Permanent storage (e.g. emplacement of containers in a mine, etc.)

...'

7 Annex II B, headed 'Recovery operations', states:

'NB: This Annex is intended to list recovery operations as they occur in practice. ...

...

R 5 Recycling/reclamation of other inorganic materials

...

R 10 Land treatment resulting in benefit to agriculture or ecological improvement

...'

The Regulation

8 The Regulation lays down rules governing *inter alia* the monitoring and control of shipments of waste between Member States.

9 According to Article 2(i) of the Regulation, 'disposal' is 'as defined in Article 1(e) of Directive 75/442/EEC' and, according to Article 2(k), 'recovery' is 'as defined in Article 1(f) of Directive 75/442/EEC'.

10 Title II of the Regulation, headed 'Shipments of waste between Member States', contains two separate chapters, one of which concerns the procedure applicable to shipments of waste for disposal (Chapter A, Articles 3 to 5) and the other the procedure applicable to shipments of waste for recovery (Chapter B, Articles 6 to 11). The procedure prescribed for the second category of waste is less restrictive than the procedure for the first category.

11 Under Article 6(1), when a waste producer or holder intends to ship waste for recovery as listed in Annex III to the Regulation (Amber list of wastes) from one Member State to another Member State and/or pass it in transit through one or several other Member States, he is to notify the competent authority of destination and send copies of the notification to the competent authorities of dispatch and transit and to the consignee.

12 According to Article 6(3), notification is effected by means of the consignment note which is issued by the competent authority of dispatch. Article 6(5) specifies the information which the notifier is to supply on the consignment note, which includes *inter alia* information relating to the recovery operations referred to in Annex II B to the Directive (fifth indent of Article 6(5)).

13 Under Article 6(6), the notifier is required to conclude a contract with the consignee for the recovery of the waste, and a copy of that contract must be supplied to the competent authority on request.

14 Article 7(2) lays down the time-limits, conditions and procedures which must be observed by the competent authorities of destination, dispatch and transit to raise an objection to the notified, planned shipment of waste for recovery. That provision provides in particular that objections must be based on Article 7(4).

15 Article 7(4) provides:

'The competent authorities of destination and dispatch may raise reasoned objections to the planned shipment:

— in accordance with Directive 75/442/EEC, in particular Article 7 thereof,

or

— if it is not in accordance with national laws and regulations relating to environmental protection, public order, public safety or health protection,

or

— if the notifier or the consignee has previously been guilty of illegal trafficking. In this case, the competent authority of dispatch may refuse all shipments involving the person in question in accordance with national legislation,

or

— if the shipment conflicts with obligations resulting from international conventions concluded by the Member State or Member States concerned,

or

— if the ratio of the recoverable and non-recoverable waste, the estimated value of the materials to be finally recovered or the cost of the recovery and the cost of the disposal of the non recoverable fraction do not justify the recovery under economic and environmental considerations.'

16 Article 26 provides:

'1. Any shipment of waste effected:

...

(c) with consent obtained from the competent authorities concerned through falsification, misrepresentation or fraud;

...

shall be deemed to be illegal traffic.

...

5. Member States shall take appropriate legal action to prohibit and punish illegal traffic.'

17 Article 30(1) states:

'Member States shall take the measures needed to ensure that waste is shipped in accordance with the provisions of this Regulation. Such measures may include inspections of establishments and undertakings, in accordance with Article 13 of Directive 75/442/EEC, and spot checks of shipments.'

The main proceedings and the national court's questions

18 On 2 March 1998, Abfall Service, established at Graz, Austria, notified the BMU, as the competent authority of dispatch, of its intention to ship 7 000 tonnes of hazardous waste to Salzwerke AG, a company established in Germany.

19 According to that notification, the waste in question was slag and ashes produced as a by-product in the operation of waste incinerators and transformed into a 'specific product' at a waste-treatment plant in Vienna, Austria. The waste was to be deposited in a former salt-mine at Kochendorf, Germany, to secure hollow spaces (mine-sealing).

20 In the notification documents, Abfall Service classified the treatment of the waste to be shipped as a 'recovery' operation coming within the scope of the operation referred to in R5 of Annex II B to the Directive.

21 The competent authority of destination, the Stuttgart Regierungspräsidium, Germany, informed Abfall Service that there appeared to be no reason for it not to approve the notification classifying the shipment as a recovery operation.

22 By decision of 19 June 1998, the BMU raised an objection to the shipment under the fifth indent of Article 7(4)(a) of the Regulation. The ground for that objection was that the planned shipment in fact constituted a disposal operation, namely the operation referred to in D12 of Annex II A to the Directive.

23 Abfall Service challenged the BMU's decision before the Verwaltungsgerichtshof. In particular, it claimed that the ground stated for the objection, namely that the planned operation was not a recovery operation but a disposal operation, was not in accordance with those laid down in the fifth indent of Article 7(4)(a) of the Regulation.

24 In those circumstances, the Verwaltungsgerichtshof, taking the view that the outcome of the proceedings before it depended on an interpretation of Community law, decided to stay proceedings and refer the following questions to the Court for a preliminary ruling:

'(1) Is the competent authority at the place of dispatch under Council Regulation No 259/93 on supervision and control of shipments of waste within, into and out of the European Community ... competent to verify the correctness of the classification by the notifier as waste for recovery under the fifth indent of Article 6(5) of Regulation No 259/93 of waste to be transported for an intended recovery operation under Annex II B to Directive 75/442/EEC and, in the event that the classification is incorrect, prohibit the transport of such waste?

(2) In the reasoned objection to the transport of waste on the ground that the planned transport is not for purposes of recovery but for disposal, contrary to the classification indicated by the notifier in the accompanying notification, may the competent authority at the place of dispatch rely on the matters constituting grounds for an objection under the fifth indent of Article 7(4)(a) of Regulation No 259/93?

(3) Should the reply to Question 2 be in the negative, on what provision of Regulation No 259/93 or other provisions of Community law may the competent authority at the place of dispatch rely in refusing to authorise a transport of waste, where contrary to the information given by the notifier, the transport is for purposes not of recovery but of disposal?

(4) Is any delivery of waste to a mine to be regarded, irrespective of the actual circumstances of such delivery, as a disposal of waste within the meaning of Regulation No 259/93 in conjunction with Annex II A (D 12) to Directive 75/442/EEC?

(5) If Question 4 is answered in the negative, according to what criteria is classification under the operations listed in Annex II to Directive 75/442 to be carried out?'

The first three questions

25 In its first three questions, which it is appropriate to consider together, the national court is essentially asking, first, whether the competent authority of dispatch within the meaning of Article 2(c) of the Regulation is competent to verify whether a proposed shipment classified in the notification as a 'shipment of waste for recovery' does in fact correspond to that classification and, second, that being the case, whether that authority can object to the shipment where the

classification given by the notifier is erroneous and which provision of Community law must be the basis for its objection.

26 Abfall Service claims that the competent authority of dispatch is not competent to verify the accuracy of the notifier's classification of the shipment as a recovery operation and that, if that classification were indeed incorrect, the authority of dispatch would not be entitled to prohibit the shipment of waste unless the notification were clearly fraudulent.

27 In this respect, Abfall Service submits that only the competent authority of destination is entitled to raise an objection in the case of incorrect classification of the purpose of the shipment. It claims, in particular, that, as regards the grounds for objection set out in the fifth indent of Article 7(4)(a) of the Regulation, only the competent authority of destination is able to acquire, in sufficient time, the information relating to the recovery installation and the costs of recovery and disposal in the country of destination which would enable it to raise an objection in full knowledge of the facts.

28 Abfall Service adds that, if the competent authority of dispatch and the competent authority of destination could concomitantly scrutinise the purpose of the shipment, there would be a risk that their decisions would differ.

29 Furthermore, Abfall Service submits that the Regulation must be interpreted in the light of the principle of free movement of goods and in line with the principle of primacy of recovery, which together imply that the competent authority of dispatch is not entitled to raise an objection on the ground that the purpose of the shipment has been incorrectly classified. First, there is a risk that the competent authority of dispatch will use its powers to protect national economic interests and, second, the exercise of such a power constitutes an unjustified limitation to the principle of primacy of recovery.

30 In contrast, the Austrian and German Governments, the French Government in its oral submissions, the Netherlands Government and the Commission consider that the competent authority of dispatch is competent to verify the accuracy of information provided by the notifier, in particular with regard to the classification of the purpose of the shipment of waste.

31 As regards the question of which provision of Community law the competent authority of dispatch must use as the legal basis for an objection to a proposed shipment which is incorrectly classified as a shipment of waste for recovery, the Austrian and German Governments, reasoning by analogy, submit that the objection provided for in the fifth indent of Article 7(4)(a) of the Regulation can be used in the present case. The Netherlands Government and the Commission do not concur with that interpretation of the provision.

32 The Austrian and German Governments further submit that the competent authority of dispatch can also use the first indent of Article 7(4)(a) of the Regulation as the legal basis for objecting to a shipment incorrectly classified as a shipment of waste for recovery. The German Government considers that Article 4(3)(a)(i) of the Regulation, which concerns shipments of waste for disposal, can also be used by the competent authority of dispatch, after the purpose of the shipment has been reclassified.

33 The French Government, in its oral submissions, and the Netherlands Government submit that where, contrary to what the notifier has stated, a shipment is not a shipment of waste for recovery but, instead, of waste for disposal, the competent authority of dispatch may reclassify the shipment and is accordingly entitled to raise an objection under Article 4(3) of the Regulation.

34 The Commission submits that, in accordance with the general principle of compliance with the law, the competent authority of dispatch must raise an

objection to a shipment where its purpose has been incorrectly classified by the notifier and that, in such a case, it is not necessary for that authority to base its action on a specific provision of the Regulation.

Findings of the Court

35 It should be observed at the outset that the question of shipments of waste is regulated by the Regulation, in a harmonised manner, at Community level, in order to ensure the protection of the environment (Case C-324/99 *DaimlerChrysler* [2001] ECR I-9897, at paragraph 42).

36 The cases in which Member States may object to a shipment of waste between Member States are, for shipments of waste for disposal, those exhaustively listed in Article 4(3) of the Regulation (the judgement in *DaimlerChrysler*, paragraph 50) and, for waste for recovery subject to the procedure laid down in Articles 6 to 8 of the Regulation, those exhaustively listed in Article 7(4) of the Regulation as provided by Article 7(2) thereof.

37 However, the application of the provisions in the Regulation defining the objections to shipments of waste for disposal or recovery which may be raised by the competent authorities of dispatch, transit and destination presupposes that the purpose of the shipment has first been correctly classified in accordance with the definitions of disposal and recovery operations given in Article 1(e) and (f) of the Directive, provisions which refer, respectively, to Annex II A and II B to the Directive.

38 The need to correctly classify the purpose of the shipment of waste follows not only from the provisions in the Regulation, referred to at paragraph 36 of this judgment, which specify the grounds for objecting to a shipment, but also, more generally, from the Regulation as a whole, which, as stated in its eighth recital, applies different procedures depending on the destination of the waste, including whether it is intended for disposal or recovery. One of the Regulation's aims, namely to render shipments of waste for recovery easier than shipments of waste for disposal by laying down less restrictive rules for the former type of shipment, would be jeopardised if the classification of the purpose of those shipments were not scrutinised.

39 Under the Regulation, the notifier itself is responsible for classifying the purpose of the shipment of waste in the consignment note, through which notification is made to the competent authorities.

40 However, it follows from the system established by the Regulation that all the competent authorities to which that notification is addressed must check that the classification by the notifier is consistent with the provisions of the Regulation and object to a shipment which is incorrectly classified.

41 That obligation derives, in particular, from Article 26 of the Regulation, which requires Member States to prohibit and punish any illegal traffic, in particular cases resulting from a knowingly false classification of the purpose of the shipment by the notifier, and from Article 30(1) of the Regulation, which expressly imposes a general duty on Member States to take the requisite measures to ensure that waste is shipped in accordance with the provisions of the Regulation.

42 This interpretation is not called into question by the arguments presented by Abfall Service to the effect that the authority of dispatch is not in a position to verify the accuracy of the notifier's classification of the operation as a 'shipment of waste for recovery'.

43 First of all, the authority of dispatch receives, under Article 6(1) of the Regulation, a copy of the notification of the proposed shipment of waste for recovery and thus has the same information at its disposal as is transmitted to the authority of destination. Moreover, the authority of dispatch may also, under Article 6(4) of the Regulation, request from the notifier additional information and documentation relating to the proposed shipment and, under Article 6(6) of the Regulation, it may require the notifier to supply a copy of the contract for the recovery of the waste. The authority of dispatch therefore has the means to allow it to scrutinise the accuracy of the classification of the purpose of that shipment.

44 Next, the Court cannot accept Abfall Service's contention that the competent authorities of destination and the competent authorities of dispatch should not both be required to verify the accuracy of the notifier's classification of the shipment because this could lead to different classifications of the same shipment. The risk of such different classifications is inherent in the system established by the Regulation, which confers simultaneously on all the competent authorities the responsibility of ensuring that the shipments are carried out in accordance with the Regulation.

45 Lastly, Abfall Service's arguments relating to the principle of freedom of movement of goods and the principle of primacy of recovery of waste cannot be accepted. First, it follows from the Regulation that the authority of dispatch may object to a shipment of waste on the ground that the classification of the purpose of the shipment is incorrect only if that classification is inconsistent with the Regulation, but not in order to restrict trade between the Member States. Second, the principle of primacy of recovery of waste, which is intended to encourage recovery, applies by definition only to waste which is in fact intended for recovery and therefore does not prohibit scrutiny of the intended use also by the competent authority of dispatch.

46 As regards the provision of Community law which the competent authority of dispatch must use as the basis for an objection to a shipment which has been incorrectly classified in the notification, it must first be observed that, according to its express terms, the fifth indent of Article 7(4)(a) of the Regulation may only be applied when at least a part of the waste is to be recovered. Therefore, that provision may not be applied by the competent authority of dispatch to object to a shipment of waste which, in its view, is solely intended for disposal.

47 If the competent authority of dispatch considers that the purpose of the shipment has been incorrectly classified in the notification, the ground for its objection to the shipment must be the classification error itself, without reference to one of the specific provisions of the Regulation setting out the objections which the Member States may raise against a shipment of waste. The effect of that objection is, as with the other objections provided for in the Regulation, to prevent the shipment.

48 The notifier may then abstain from shipping the waste to another Member State, submit a new notification, or institute any appropriate proceedings to challenge the decision of the authority of dispatch objecting to the shipment. In any event, it is not for the competent authority *ex officio* to reclassify the purpose of the shipment of waste, since such a unilateral reclassification would result in one and the same shipment being examined by different competent authorities in the light of provisions falling under different chapters of the Regulation, which would be incompatible with the system established by the Regulation.

49 Moreover, it should be borne in mind that the Court has held that the procedure laid down by the Regulation provides the notifier with a guarantee that the proposed shipment will be examined within the periods prescribed by the Regulation and that he will be informed, upon the expiry of those periods at the latest, whether, and on what conditions, if any, the shipment can be carried out (the *DaimlerChrysler* case, at paragraph 70). Therefore, any objection in respect

of the incorrect classification of the notified shipment as a shipment of waste for recovery must be raised by the competent authority of dispatch within the period prescribed by Article 7(2) of the Regulation.

50 In view of the foregoing, the answer to the first three questions must be that it follows from the system established by the Regulation

— that the competent authority of dispatch, within the meaning of Article 2(c) thereof, is competent to verify whether a proposed shipment classified in the notification as a 'shipment of waste for recovery' does in fact correspond to that classification, and

— that, if that classification is incorrect, the authority must oppose the shipment by raising an objection founded on that misclassification within the period prescribed by Article 7(2) of the Regulation.

The fourth and fifth questions

51 In its fourth and fifth questions, which should be considered together, the national court is essentially asking whether the deposit of waste in a disused mine necessarily constitutes a disposal operation within the meaning of D 12 of Annex II A to the Directive or whether such deposits must be assessed on a case-by-case basis to determine whether the operation is a disposal or a recovery within the meaning of the Directive and, in that case, what criteria should be used to make the assessment.

52 Abfall Service and the Austrian and German Governments consider that the deposit of waste in a disused mine must be classified as a disposal or a recovery of waste according to the individual circumstances of each case.

53 As regards the criteria for that classification, Abfall Service submits that, according to the Directive, the conservation of natural resources as raw materials and the intention to reclaim waste are the objectives characterising a recovery operation. It claims that the hazardous or non-hazardous nature of the waste must also be taken into account; the fact that the waste is hazardous is an indication that the related operation is one of disposal.

54 According to the Austrian and German Governments, the classification of the deposit of waste in a disused mine for the purposes of the Directive depends essentially on whether the waste in question has the relevant technical characteristics to be used as mine-fill material. The German Government adds that the Directive's objective of conserving natural resources implies that the classification of an operation should be based on the principal objective of that operation; the fact that waste is used as a substitute for natural resources prompts the conclusion that the operation constitutes a recovery of that waste.

55 By contrast, the French Government in its oral submissions, the Netherlands Government and the Commission consider that any deposit of waste in a disused mine must be classified as a disposal operation because it is covered by the operation referred to in D 12 of Annex II A to the Directive. The Netherlands Government and the Commission state that that type of deposit may also in certain cases be considered to be covered by the operations set out in D 1 and D 3 of that Annex.

56 The French and Netherlands Governments add that recycling, re-use and reclamation are operations which presuppose that the waste undergoes treatment in order that it may be re-used. According to those Governments, that condition is not met by the deposit of waste in a disused mine.

57 Furthermore, according to the Commission, there may be uses of waste which are not expressly included in the operations described in Annexes II A and II B to the Directive, but which nevertheless fall within the scope of application of the Directive and the Regulation.

Findings of the Court

58 It must be observed, at the outset, that neither the Regulation nor the Directive contains a general definition of disposal or recovery of waste, but merely refers to Annexes II A and II B to the Directive, in which various operations falling within the scope of those concepts are listed.

59 As is stated in the introductory note to Annexes II A and II B to the Directive, each of those annexes is intended to list disposal or recovery operations as they occur in practice. Moreover, it is clear from the wording of the operations in those annexes that some of them are described in very general terms and in fact cover categories of operations, with examples of operations sometimes provided to illustrate the relevant category of operation.

60 It must therefore be concluded that the intention of Annexes II A and II B to the Directive is to list the most common disposal and recovery operations and not precisely and exhaustively to specify all the disposal and recovery operations covered by the Directive.

61 It follows from the approach thus adopted by the Community legislature, first, that some methods of disposal or recovery of waste may not be expressly mentioned amongst the operations listed in Annexes II A and II B to the Directive, notably because they did not come into use until after the most recent adaptation of those Annexes to reflect scientific and technical progress, and, second, that some operations are capable of falling within the wording of operations mentioned in Annex II A and in Annex II B to the Directive.

62 However, it is evident from the Directive that any treatment of waste falling within its scope of application must be classifiable either as disposal or recovery of waste, in order that the separate rules established by the Directive for those two categories of operations can be applied, in particular with regard to the authorisation system imposed on establishments and undertakings which carry out such operations. As is clear from paragraph 38 of the present judgment, the application of the Regulation also presupposes, with regard to determining the rules applicable to a shipment of waste, that the purpose of the shipment can be classified as a disposal or as a recovery.

63 Therefore, for the purpose of applying the Directive and the Regulation, it must be possible to classify any waste treatment operation as either a disposal or a recovery operation, and a single operation may not be classified simultaneously as both a disposal and a recovery operation.

64 Consequently, where, having regard solely to the wording of the operations in question, a waste treatment operation cannot be brought within one of the operations or categories of operations referred to in Annex II A or II B to the Directive, it must be classified on a case-by-case basis in the light of the objectives of the Directive.

65 That is the case here, since the deposit of slag and ashes in a disused mine constitutes an operation which, having regard solely to the wording of the operations in question, is capable of falling within the scope of the disposal operation referred to in D 12 of Annex II A to the Directive or of the recovery operation referred to in R 5 of Annex II B to that Directive.

66 In that respect, it must be observed that under Article 3(1)(b) of the Directive Member States are required to take appropriate measures to encourage the recovery of waste by means of recycling, re-use or reclamation or any other process with a view to extracting secondary raw materials and the use of waste as a source of energy.

67 It should first be observed that, as the Advocate General has pointed out at paragraph 82 of his Opinion, while the term 'recovery operation' may generally imply a prior treatment of the waste, it does not follow from Article 3(1)(b) or from any other provision of the Directive that the fact that waste has been subject to such a treatment is a necessary condition for classifying an operation as 'recovery' within the meaning of Article 1(f) of the Directive.

68 It must also be noted that, as the Advocate General has explained at paragraph 84 of his Opinion, it does not follow from Article 3(1)(b) or from any other provision of the Directive that the hazardous or non-hazardous nature of the waste is, of itself, a relevant criterion for assessing whether a waste treatment operation must be classified as 'recovery' within the meaning of Article 1(f) of the Directive.

69 However, it does follow from Article 3(1)(b) and the fourth recital of the Directive that the essential characteristic of a waste recovery operation is that its principal objective is that the waste serve a useful purpose in replacing other materials which would have had to be used for that purpose, thereby conserving natural resources.

70 It is for the national judge to apply that criterion in the present case in order to classify the deposit of the waste at issue in a disused mine as either a disposal operation or a recovery operation.

71 In view of the considerations set out above, the answer to the fourth and fifth questions must be that the deposit of waste in a disused mine does not necessarily constitute a disposal operation for the purposes of D 12 of Annex II A to the Directive.

The deposit must be assessed on a case-by-case basis to determine whether the operation is a disposal or a recovery operation within the meaning of that Directive.

Such a deposit constitutes a recovery if its principal objective is that the waste serve a useful purpose in replacing other materials which would have had to be used for that purpose.

Costs

72 The costs incurred by the Austrian, German, French and Netherlands Governments and by the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Fifth Chamber),

in answer to the questions referred to it by the Verwaltungsgerichtshof by order of 16 December 1999, hereby rules:

1. It follows from the system established by 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, as amended by Commission Decision 98/368/EC of 18 May 1998,

— that the competent authority of dispatch, within the meaning of Article 2(c) thereof, is competent to verify whether a proposed shipment classified in the notification as a 'shipment of waste for recovery' does in fact correspond to that classification, and

— that, if that classification is incorrect, the authority must oppose the shipment by raising an objection founded on that misclassification within the period prescribed by Article 7(2) of the Regulation.

2. The deposit of waste in a disused mine does not necessarily constitute a disposal operation for the purposes of D 12 of Annex II A to Council Directive 75/442/EEC of 15 July 1975 on waste, as amended by Council Directive 91/156/EEC of 18 March 1991 and Commission Decision 96/350/EC of 24 May 1996.

The deposit must be assessed on a case-by-case basis to determine whether the operation is a disposal or a recovery operation within the meaning of that Directive.

Such a deposit constitutes a recovery if its principal objective is that the waste serve a useful purpose in replacing other materials which would have had to be used for that purpose.

Jann von Bahr La Pergola

Delivered in open court in Luxembourg on 27 February 2002.

R. Grass

Registrar

P. Jann

President of the Fifth Chamber