OPINION OF ADVOCATE GENERAL LÉGER
delivered on 11 September 2003 [1]

1. By order of 11 September 2001 the Landesgericht Korneuburg (Austria), sitting in commercial matters, referred to the Court seven questions for a preliminary ruling pursuant to Article 234 EC.

2. Some of the questions relate to the interpretation of Article 3(1) of European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste. [2] Other questions seek to enable the national court to determine whether the Austrian legislation on the system for the collection and recovery of packaging and packaging waste is compatible with Community law.

Legal context

The Community legislation

3. The aims of the Directive are, on the one hand, to provide a high level of environmental protection and, on the other, to ensure the functioning of the internal market and to avoid obstacles to trade and the distortion and restriction of competition within the Community. [3]

4. The scope of the Directive is described by Article 2(1) as follows:

'This directive covers all packaging placed on the market in the Community and all packaging waste, whether it is used or released at industrial, commercial, office,

1 — Original language: French.

2 — OJ 1994 L 365, p. 10 ('the Directive').

3 — First recital in the preamble to the Directive.

shop, service, household or any other level, regardless of the material used.'

5. Article 3(1) of the Directive defines 'packaging' as follows:

'For the purposes of this directive:

1. "packaging" shall mean all products made of any materials of any nature to be used for the containment, protection, handling, delivery and presentation of goods, from raw materials to processed goods, from the producer to the user or the consumer. "Non-returnable" items used for the same purposes shall also be considered to constitute packaging.

"Packaging" consists only of:

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

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

(c) transport packaging or tertiary packaging, i.e. packaging conceived so as to facilitate handling and transport of a number of sales units or grouped packagings in order to prevent physical handling and transport damage. Transport packaging does not include road, rail, ship and air containers.'

6. Article 7 of the Directive provides that the Member State are to set up systems for the return, collection and recovery of packaging and packaging waste.

'1. Member States shall take the necessary measures to ensure that systems are set up to provide for:

(a) the return and/or collection of used packaging and/or packaging waste from the consumer, other final user, or from the waste stream in order to channel it to the most appropriate waste management alternatives;

(b) the reuse or recovery including recycling of the packaging and/or packaging waste collected,

in order to meet the objectives laid down in this directive.

These systems shall be open to the participation of the economic operators of the sectors concerned and to the participation of the competent public authorities. They shall also apply to imported products under non-discriminatory conditions, including the detailed arrangements and any tariffs imposed for access to the systems, and shall be designed so as to avoid barriers to trade or distortions of competition in conformity with the Treaty.

2. The measures referred to in paragraph 1 shall form part of a policy covering all packaging and packaging waste and shall take into account, in particular, requirements regarding the protection of environmental and consumer health, safety and hygiene; the protection of the quality, the authenticity and the technical characteristics of the packed goods and materials used; and the protection of industrial and commercial property rights.'

The national legislation

7. In Austria the Directive was transposed by the Verpackungsverordnung [4] (Decree No 1996/648 of the Federal Minister for the Environment, Youth and Family Affairs on the avoidance and recycling of packaging waste and certain product waste and the setting up of collection and recycling systems).

8. Paragraph 1 of the Verpackungsverordnung provides as follows:

'(1) This Decree shall apply to any person who in Austria:

4 — BGBl. 1996 I, p. 4553; 'the Verpackungsverordnung'.

1. produces packaging or products out of which packaging is directly produced (producers);

2. imports packaging or products out of which packaging is produced, or goods or commodities in packaging (importers);

3. fills or packages goods or commodities into packaging, or puts goods or commodities together with packaging in order to store or sell them (packagers);

4. puts into circulation packaging or products out of which packaging is directly produced, or goods or commodities in packaging, at any stage of distribution, including in mail order business (distributors) or

5. buys or imports packaging or goods or commodities in packaging for their own use or consumption (end users).'

9. Paragraph 2 provides as follows:

'1. For the purposes of this Decree, "packaging" means packaging materials, packaging aids, pallets or products out of which packaging materials or packaging aids are directly produced. "Packaging materials" are products which are intended to enclose or hold together goods or commodities for the purposes of trade, storage, transportation, mailing or sale. "Packaging aids" are products which are intended for packaging together with packaging materials, especially products for packaging, sealing, making ready for dispatch or marking goods or commodities.

2. "Transportation packaging" is packaging such as barrels, canisters, chests, sacks, pallets, boxes, foam dishes, shrink-wrap foil or similar wrappings as well as components of transportation packaging, intended to protect goods or commodities against damage, either from the producer to the distributor or en route to delivery to end users via the distributor, or which are used for transport safety reasons.

3. "Sales packaging" is packaging such as cups, bags, blister packs, cans, buckets, barrels, bottles, canisters, sacks, boxes, dishes, carrier bags, tubes or similar wrappings as well as components of sales

packaging, used by end users or third parties on behalf of end users, especially as a medium for carrying directions for use or statutorily prescribed product information. Packaging which fulfils the functions of both sales packaging and transportation packaging shall be deemed to be sales packaging.

4. "Grouped packaging" means packaging other than packaging falling under paragraphs (2) or (3), such as blister packs, film, boxes or similar wrappings, which either is added to one or more items of sales packaging or surrounds goods or commodities, in so far as it is not required for delivery to end users, for example for reasons of hygiene or technical reasons specific to the product or so that the product has a longer shelf-life or as protection against damage or spoiling.

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

Facts and main proceedings

10. Plato Plastik Robert Frank GmbH ('Plato Plastik') manufactures and distributes, inter alia, carrier bags which it supplies to Caropack Handelsgesellschaft mbH ('Caropack') for marketing. [5]

11. The main proceedings relate to two types of plastic carrier bag manufactured by Plato Plastik: 'Merkur' bags and 'Fürnkranz' bags.

12. 'Merkur' bags are offered for sale in food supermarkets, where they hang near the check-outs and are handed to customers on request against payment. Customers normally fill the bags with their purchases in the supermarket and take them away from the shop.

13. 'Fürnkranz' bags are used in clothes shops. The shop assistant puts the customer's purchases in them and hands them to the customer after the goods are paid for, but there is no separate charge for the bag. [6]

5 — See the order for reference (p. 3).

6 — See the observations of Plato Plastik (paragraphs 3 and 4).

14. According to the Verpackungsverordnung, Plato Plastik is deemed to be a packaging producer which is required either to take back packaging waste or to join the national system for the collection and recovery of packaging. However, Plato Plastik concluded an agreement transferring to Caropack its obligation to take back the plastic bags. The agreement stipulates that Caropack must give Plato Plastik a written confirmation that it takes part in the collection and recovery system in respect of the bags it receives.

15. The Austrian administrative authorities prosecuted Plato Plastik for failing to join the collection and recovery system set up by the Verpackungsverordnung and managed by Altstoff Recycling Austria ('ARA'). In its defence, Plato Plastik requested confirmation of Caropack's participation in the system. [7]

16. However, Caropack refuses to give such confirmation on the ground that the plastic carrier bags are not packaging within the meaning of the Verpackungsverordnung and the Directive. Caropack maintains that it has no obligation to take back the bags. Furthermore, it contends that the ARA system does not comply with the Directive. [8]

17. Plato Plastik appealed to the Landesgericht Korneuburg, seeking an order requiring Caropack to provide the confirmation in question so as to avoid possible criminal penalties.

The questions referred

18. Consequently the national court decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

'1. Are plastic carrier bags "packaging" within the meaning of European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste, particularly Article 3(1) thereof,

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

(b) if a retailer hands them over to customers for the same purpose after the price has been paid for the purchased goods, regardless of

7 — See the Commission's observations (paragraph 2).

8 — See the order for reference (end of p. 7, paragraph 2).

whether customers ask for them and without obligatory payment of any extra charge, and they are then filled with the purchased goods?

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

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

2. Is it in conformity with Community law for the operator of the collection and recovery system set up in Austria to charge a fee ("Lizenzgebühr") even for carrier bags not covered by Directive 94/62 solely on the ground that the bags bear a mark (Grüner Punkt) in respect of which the operator has a right of disposition?

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

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

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

(2) Additional question, in the event that the preceding question is answered in the affirmative:

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

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

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

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

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

The subject-matter of the questions referred

19. The request from the Landesgericht Korneuburg for a preliminary ruling raises two series of questions.

20. The first series, which includes the first and third questions, relates to the interpretation of Article 3(1) of the Directive. The national court wishes to know whether plastic carrier bags which are supplied at the customer's request and charged for or provided free of charge without being expressly requested by the customer are packaging within the meaning of the Directive. The national court also asks what is meant by 'producer' for the purpose of the same provision.

21. The second series, which includes the second and the fourth to the seventh questions from the national court, relates to the compatibility of the ARA system with Community law. The national court asks whether:

— it is compatible with Community law for an operator of the packaging collection system in Austria to claim payment for plastic bags which are not covered by the definition of packaging for the purposes of the Directive (second question);

— it is compatible with the 'polluter pays' principle, to which the Directive refers, for the national legislation to require producers, importers and distributors of packaging to take it back, but not consumers (fourth question);

— the Treaty provisions on competition, freedom to provide services and the principle of proportionality preclude the national ARA system from having

a monopoly (fifth, sixth and seventh questions).

The jurisdiction of the Court

22. First of all, I must examine the admissibility of the questions referred by the national court as both the Commission and the Austrian Government contend that they are inadmissible on several grounds.

23. It has consistently been held that the procedure laid down in Article 234 EC is an instrument for cooperation between the Court of Justice and the national courts. [9]

24. On this point, it must be observed that, in the context of the cooperation between the Court of Justice and the national courts provided for by Article 234 EC, it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling (in order to enable it to deliver judgment) and the relevance of the questions which it submits to the Court. [10] Consequently, where the questions submitted by the national court concern the interpretation of Community law, the Court of Justice is, in principle, bound to give a ruling. [11]

25. Nevertheless, the Court has taken the view that, in order to determine whether it has jurisdiction, it should examine the conditions in which the case was referred to it by the national court. [12]

26. It is with that function in mind that the Court has taken the view that it is unable to rule on a question referred by a national court where it is manifest that the interpretation or the assessment of the validity of Community law sought by that court bears no relation to the true nature of the main action or its purpose, or where the problem is hypothetical and the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it. [13]

9 — See in particular Case 16/65 *Schwarze* [1965] ECR 877, 886, and Case C-99/00 *Lyckeskog* [2002] ECR I-4839, paragraph 14.

10 — Case C-412/93 *Leclerc-Siplec* [1995] ECR I-179, paragraph 8 et seq. See also, to that effect, Case 83/78 *Pigs Marketing Board* [1978] ECR 2347; Case C-186/90 *Durighello* [1991] ECR I-5773, and Case C-83/91 *Meilicke* [1992] ECR I-4871, paragraph 23.

11 — Case C-415/93 *Bosman* [1995] ECR I-4921, paragraph 59. See also Case C-231/89 *Gmurzynska-Bscher* [1990] ECR I-4003, paragraph 20; Case C-125/94 *Aprile* [1995] ECR I-2919, paragraphs 16 and 17, and Case C-379/98 *PreussenElektra* [2001] ECR I-2099, paragraph 38.

12 — *Bosman*, cited above, paragraph 60. See also *Meilicke*, cited above, paragraph 25.

13 — *Bosman*, cited above, paragraph 61, also *Meilicke*, cited above, paragraph 32.

27. In the situation last mentioned above, it should be noted that in order to reach an interpretation of Community law which will be of use to the national court, it is essential that the national court define the factual and legislative context of the questions it is asking or, at the very least, explain the factual circumstances on which those questions are based. [14]

28. In the absence of those particulars, it is not possible to delimit the specific problem of interpretation which could be raised in relation to each of the provisions of Community law which the national court requires to be interpreted.

29. The need for precision with regard to the factual and legislative context applies especially in the sphere of competition, which is characterised by complex factual and legal situations. [15]

30. As I have said, the questions from the national court fall into two categories. The first relates to the interpretation of the terms 'packaging' and 'producer' which appear in the Directive. The Court has before it sufficient information to reply to those questions, which I find to be admissible.

31. In my view, the second series of questions does not meet the requirements for admissibility. In the second question, the national court asks the Court to ascertain whether Community law precludes an operator of the packaging collection system in Austria from claiming payment for plastic bags which are not covered by the definition of packaging for the purpose of the Directive, on the sole ground that the bags bear a mark ('der Grüne Punkt') in respect of which the operator has a right of disposition.

However, the national court's question gives no details at all of the general context, the purpose, the practical arrangements, the amount or frequency of the payment required by the operator of the system. Nor does the national court provide to the Court any information regarding the 'Grüne Punkt' mark and its connection with the payment required by the operator of the packaging collection system.

32. The same applies in relation to the other questions from the national court. The fourth question seeks to establish whether it is contrary to the 'polluter pays' principle, referred to in the Directive, for the national legislation to require producers, importers and distributors of packa-

14 — See Joined Cases C-320/90 to C-322/90 *Telemarsicabruzzo and Others* [1993] ECR I-393, paragraph 6, and, in particular, the Opinion of Advocate General Gulmann, paragraphs 5 to 21. See also the orders in Case C-157/92 *Banchero* [1993] ECR I-1085, paragraph 6, and Case C-78/93 *La Pyramide* [1994] ECR I-3999, paragraph 14.

15 — See the orders in *Banchero*, cited above, paragraph 5, and Case C-116/00 *Laguillaumie* [2000] ECR I-4979, paragraph 19. See also Case C-176/96 *Lehtonen and Castors Braine* [2000] ECR I-2681, paragraph 22.

ging to take it back, but not consumers. However, the order for reference gives no factual or legislative information on the various regimes of obligations in question or on the statutes of the various economic protagonists involved (specifically, producers, importers and consumers) which would enable the Court to give a reply concerning the 'polluter pays' principle.

33. With the fifth, sixth and seventh questions the national court asks the Court to assess the collection and recovery system managed by ARA in the light of the competition rules, the fundamental freedoms and the principle of proportionality. However, I find that the order for reference gives no information at all concerning the national collection and recovery system set up by the Republic of Austria, namely the system managed by ARA. The Court has no information on ARA's operation and practices or on its position in the national market or its conduct in relation to the different economic protagonists.

34. Consequently I propose that the Court declare the second and the fourth to seventh questions from the national court inadmissible. I shall therefore confine my remarks to the first and third questions in the order for reference.

The substance of the case

35. The national court's first question is whether plastic carrier bags given to customers in a shop, whether free of charge or otherwise, are packaging within the meaning of Article 3(1) of the Directive.

36. The third question concerns the definition of 'producer' for the purpose of the same provision. It is necessary to determine whether 'producer' includes the person who puts the goods together with, or causes them to be put together with, the product serving as packaging, or also the undertaking which manufactures the product intended to serve as packaging, and finally whether the product must then be regarded as packaging material.

37. I shall consider the terms 'packaging' and 'producer' together because 'producer' is included in the definition of 'packaging' and cannot be understood independently. In accordance with the methods of interpretation used by the Court,[16] I shall examine the wording, the general scheme and the aims of the Directive in order to reply to the national court.

16 — See, in particular, Case C-208/98 *Berliner Kindl Brauerei* [2000] ECR I-1741, and Case C-372/98 *Cooke* [2000] ECR I-8683.

38. I would mention that this is the first time that the Court has been called upon to interpret 'packaging' for the purpose of Article 3(1) of the Directive.

The wording of Article 3(1) of the Directive

39. It is apparent from reading Article 3(1) of the Directive that 'packaging' requires two conditions to be met. First, the product must fulfil the conditions in the first paragraph of the general definition. Secondly, it must fall into one or more of the three categories listed in Article 3(1)(a), (b) and (c).

40. The general definition of 'packaging' states that it may be made of any kind of material and must be used for the containment, presentation and protection of goods and for their handling and delivery, from the producer to the user or consumer. In addition to this carefully framed definition, the concept of 'packaging' for the purposes of the Directive is extended by the second sentence of Article 3(1), which states that '"non-returnable" items used for the same purposes shall also be considered to constitute packaging'.

41. In my opinion, the enumeration of the possible functions of packaging (transport, protection and presentation) is not worded in such a way as to mean that those functions must all be fulfilled, but is indeed a list of alternatives. It is true that the legislature has used the conjunction 'and' between the different purposes of packaging, which could probably create the impression that, on a literal interpretation of the sentence, all the listed functions must be fulfilled. However, we shall see, on the basis of structural and purposive interpretation, that the legislature clearly had the contrary intention. I shall therefore proceed from the principle that the functions constitute a list of alternatives.

42. This first part of the definition, as worded, particularly the second sentence, covers a broad subject field. Therefore we must see whether the plastic carrier bags handed to customers in shops, like those in issue in the main proceedings, fall within the first part of the definition in Article 3(1) of the Directive.

43. The 'Merkur' and 'Fürnkranz' bags are handed to customers in shops so that they can put their purchases in them. The bags are intended to contain and protect goods and are used for carrying away the goods bought in the shop to the place where they are to be used. The bags enable all the purchases to be put together and carried more easily without being damaged.

44. Furthermore, after use, the bags are almost systematically thrown away, whether empty or filled with waste. However, I do not think it is relevant to take as a criterion the secondary uses to which the bags may lend themselves, such as serving as dustbins, in order to envisage a different classification. Consequently I find that the plastic carrier bags are indeed covered by the second sentence of the general definition of Article 3(1) of the Directive, which refers to 'non-returnable' items.

45. On a strictly literal interpretation, I shall conclude that the definition of packaging in the first part of Article 3(1) is capable of covering the plastic carrier bags handed to customers in shops. We must now consider whether the second part of the definition of packaging, on a literal interpretation, also covers such bags.

46. As I have already pointed out, Article 3 (1) of the Directive provides that, in order to be described as packaging, an item must meet the abovementioned general condition and, in addition, fall within one of the three categories of packaging which are defined exhaustively.

47. Those categories are sales packaging, grouped packaging and transport packaging. According to Article 3(1)(c) of the Directive, transport packaging is intended to facilitate the handling or transport of goods in order to prevent damage to them.

48. I have just established that plastic carrier bags enable customers to facilitate the transport of their purchases exactly in the sense of Article 3(1)(c). The purpose of the plastic bags which I have pointed out is precisely to enable the purchased goods to be delivered, while avoiding damage to them.

49. In my view, the third category of packaging, which is transport packaging, corresponds to the use of the plastic carrier bags in issue in the main proceedings.

50. Therefore the 'Merkur' and 'Fürnkranz' bags are transport packaging under Article 3(1)(c) of the Directive.

51. Finally, the national court observes that, pursuant to Article 3(1) of the Directive, the requirement of delivery from the producer to the consumer may give rise

to the question of who is the producer. Is he the producer of the purchased goods, is he the person who puts the purchased goods together with the packaging (in the present case, Caropack) or is he the person who manufacturers the packaging products (in the present case, Plato Plastik)? In my opinion, this can be answered solely in combination with the definition of packaging because the concept of 'producer' forms part of it.

52. As we have already seen, according to a literal interpretation of Article 3(1) of the Directive, the definition of 'packaging' depends on the purpose of the packaging: transport, protection and presentation. The concept of producer is used precisely to describe one of the functions of packaging, which is to enable the goods to be delivered or transported from the producer, that is to say the manufacturer of the goods, to the consumer or user of the goods.

53. Therefore, as I see it, the 'producer' must be understood to mean the person who manufactures the goods for which packaging will subsequently be necessary. The producer may sell his goods directly to consumers or indirectly through a distributor, but that does not change the purpose of the packaging or its definition.

54. Accordingly it follows from the wording of the complete definition of packaging in Article 3(1) that plastic carrier bags handed to customers in shops must be regarded as packaging.

55. This analysis seems to me to be consistent with the general scheme of the Directive.

The general scheme of the Directive

56. The position of Article 3 in the scheme of the Directive shows that it is one of the first fundamental articles of the Directive which set out its aims and scope and define its most important concepts.

57. First of all, the Directive gives the definitions of 'packaging' and 'packaging waste' and provides that the Member States are to take measures for preventing the formation of packaging waste and to set up systems for taking back, collecting and recovering packaging waste.

58. The Directive also sets out the essential requirements relating to the composition, reusability and recoverability of packaging and packaging waste, which must meet those requirements.

59. We have seen that the fifth recital in the preamble [17] and Article 2 of the Directive aim to cover broadly all packaging placed on the market in the Community.

60. In that context the interpretation of Article 3(1), when read in the light of the general scheme of the Directive, is unequivocal. The definition must be construed as broadly as possible, [18] contrary to the observations of Plato Plastik and Caropack.

61. Therefore the plastic carrier bags in issue in the main proceedings must be characterised as packaging by way of the literal interpretation of Article 3 and the structural interpretation of the Directive.

62. This analysis also seems to me to accord with the aims of the Directive.

The aims of the Directive

63. As we know, the Directive has two aims. One of them is to provide a high level of environmental protection and the other is to ensure the functioning of the internal market and to avoid obstacles to trade and distortion and restriction of competition within the Community. [19]

64. In order to do this, the Directive provides for the harmonization of national measures concerning the management of packaging and packaging waste. [20] In addition, it states that it is necessary to reduce the overall volume of packaging, with the prevention of packaging waste as a priority. [21]

65. To achieve those aims, the Directive provides in particular that the Member States are to set up systems for the collection and recovery of packaging and packaging waste which comply with the Community rules of non-discrimination, free movement and freedom of competition. [22]

17 — 'Whereas this directive should cover all types of packaging placed on the market ...'.

18 — See, to this effect, the observations of the French Government (paragraphs 7 and 9).

19 — First recital.

20 — *Idem.*

21 — Seventh recital.

22 — Eighteenth recital and Article 7 of the Directive.

66. However, it must be noted that the mere fact of a strict interpretation of 'packaging' will not prevent a considerable increase in packaging and packaging waste.

67. It is common ground that plastic carrier bags have become everyday consumer goods. Consumers throughout the world use them when they have finished shopping in a particular shop. They put their purchases in them so as to carry them easily out of the shop and take them home or to the place where they will consume them.

68. However, such widespread use of plastic bags in everyday life gives rise to a major environmental problem not only because of the high number of plastic bags in circulation (several thousand million), but also because they have a very long life.[23] Consequently, in order to prevent the considerable pollution which they constitute, some countries have decided to prohibit their use.[24]

69. As we know, plastic carrier bags are used every day in large numbers by every consumer in the European Community also.

70. If plastic bags are excluded from the definition of 'packaging', the attainment of the Directive's aims (the management of waste) is impeded because plastic bags will be disregarded by every national system for the collection and recovery of packaging and packaging waste. Consequently the disposal of such bags in large numbers, without the beneficial control of the Directive, will continue to have the same negative impact on the environment.

71. The exclusion of plastic carrier bags from the scope of the Directive would mean that they are not covered by its main aim, which is to reduce the amount of packaging and which is the most effective means of preventing the harmful effects of plastic bags on the environment.

72. Therefore it is clear from the textual, structural and purposive interpretation of Article 3(1) of the Directive that plastic carrier bags are packaging.

73. The national court also asks whether the fact that the customer buys the bag

23 — Some commentators mention 100 or 400 years or even more. In the absence of a clear-cut study of the subject, everyone agrees that it is longer than a human life.

24 — This applies to Taiwan, where 16 million plastic bags are distributed every day. In spring 2003 Corsica held a referendum on the replacement of plastic bags in the island's supermarkets.

himself or receives it free of charge should be taken into account.

74. It must be observed that Article 3 of the Directive does not indicate that such criteria are important with regard to the question whether a product is to be described as packaging. According to the definition of 'packaging' in the Directive, whether packaging is paid for or free of charge is irrelevant.

75. In my opinion, the use and the function of plastic carrier bags do not change according to whether they are supplied to customers free or in return for payment. That is merely a commercial decision by the shop supplying or selling the bags. However, whichever it chooses is of no consequence for the interpretation of 'packaging' and for determining whether the bags will be used to transport the purchases made by customers and will be regarded as packaging for the purposes of the Directive.

76. In view of all the foregoing considerations, I propose that the Court interpret Article 3(1) of the Directive as meaning that plastic carrier bags handed to customers in shops, whether free of charge or not, are packaging.

The other questions

77. The first additional question from the national court is whether the reply to the first question varies according to the different language versions of Article 3(1) of the Directive.

78. It has consistently been held that the various language versions of a provision of Community law must be uniformly interpreted, and thus, in the case of divergence between those versions, the provision in question must be interpreted by reference to the purpose and general scheme of the rules of which it forms part. [25]

79. In any event, according to the literal, structural and purposive interpretation of

25 — See, in particular, Case 30/77 *Bouchereau* [1977] ECR 1999, paragraph 14; Case C-449/93 *Rockfon* [1995] ECR I-4291, paragraph 28; Case C-236/97 *Codan* [1998] I-8679, paragraph 28; Case C-420/98 *W.N.* [2000] ECR I-2847, paragraph 21, and Case C-257/00 *Givane and Others* [2003] ECR I-345, paragraph 37.

Article 3(1) of the Directive, plastic carrier bags must be included in the definition of 'packaging'. The language differences are thus of no consequence.

80. The second additional question does not call for a reply because it falls to be answered only if the reply to the first question is in the negative, namely that plastic carrier bags are not packaging.

Conclusion

81. In the light of the foregoing considerations, I propose that the Court rule as follows:

Article 3(1) of European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste must be interpreted as meaning that plastic carrier bags handed to customers in shops, whether free of charge or not, are packaging within the meaning of the Directive. The word 'producer' within the meaning of the same article refers to the producer of the goods, not the manufacturer of the packaging products.