JUDGMENT OF THE COURT (First Chamber)

21 June 2007 *

In Case C-259/05,

REFERENCE for a preliminary ruling under Article 234 EC from the Rechtbank te Rotterdam (Netherlands), made by decision of 8 June 2005, received at the Court on 20 June 2005, in criminal proceedings against

Omni Metal Service,

THE COURT (First Chamber),

composed of P. Jann, President of the Chamber, J.N. Cunha Rodrigues, K. Schiemann (Rapporteur), M. Ilešič and E. Levits, Judges,

Advocate General: P. Mengozzi,
Registrar: J. Swedenborg, Administrator,

having regard to the written procedure and further to the hearing on 7 September 2006,

* Language of the case: Dutch.

after considering the observations submitted on behalf of:

— Omni Metal Service, by R. Sinke and B. Veldhoven, advocaten,

— the Netherlands Government, by H.G. Sevenster and M. de Mol, and by P. van Ginneken, acting as Agents,

— the Portuguese Government, by L. Fernandes and M. Ribes, acting as Agents,

— the Commission of the European Communities, by M. Konstantinidis, acting as Agent, and by P. Kugel, T. Ormond and P. Kuypers, advocaten,

after hearing the Opinion of the Advocate General at the sitting on 15 February 2007,

gives the following

Judgment

1 This reference for a preliminary ruling concerns 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 Regulation (EC) No 2557/2001 of 28 December 2001 (OJ 2001 L 349, p. 1) ('Regulation No 259/93').

2 The reference was made in criminal proceedings brought against Omni Metal Service for exporting scrap electrical cable from Spain to China via the Netherlands without giving the Netherlands authorities prior notification of that shipment.

Legal context

3 Article 1 of Regulation No 259/93 provides as follows:

'1. This Regulation shall apply to shipments of waste within, into and out of the Community.

...

3. (a) Shipments of waste destined for recovery only and listed in Annex II shall also be excluded from the provisions of this Regulation except as provided for in subparagraphs (b), (c), (d) and (e), in Article 11 and in Article 17(1), (2) and (3) ...'

4 Annex II to Regulation No 259/93, entitled 'Green list of wastes', provides as follows:

'Regardless of whether or not wastes are included on this list, they may not be moved as green wastes if they are contaminated by other materials to an extent which (a) increases the risks associated with the waste sufficiently to render it appropriate for inclusion in the amber or red lists, or (b) prevents the recovery of the waste in an environmentally sound manner.

GA. Metal and metal-alloy wastes in metallic, non-dispersible form

...

The following waste and scrap of non-ferrous metals and their alloys:

GA 120 7404 00 Copper waste and scrap

...

GC. Other wastes containing metals

GC 010 Electrical assemblies consisting only of metals or alloys

GC 020 Electronic scrap (e.g. printed circuit boards, electronic components, wire, etc.) and reclaimed electronic components suitable for base and precious metal recovery

...

GH. Solid plastic wastes

Including, but not limited to:

GH 010 3915 Waste, parings and scrap of plastics of:

...

GH 013 ex 3915 30 — polymers of vinyl chloride

...'

5 Article 17 of Regulation No 259/93 states:

'1. In respect of waste listed in Annex II, the Commission shall notify prior to the date of application of this Regulation to every country to which the OECD Decision [Decision of the Council of the Organisation for Economic Co-operation and Development of 30 March 1992 on the control of transfrontier movements of wastes

destined for recovery operations] does not apply the list of waste included in that Annex and request written confirmation that such waste is not subject to control in the country of destination and that the latter will accept categories of such waste to be shipped without recourse to the control procedures which apply to Annex III or IV or that it indicate where such waste should be subject to either those procedures or the procedure laid down in Article 15.

...

2. Where waste listed in Annex II is exported, it shall be destined for recovery operations within a facility which under applicable domestic law is operating or is authorised to operate in the importing country. ...

...

8. Where waste for recovery listed in Annex III and IV and waste for recovery which has not yet been assigned to Annex II, III or IV is exported to and through countries to which the OECD Decision does not apply:

— Article 15, except for paragraph 3, shall apply by analogy;

— reasoned objections may be raised in accordance with Article 7(4) only;

save as otherwise provided for in bilateral or multilateral agreements entered into in accordance with Article 16(1)(b) and on the basis of the control procedure of either paragraph 4 or 6 of this Article or Article 15.'

6 Article 15 of Regulation No 259/93 lays down the procedure applicable to exports of waste intended for disposal. That procedure requires, inter alia, notification to the competent authority of transit.

7 Article 26(1)(a) of that regulation provides as follows:

'Any shipment of waste effected:

(a) without notification to all competent authorities concerned pursuant to the provisions of this Regulation; ...

shall be deemed to be illegal traffic.'

8 Commission Regulation (EC) No 1547/1999 of 12 July 1999 determining the control procedures under Council Regulation (EEC) No 259/93 to apply to shipments of certain types of waste to certain countries to which OECD Decision C(92) 39 final does not apply (OJ 1999 L 185, p. 1), as amended by Commission Regulation (EC) No 2118/2003 of 2 December 2003 (OJ 2003 L 318, p. 5), provides, as is apparent from Annex D thereto, that shipments of wastes listed under headings GA 120 740400, GC 020 and under section GH of Annex II to Regulation No 259/93 will

be accepted by China without recourse to any of the control procedures provided for in Regulation No 259/93 but will be subject to obligatory pre-shipment inspection by the China National Import and Export Commodities Inspection Corporation.

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

9 Criminal proceedings were brought before the Rechtbank te Rotterdam (District Court, Rotterdam) against Omni Metal Service, which is established in France, on the basis of the first paragraph of Article 10.60 of the Wet milieubeheer (Environmental Management Act) in conjunction with the first paragraph of Article 26 of Regulation No 259/93.

10 It is charged with breaching the provisions of Regulation No 259/93 by exporting, on or about 15 March 2004, from Spain to China via Rotterdam 17 containers carrying scrap electrical cable (consisting of a copper core surrounded by PVC sheathing with diameters of up to 15 cm) intended for processing with a view to re-use, without notifying the competent authorities of that shipment.

11 According to the Openbaar Ministerie (Public Prosecutor's Department), since such waste does not consist of household flex or wire but rather of large-diameter underground cable for the transport of electricity, it does not constitute electronic scrap within the meaning of heading GC 020 of the green list of wastes. Moreover, since the unseparated combination of copper and PVC is not, as such, mentioned on that list or on the lists in Annexes III or IV to Regulation No 259/93 and the shipment was to be to a non-OECD State, the Netherlands authorities in particular should have been notified, as the authorities of transit, as is apparent from Article 15 in conjunction with Article 17(8) of that regulation.

12 The Openbaar Ministerie takes the view that such an interpretation is dictated, first, by the need for a restrictive interpretation of the categories of waste the shipment of which is not governed by Regulation No 259/93 and, second, by the lessons to be drawn from Case C-192/96 *Beside and Besselen* [1998] ECR I-4029, paragraphs 32 and 34.

13 On the other hand, Omni Metal Service contends that the scrap in question in the main proceedings falls squarely within heading GC 020 because the composition of the cables is the only decisive factor for the purposes of such a classification, not their origin or their diameter. Moreover, where there is a combination of different green list wastes, the practice followed in Spain, the country of dispatch, is to regard those wastes as coming under that list and, as a consequence, to follow the green list procedure. The policy in China is similar, since, where there is a combination of copper and PVC, that third country simply requires the importation to be subject to pre-shipment inspection by the China National Import and Export Commodities Inspection Corporation in the State of dispatch.

14 It is in those circumstances that the Rechtbank te Rotterdam decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Can cable scrap such as that in issue in the present case (in part with a diameter of 15 cm) be classified as "electronic scrap (e.g. ... wire, etc.)" within the terms of heading GC 020 of the green list?

(2) If the Court of Justice should answer Question 1 in the negative, can or must a combination of green list materials, which is not as such mentioned in the green list, be regarded as a green list material and may that combination of materials be transported for purposes of recovery without the notification procedure being applicable?

(3) Is it necessary in this connection that the waste material be offered or transported separately?'

The questions referred for a preliminary ruling

Question 1

15 It should be noted at the outset that, when the Court is requested to give a preliminary ruling, its task is to provide the national court with guidance on the scope of the rules of Community law so as to enable that court to apply the rules correctly to the facts in the case before it and it is not for the Court of Justice to apply those rules itself, a fortiori since it does not necessarily have available to it all the information that is essential for that purpose.

16 The procedure for referring questions for a preliminary ruling under Article 234 EC establishes a relationship of close cooperation between the national courts and the Court of Justice based on the assignment to each of different functions and

constitutes an instrument by means of which the Court provides the national courts with the criteria for the interpretation of Community law which they need in order to dispose of disputes which they are called upon to resolve (Joined Cases C-260/00 to C-263/00 *Lohmann and Medi Bayreuth* [2002] ECR I-10045, paragraph 27).

17 On the other hand, the Court has no jurisdiction to give a ruling on the facts in an individual case or to apply the rules of Community law which it has interpreted to national measures or situations, since those questions are matters for the exclusive jurisdiction of the national court (see, inter alia, Joined Cases C-175/98 and C-177/98 *Lirussi and Bizzaro* [1999] ECR I-6881, paragraph 38, and Case C-318/98 *Fornasar and Others* [2000] ECR I-4785, paragraph 32).

18 Accordingly, the first question must be understood as asking whether heading GC 020 of the green list of wastes must be interpreted as covering electrical wire and, if so, under what conditions.

19 In that regard, it is apparent from the wording of that heading that it covers waste consisting of electronic scrap and reclaimed electronic components suitable for metal recovery. As the Netherlands Government pointed out, wire itself is given only as an example of such electronic scrap.

20 It follows, as the Netherlands Government and the Commission rightly submitted, and contrary to what Omni Metal Service contended, that heading GC 020 covers only wire from electronic equipment. On the other hand, that heading does not apply where there are other types of wire, in particular wire from electrical equipment or assemblies, since heading GC 010 of the green list of wastes in fact expressly specifies with regard to waste from such assemblies that it is included under that heading only in so far as it consists solely of metals or alloys.

21 Although the descriptions provided by the Rechtbank te Rotterdam of the cable at issue in the main proceedings would appear to suggest that it was not wire that had been part of electronic equipment, Omni Metal Service submitted at the hearing that that cable had not in any way been intended exclusively for the underground transport of electricity, as the Netherlands Government maintained, but that it did indeed come from such electronic equipment.

22 As was pointed out at paragraphs 15 to 17 above, the findings of fact to be made in that regard are matters for the referring court.

23 In the light of the above, the answer to the first question must be that heading GC 020 of the green list of wastes in Annex II to Regulation No 259/93 must be interpreted as covering wire cable only if such wire comes from electronic equipment.

Questions 2 and 3

24 As a preliminary point, it should be noted that the main proceedings relate to the export of electrical cable consisting of a copper core surrounded by PVC sheathing and not to the export of such cores or sheathing that have previously been separated.

25 In those circumstances, the second and third questions referred by the national court must be understood as asking, in essence, whether Regulation No 259/93 should be interpreted as meaning that the rules on shipment laid down by that regulation in relation to green list waste apply to a composite-type waste which, although not referred to in that list, is a combination of two materials both of which appear on that list.

26 According to the Netherlands and Portuguese Governments, that question should be answered in the negative. By contrast, Omni Metal Service maintains the view that it had previously put forward before the referring court that such composite waste must be covered by the rules applicable to the green list of wastes.

27 For its part, the Commission maintains that the question whether shipment of a combination of green list waste materials may be possible without prior notification depends on the individual circumstances of each case. According to the Commission, the notification requirement does not apply, in particular, where the country of destination accepts the waste in question for the purposes of recovery and provided that all the materials concerned do in fact appear on the green list of wastes and the level of contamination of the various wastes does not render such requirement necessary.

28 On the other hand, according to the Commission, it follows from the introductory sentence of Annex II to Regulation No 259/93 that waste cannot be subject to the green list rules if there is an unacceptable risk for the environment or it is impossible for the various materials concerned to be recovered in a sound manner. The Commission is of the view that, in the case at issue in the main proceedings, notification was indeed necessary in so far as PVC may sometimes be hazardous for the environment.

29 As the Court has previously held, it is apparent in particular from the sixth and ninth recitals in the preamble to Regulation No 259/93 that the system set up for the supervision and control of shipments of waste between Member States introduced by that regulation reflects the need to preserve, protect and improve the quality of the environment and is designed to enable the competent authorities to take all necessary measures for the protection of human health and the environment (see Case C-187/93 *Parliament* v *Council* [1994] ECR I-2857, paragraph 18).

30 The 11th and 12th recitals in the preamble to Regulation No 259/93 also confirm that the supervision and control established by that regulation are intended to protect the environment, not only within the Community but also in third countries to which waste is exported from the Community.

31 With regard to the fact that shipments of waste destined for recovery and appearing on the green list of wastes are, by way of exception, generally excluded from the control procedures established by Regulation No 259/93 by virtue of Article 1(3)(a) of that regulation, that is explained, as is stated in the 14th recital in the preamble thereto, by the fact that such waste should not normally present a risk to the environment if properly recovered in the country of destination. It is clear from that statement that, where a type of waste is included on that list and is consequently excluded from the system of supervision and control established by Regulation

No 259/93, that is the result of a prior assessment which concluded that there were no such risks.

32 In the light of the above, it must be concluded that the more flexible system applicable to wastes appearing on the green list, whereby such wastes are not subject to the essential aspects of the supervision and control procedures established by Regulation No 259/93, cannot in principle be extended to wastes which do not appear on that list.

33 In particular, where waste is composed of two materials which, when considered separately, may constitute types of waste which are included on the green list of wastes, it does not automatically follow that such composite waste comes under that list. The conditions under which waste may be processed and the environmental risks associated with the handling of such waste are not necessarily the same and may vary according to whether the waste concerned consists of a composite whole made up of a number of materials or whether each one of those materials constitutes a distinct type of waste.

34 In that regard, it should be noted that the Court has held that a mixture of green list waste could belong to category 'AD 160 municipal/household waste' on the amber list in Regulation No 259/93, adding thereto that only if such waste had been collected separately or sorted correctly could it come under the green list (see, to that effect, *Beside and Besselsen*, paragraphs 30 and 31).

35 A fortiori, a single type of waste that is the result of a durable combination — and not a simple incidental mixing — of two main materials both of which are included on the green list of wastes cannot come under that list, unless it is expressly mentioned there.

36 The approach advocated by the Commission cannot be followed.

37 In the first place, that approach is incompatible with the objectives pursued by Regulation No 259/93 in so far as that regulation is designed, as was explained at paragraphs 28 to 33 above, to exclude shipments of certain types of waste from the supervision and control procedures established by that regulation only by including such waste on the green list after a prior assessment has been carried out of the environmental risks associated with its processing and handling.

38 Secondly, as was rightly pointed out by the Netherlands Government, a case-by-case approach such as that advocated by the Commission would be likely to lead to legal uncertainty both among economic operators who would be primarily responsible for taking decisions in that regard and for bearing the associated risks and among the competent authorities of the Member States.

39 In view of the uncertainty to which it gives rise, such an approach would also be likely to undermine the objective of the Community legislature, which, by choosing a regulation as a means of legislating on shipments of waste, specifically intended to ensure that that legislation was applied simultaneously and consistently in all Member States, such harmonisation concerning not only the substantive conditions in which those shipments may be carried out but also the procedure applicable to those shipments (Case C-324/99 *Daimler Chrysler* [2001] ECR I-9897, paragraphs 34 and 67).

40 Thirdly, there is no support to be found for the Commission's contention in that regard in the text of Regulation No 259/93. In particular, contrary to the

Commission's suggestion, there is no basis, in the introductory sentence of Annex II to Regulation No 259/93, for the conclusion that the rules laid down for the wastes mentioned in the green list should apply to waste which combines two materials appearing on that list, provided that that will not result in an unacceptable risk for the environment or in preventing the various materials concerned from being recovered in a sound manner.

41 The situation envisaged by that introductory sentence, which concerns the case in which particular waste is 'contaminated' by '[an]other' material, cannot simply be equated with a case in which waste is made up of two materials, both of which form essential intrinsic components of that waste.

42 In the light of all the above considerations, the answer to the second and third questions must be that Regulation No 259/93 is to be construed in such a way that the fact that composite waste is a combination of two materials both of which are mentioned in the green list of wastes in Annex II to that regulation does not have the effect of making the rules laid down by that regulation concerning the waste mentioned on that list applicable to such composite waste.

Costs

43 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) hereby rules:

1. **Heading GC 020 of the green list of wastes in Annex II to 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 Regulation (EC) No 2557/2001 of 28 December 2001, is to be interpreted as covering wire cable only if such wire comes from electronic equipment.**

2. **Regulation No 259/93, as amended by Regulation No 2557/2001, is to be construed in such a way that the fact that composite waste is a combination of two materials both of which are mentioned in the green list of wastes in Annex II to that regulation does not have the effect of making the rules laid down by that regulation concerning the wastes mentioned on that list applicable to such composite waste.**

[Signatures]