JUDGMENT OF THE COURT

13 December 2001 *

In Case C-324/99,

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

DaimlerChrysler AG

and

Land Baden-Württemberg,

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),

* Language of the case: German.

THE COURT,

composed of: G.C. Rodríguez Iglesias, President, N. Colneric (President of Chambers), C. Gulmann, D.A.O. Edward, A. La Pergola (Rapporteur), L. Sevón, M. Wathelet, R. Schintgen, V. Skouris, J.N. Cunha Rodrigues and C.W.A. Timmermans, Judges,

Advocate General: P. Léger,
Registrar: H.A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

— DaimlerChrysler AG, by L. Giesberts, Rechtsanwalt,

— the Land Baden-Württemberg, by C. Weidemann, Rechtsanwalt,

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

— the Danish Government, by J. Molde, acting as Agent,

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

— the Austrian Government, by C. Stix-Hackl, acting as Agent,

— the United Kingdom Government, by J.E. Collins, acting as Agent, and D. Wyatt QC,

— 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 DaimlerChrysler AG, the Land Baden-Württemberg, the United Kingdom Government and the Commission at the hearing on 27 March 2001,

after hearing the Opinion of the Advocate General at the sitting on 20 September 2001,

gives the following

Judgment

1 By judgment of 24 June 1999, received at the Court on 30 August 1999, the Bundesverwaltungsgericht (Federal Administrative Court) referred to the Court for a preliminary ruling under Article 234 EC four questions on the interpretation of Council Regulation (EC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community (OJ 1993 L 30, p. 1, 'the Regulation').

2 Those questions were raised in proceedings between DaimlerChrysler AG ('DaimlerChrysler') and *Land* Baden-Württemberg concerning the legality of a decree of the Government and the Minister for the Environment and Transport of that *Land* making it compulsory to offer certain waste for disposal to an approved body.

Legal framework

The Community legislation

3 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) ('the Directive'), is aimed at the harmonisation of national legislation on waste disposal.

4 Articles 3, 4 and 5 of the directive lay down the following objectives: first, the prevention, reduction, recovery and use of waste; next, the protection of human health and the environment in the processing of waste, whether for disposal or recovery; and, finally, the creation at Community level and, if possible, at national level of an integrated network for the disposal of waste.

5 Thus, Article 5 of the Directive provides:

'1. Member States shall take appropriate measures, in cooperation with other Member States where this is necessary or advisable, to establish an integrated and

adequate network of disposal installations, taking account of the best available technology not involving excessive costs. The network must enable the Community as a whole to become self-sufficient in waste disposal and the Member States to move towards that aim individually, taking into account geographical circumstances or the need for specialised installations for certain types of waste.

2. The network must also enable waste to be disposed of in one of the nearest appropriate installations, by means of the most appropriate methods and technologies in order to ensure a high level of protection for the environment and public health.'

6 The Regulation organises, *inter alia*, the supervision and control of shipments of waste between Member States.

7 Title II of the Regulation, entitled 'Shipments of waste between Member States', contains Chapter A on the procedure applicable to shipments of waste for disposal.

8 Under Article 4(2)(c) of the Regulation, which forms part of Chapter A, the objections and conditions which the competent authorities of destination, dispatch and transit may raise in respect of a shipment of waste, in accordance with subparagraphs (a) and (b), are to be based on paragraph 3 of that article.

9 Article 4(3)(a)(i) of the Regulation provides:

'In order to implement the principles of proximity, priority for recovery and self-sufficiency at Community and national levels in accordance with Directive 75/442/EEC, Member States may take measures in accordance with the Treaty to prohibit generally or partially or to object systematically to shipments of waste. Such measures shall immediately be notified to the Commission, which will inform the other Member States.'

National legislation

10 The first sentence of Paragraph 9(1) of the Law on the reduction of waste at source and its management, and on the treatment of contaminated sites, in *Land* Baden-Württemberg ('the Landesabfallgesetz'), in the version of 15 October 1996 (GBl, p. 617), most recently amended by Paragraph 4 of the Law of 16 July 1998 (GBl, p. 422), provides that the *Land* authorities, together with producers and holders of waste, are to set up treatment centres for waste disposal where that waste requires special supervision.

11 The second sentence of Paragraph 9(2) of the Landesabfallgesetz authorises the Government of the *Land* to provide by decree that producers and holders of waste for disposal where that waste requires special supervision must offer it to the entities responsible for the treatment centres or to the Special Waste Agency set up pursuant to Paragraph 2a(1) of that law.

12 According to the third sentence of Paragraph 9(2) of the Landesabfallgesetz, waste that cannot be treated in the treatment centres is to be sent to the waste treatment installation proposed by the producer or holder of the waste.

13 The Decree of the Government and the Minister for the Environment and Transport of *Land* Baden-Württemberg of 12 September 1996 on the treatment of waste requiring special supervision and on the Special Waste Agency 1996 (GBl, p. 586), as amended by the Decree of 26 January 1998 (GBl, p. 73, 'the Decree'), was adopted on the basis of the second sentence of Paragraph 9(2) of the Landesabfallgesetz.

14 According to Paragraph 1(1) of the Decree, the entity responsible for the treatment centres for waste for disposal where that waste requires special supervision is the company Sonderabfallentsorgung Baden-Württemberg GmbH ('SBW'), set up in 1973 and owned, as to the majority of its shares, by *Land* Baden-Württemberg.

15 According to Paragraph 1(2) of the Decree, the treatment centres are, for waste for storage, the special disposal centre at Billigheim, Germany, and, for waste for burning, the waste incinerator belonging to the firm Abfall-Nerwertungsgesellschaft mbH ('AVG') in Hamburg, Germany, 'within the framework of current delivery commitments'.

16 Under the first sentence of Paragraph 3(1) of the Decree, producers and holders of waste for disposal which is produced in *Land* Baden-Württemberg or which is to be treated, stored or deposited there must, where that waste requires special supervision, offer that waste to the Special Waste Agency, which sends it to a treatment centre, in accordance with Paragraph 4(1) of the Decree. However, the

second sentence of Paragraph 3(1) of the Decree provides for a number of exceptions to that obligation, in particular for quantities of waste below certain thresholds or, subject to certain conditions, where the waste is disposed of in the facilities of the producers or holders of waste.

17 Paragraph 4(1) of the Decree provides:

'The Special Waste Agency shall send the waste offered to it to SBW Sonderabfallentsorgung Baden-Württemberg GmbH for treatment in the treatment installations in accordance with Paragraph 1(2) where the waste is capable of being treated in those installations. In the case of the special incineration centre of Abfall-Verwertungsgesellschaft mbH in Hamburg, the obligation to deliver 20 000 tonnes per year must be observed. It shall dispatch the waste sent to it pursuant to the first sentence to treatment installations.'

18 Under Paragraph 4(3) of the Decree, any waste offered which is not sent to one of the two centres referred to in paragraph 15 of this judgment is to be sent by the Special Waste Agency to the establishment suggested by the producer or holder of the waste if the waste can be treated there in accordance with the German legislation on environmental protection.

19 The delivery commitment referred to in Paragraphs 1(2) and 4(1) of the Decree, which relates to an annual quantity of 20 000 tonnes to be delivered to the special incineration centre in Hamburg, originated in an agreement concluded between SBW and AVG on 5 May 1994 ('the Agreement').

20 According to the preamble to the Agreement, concluded for a period of 15 years, *Land* Hamburg is to make part of its incineration capacity available to *Land* Baden-Württemberg in order to treat the special waste offered by SBW at a price of DEM 1 200 per tonne of waste incinerated. The waste is incinerated in AVG's waste incinerator.

21 Under the Agreement, SBW is authorised to deliver a maximum of 30 000 tonnes per year to AVG. SBW also undertakes to send AVG a minimum quantity of 20 000 tonnes per year and to pay the corresponding price for treatment of that quantity, even though the quantities actually delivered are below that figure. In order to cover any shortfall by SBW, *Land* Baden-Württemberg is to provide a guarantee of DEM 180 000.

The main proceedings and the questions referred to the Court

22 DaimlerChrysler disputed the legality of the Decree and, by application lodged on 4 December 1996, requested the Verwaltungsgerichtshof Baden-Württemberg, Germany, to annul it.

23 DaimlerChrysler maintained that it was harmed by the obligation to offer the special waste to an incineration centre in Hamburg, on the ground that it was thereby prevented from having the waste produced by its factories in *Land* Baden-Württemberg incinerated more cheaply abroad, particularly in Belgium. Shipping the waste to the Hamburg installation, over distances generally between 600 and 800 kilometres, caused it to incur additional costs of DEM 2.2 million each year.

24 In support of its action, DaimlerChrysler claimed, *inter alia*, that the obligation laid down in the Decree to offer the waste to AVG's incineration centre is equivalent to a quantitative restriction on exports prohibited by Article 34 of the EC Treaty (now, after amendment, Article 29 EC) and is contrary to the provisions of the Directive and the Regulation.

25 The Verwaltungsgerichtshof Baden-Württemberg held that the action for annulment was unfounded and dismissed it by judgment of 24 November 1997. By decision of 14 May 1998, the Bundesverwaltungsgericht, on appeal by DaimlerChrysler, granted the latter leave to appeal on a point of law.

26 In the order for reference, the Bundesverwaltungsgericht finds that the Decree is not contrary to national law. As regards the compatibility of the Decree with Community law, the national court states that the introduction of an obligation for producers and holders of waste for disposal to offer the waste to the Special Waste Agency must be regarded as a measure prohibiting exports of waste which is consistent with Article 4(3)(a)(i) of the Regulation.

27 However, being uncertain whether other aspects of the Decree are compatible with Community law, the Bundesverwaltungsgericht decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

'1. Is the expression "in accordance with the Treaty" in Article 4(3)(a)(i) of Council Regulation (EEC) No 259/93 to be construed as meaning that, in the case of a general prohibition on the export of waste for disposal where that waste requires special supervision, which is justified by the principles of proximity, priority for recovery and self-sufficiency in waste disposal, a

further issue to be examined is whether the export ban is compatible with primary law of the European Union, in particular with the prohibition of quantitative restrictions on trade between the Member States under Article 28 et seq. of the EC Treaty?

2. If Question 1 is answered in the affirmative, in the case of an export ban imposed by legislation and restricted as to quantity, is review of the legislative provisions as such sufficient or must there be a review of each individual case in which an intended export is prohibited in application of the legislative provision? In that text, is it permissible, by the imposition of obligations to offer waste for disposal where that waste requires special supervision to a domestic facility, to "lay down" for a period of 15 years a ban on the export of that waste, if at the time when those obligations were imposed the security sought in the treatment of waste could be obtained only by an agreement of that duration concluded with the operator of that facility?

3. Are the Member States authorised by Article 4(3) of Regulation (EEC) No 259/93 to adopt legislation which, in the context of obligations to offer waste for disposal where that waste requires special supervision, makes the shipment of such waste to other Member States subject to the condition that the intended disposal satisfies the requirements of the state of dispatch on environmental protection?

4. Does Article 3 et seq. of Regulation (EEC) No 259/93 preclude a Member State from applying before the notification procedure a procedure of its own in relation to the offer and allocation of waste, applicable to the intended transfrontier shipment of waste for disposal where that waste requires special supervision?'

28 It should be observed at the outset that, as the Commission rightly points out, although the national court refers in its questions to waste for disposal where that waste requires special supervision (hereinafter 'waste for disposal requiring special supervision'), the Regulation, in defining, in Title II, Chapter A, the procedure applicable to shipments between Member States of waste for disposal, does not distinguish between particular categories according to the nature of the waste concerned. The answer to the questions therefore applies without distinction to all shipments of waste for disposal governed by the Regulation, irrespective of whether the waste in question requires special supervision.

First question

29 It should first be noted that the first sentence of Paragraph 3(1) of the Decree, which lays down an obligation to offer waste for disposal to an approved local body, was adopted on the basis of Article 4(3)(a)(i) of the Regulation, which authorises Member States, under certain conditions, to take general measures restricting shipments of waste between Member States. Further, according to the national court, that national provision is consistent with that provision of the Regulation.

30 In addition, the national court does not question the validity of Article 4(3)(a)(i) of the Regulation as regards Article 30 of the EC Treaty (now, after amendment, Article 28 EC), Article 34 of the Treaty and Article 36 of the EC Treaty (now, after amendment, Article 30 EC).

31 In that context, the first question referred by the national court must be taken as relating to the question whether, when a national measure generally prohibiting exports of waste for disposal is justified by the principles of proximity, priority

for recovery and self-sufficiency, in accordance with Article 4(3)(a)(i) of the Regulation, it is also necessary, because that provision uses the expression 'in accordance with the Treaty', that national measure must be subject to a further and separate review of its compatibility with Articles 34 and 36 of the Treaty.

32 It should be borne in mind that, where a matter is regulated in a harmonised manner at Community level, any national measure relating thereto must be assessed in the light of the provisions of that harmonising measure and not of Articles 30, 34 and 36 of the Treaty (see, in that regard, Case C-37/92 *Vanacker and Lesage* [1993] ECR I-4947, paragraph 9).

33 It should be pointed out, first of all, that the Regulation repealed and replaced Council Directive 84/631/EEC of 6 December 1984 on the supervision and control within the European Community of the transfrontier shipment of hazardous waste (OJ 1984 L 326, p. 31), which, as the Court has held, had introduced a complete system covering, in particular, transfrontier shipments of dangerous waste with a view to their disposal at establishments conforming to specific requirements and was based on the obligation of the holder of the waste to make a detailed notification in advance (see Case C-2/90 *Commission* v *Belgium* [1992] ECR I-4431, paragraph 20, and Case C-422/92 *Commission* v *Germany* [1995] ECR I-1097, paragraph 32).

34 The Regulation originated in a proposal for a Council Regulation (EEC) on the supervision and control of shipments of waste within, into and out of the European Community (90/C 289/05), presented by the Commission on 10 October 1990. It appears from the grounds of that proposal that the choice of a regulation as the means of implementing the amendments to the Community legislation on shipments of waste was dictated by the need to ensure that the legislation was applied simultaneously and consistently in all Member States.

35 Furthermore, it is apparent from the first four recitals of the preamble that the Regulation was adopted with a view to replacing Directive 84/631 by a regulation, having regard to the commitments entered into by the Community in the context of various international conventions and, in particular, the Convention on the control of transboundary movements of hazardous wastes and their disposal, signed in Basel, Switzerland, on 22 March 1989 and approved on behalf of the Community by Council Decision 93/98/EEC of 1 February 1993 (OJ 1993 L 39, p. 1).

36 The Regulation applies, as provided in Article 1(1) thereof, to shipments of waste within, into and out of the Community, subject to the exceptions listed in Article 1(2) and (3).

37 Title II of the Regulation concerns shipments of waste between Member States and draws a distinction between waste destined for disposal (Chapter A, Articles 3 to 5) and waste destined for recovery (Chapter B, Articles 6 to 11). As is indicated in the ninth recital, that Title sets up a system whereby shipments of waste are subject to prior notification to the competent authorities enabling them to be duly informed in particular of the type, movement and disposal or recovery of the waste, so that they may take all necessary measures for the protection of human health and the environment, including the possibility of raising reasoned objections to the shipment.

38 Article 13 of the Regulation, which constitutes Title III, concerns shipments of waste within Member States. In accordance with the fifth recital, the supervision and control of such shipments are the responsibility of the Member States themselves. The national systems established by them for that purpose must take account, however, of the need for coherence with the Community system established by the Regulation (Article 13(2)). Member States may also apply the system provided for by the Regulation in relation to shipments between Member States (Article 13(4)).

39 Titles IV, V and VI of the Regulation lay down the rules applying respectively to exports of waste out of the Community, imports of waste into the Community and the transit of waste from outside and through the Community for disposal or recovery outside the Community.

40 Title VII of the Regulation, entitled 'Common provisions', lays down, *inter alia*, the conditions in which a shipment of waste is to be deemed to be illegal traffic and the measures to be taken in such a case (Article 26).

41 In an action brought before it for annulment of the Regulation, the Court held that the Regulation sets out the conditions governing shipments of waste between Member States and the procedures to be followed for their authorisation, those conditions and procedures having all been adopted with a view to ensuring the protection of the environment, taking account of objectives falling within the scope of environmental policy such as the principles of proximity, priority for recovery and self-sufficiency at Community and national levels (Case C-187/93 *Parliament* v *Council* [1994] ECR I-2857, paragraphs 21 and 22). The Court further observed, with a view to determining whether the Regulation could be validly adopted on the legal basis of Article 130s of the Treaty (now, after amendment, Article 175 EC), that the aim of the Regulation was to provide a harmonised set of procedures whereby movements of waste can be limited in order to secure protection of the environment (*Parliament* v *Council*, paragraph 26).

42 It therefore follows from the context in which the Regulation was adopted, from its nature, from the aims which it pursues and from its content, that it regulates in a harmonised manner, at Community level, the question of shipments of waste in order to ensure the protection of the environment.

43 Accordingly, any national measure relating to shipments of waste must be assessed in the light of the provisions of the Regulation and not of Articles 30, 34 and 36 of the Treaty.

44 In that context, the use in Article 4(3)(a)(i) of the Regulation of the expression 'in accordance with the Treaty' cannot be construed as meaning that a national measure that satisfies the requirements of that provision must be subject to a further and separate review of its compatibility with Articles 30, 34 and 36 of the Treaty.

45 Nor does the expression 'in accordance with the Treaty' mean that all national measures restricting the shipments of waste referred to in Article 4(3)(a)(i) of the Regulation must be systematically presumed to be compatible with Community law solely because they are intended to implement one or more of the principles referred to in that provision. That expression must instead be construed as meaning that, in addition to being compatible with the Regulation, such national measures must also comply with the general rules or principles of the Treaty to which no direct reference is made in the legislation adopted in the field of waste shipments.

46 In the light of the foregoing considerations, the answer to the first question must be that where a national measure generally prohibiting exports of waste for disposal is justified by the principles of proximity, priority for recovery and self-sufficiency, in accordance with Article 4(3)(a)(i) of the Regulation, it is not necessary for that national measure to be subject to a further and separate review of its compatibility with Articles 34 and 36 of the Treaty.

Second question

47 Since the second question was referred by the national court only in the event of an affirmative answer to the first question, there is no need to reply to it.

Third question

48 By its third question, the national court is asking, essentially, whether Article 4(3) of the Regulation authorises a Member State which has adopted legislation establishing an obligation to offer waste for disposal to an approved body to provide that, where the waste is not allocated to a treatment centre belonging to that body, its shipment to treatment installations in other Member States is authorised only on condition that the intended disposal satisfies the requirements of that Member State's environmental protection legislation.

49 In that regard, it should be observed that Article 4(2)(c) of the Regulation provides that objections to shipments of waste are to be based on Article 4(3).

50 It follows that the cases in which Member States may object to a shipment of waste for disposal between Member States are those exhaustively listed in Article 4(3) of the Regulation.

51 Article 4(3)(a) of the Regulation concerns cases in which Member States may take measures to prohibit generally or partially or to object systematically to shipments of waste. Article 4(3)(b) and (c) concerns cases in which Member States may raise objections to a specific shipment of waste.

52 The national legislation in issue to which the third question refers establishes a system whose effect is that exports of waste are prohibited in principle, subject to a number of exceptions. A first category of exceptions exempts producers or holders of waste, in certain cases, from the requirement to offer it to the approved body responsible for waste management, in particular when the quantities of waste in question are below certain thresholds. A second category of exceptions, to which the third question specifically refers, provides that, where waste has been offered to the approved body responsible for management of waste for disposal but cannot be treated by a treatment centre for which that body is responsible, in particular because the treatment capacities of such a centre are exceeded, waste may be authorised to be shipped to a treatment installation suggested by the producer or holder of the waste, on condition that the intended disposal meets the requirements of the environmental protection rules of the Member State of dispatch.

53 As DaimlerChrysler rightly points out, the Decree whose legality is challenged in the main proceedings constitutes an abstract and general act of a Member State, such as those contemplated in Article 4(3)(a)(i) of the Regulation, so that the question whether Community law authorises a national measure such as that decree falls to be examined under that provision of the Regulation and not under the other provisions of Article 4(3).

54 On the question of the compatibility of the Decree with Article 4(3)(a)(i) of the Regulation, *Land* Baden-Württemberg claims, in particular, that since under that provision Member States are authorised to impose a general prohibition on

exports of waste, a Member State which declines to impose such a prohibition must *a fortiori* be recognised as having the right, exercised in the legislation at issue in the main proceedings, to require that, where the waste is disposed of abroad, its own standards of environmental protection be observed.

55 That argument cannot be accepted.

56 National legislation such as that at issue in the main proceedings, which must be regarded as a measure partially prohibiting shipments of waste, can, like the measures generally prohibiting, or systematically objecting to, such shipments referred to in Article 4(3)(a)(i) of the Regulation, be lawfully adopted by a Member State only on condition that it satisfy the requirements laid down in that provision, namely that it implement the principles of proximity, priority for recovery and self-sufficiency at Community and national levels in a manner consistent with the principle of proportionality.

57 In that regard, since Article 4(3)(a)(i) of the Regulation does not specifically provide for the possibility of prohibiting shipments of waste where the disposal of the waste does not satisfy the requirements of the environmental protection legislation of the State of dispatch, it is necessary to consider whether that possibility may be justified by reference to one of the three principles mentioned in that provision.

58 As regards, first, the principle of proximity, it should be observed that national legislation which, where it permits shipments of waste to another Member State for disposal, makes authorisation of such a shipment subject to the condition that that disposal can be achieved in a manner consistent with the requirements of the environmental protection legislation of the State of dispatch cannot be regarded as implementing that principle.

59 Such legislation takes no account of the proximity of the treatment installation suggested by the producer or holder of the waste.

60 As regards, second, the principle of priority for recovery, laid down in Article 3(1)(b) of the Directive, which provides that Member States are to take appropriate measures to encourage the recovery of waste, it cannot by definition be implemented by national legislation aimed not at encouraging such recovery but solely at determining the treatment installation in which the waste can be disposed of.

61 As regards, third, the principle of self-sufficiency at Community and national level, it follows from Article 5(1) of the Directive that the object of that principle is to enable the Community as a whole to become self-sufficient in waste disposal and the Member States to move towards that aim individually, by means of an integrated and adequate network of disposal installations.

62 Admittedly, implementation of that principle may in theory justify legislation that introduces an obligation to offer waste for disposal to an approved body, which sends the waste to treatment installations it controls, in so far as that obligation is justified by the need to ensure a level of activity indispensable to the viability of those treatment installations and, consequently, makes it possible to maintain treatment capacities which help to put into practice the principle of self-sufficiency at national level.

63 However, the condition that the shipment of waste for disposal be authorised only if disposal is carried out in accordance with the requirements of the environmental protection legislation of the State of dispatch does not in any way

contribute to the implementation of the principle of self-sufficiency, since it applies only in cases where, because the waste in question cannot be treated by an installation belonging to the approved body responsible for managing waste for disposal, it is sent in any event to a treatment establishment suggested by the producer or holder of the waste.

64 It follows from the foregoing that, where a Member State authorises the shipment of waste to treatment installations in another Member State suggested by the producer or holder of the waste and not to installations designated by it, Article 4(3) of the Regulation does not authorise that Member State to impose a condition that the intended disposal must satisfy the requirements of its own legislation.

65 The answer to the third question must therefore be that Article 4(3) of the Regulation does not authorise a Member State which has adopted legislation introducing an obligation to offer waste for disposal to an approved body to provide that, where the waste is not allocated to a treatment centre for which that body is responsible, its shipment to treatment installations in other Member States is authorised only on condition that the intended disposal satisfy the requirements of the environmental protection legislation of that Member State.

Fourth question

66 By its fourth question, the national court is asking, essentially, whether Articles 3 to 5 of the Regulation preclude a Member State from applying its own procedure

relating to the delivery and allocation of waste to shipments of waste for disposal between Member States, before implementation of the notification procedure provided for in the Regulation.

67 In that regard, the harmonisation in relation to shipments of waste achieved by the Regulation concerns not only the substantive conditions in which those shipments may be carried out but also the procedure applicable to those shipments.

68 In particular, under Articles 3 to 5 of the Regulation the procedure applicable to shipments between Member States of waste for disposal is characterised by the obligation imposed on a producer or holder of such waste who proposes to ship it or have it shipped to give advance notice to the competent authority of destination.

69 That notification forms an essential part of the procedure laid down for shipments of that type by the Regulation, which defines in detail the information regarding the shipment to be set out in the notification and which provides that acknowledgement of receipt of the notification marks the point at which time begins to run for the purpose of the various time-limits by which the competent authorities of destination, dispatch and transit may exercise, or decline to exercise, their right under the Regulation to object to the shipment or to lay down conditions in respect thereof.

70 The procedure thus defined by the Regulation provides the notifier with a guarantee that his 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.

71 National legislation requiring a producer or holder of waste proposing to ship that waste or to have it shipped, prior to the Community procedure starting with the notification provided for by the Regulation, to follow a separate procedure, which includes its own formalities and time-limits, concerning the offer and allocation of the waste, cannot be regarded as compatible with the procedure laid down in Articles 3 to 5 of the Regulation.

72 It follows that Articles 3 to 5 of the Regulation, which define the procedure to be applied to shipments between Member States of waste for disposal, preclude a Member State from applying, before implementing the notification procedure laid down in the Regulation, its own procedure concerning the delivery and allocation of the waste.

73 That interpretation is not invalidated by the argument of *Land* Baden-Württemberg that, since the Regulation, in Article 4(3)(a)(i), authorises Member States to take measures to prohibit generally shipments of waste, they must *a fortiori* be recognised as being authorised to introduce, for the purpose of implementing those national measures, an independent procedure involving preliminary examination of an application to ship waste for disposal.

74 Where Member States exercise the option conferred by Article 4(3)(a)(i) of the Regulation to take general measures restricting shipments of waste, they cannot derogate from the notification procedure laid down in the Regulation. They must, on the contrary, exercise that option within the procedural framework established by the Regulation, which provides that advance notification of the proposed

shipment marks the first stage in the procedure leading to its possible authorisation.

75 In particular, where a Member State takes a measure partially prohibiting shipments of waste in accordance with Article 4(3)(a)(i) of the Regulation, by providing that certain waste must be offered to an approved body responsible for the management of waste for disposal, and that shipment of such waste to a disposal installation in another Member State can be authorised only where it cannot be treated in an installation belonging to that body, any objection to the shipment by the authority of dispatch based on that prohibitive measure must be raised in accordance with the procedures laid down in the Regulation.

76 The answer to the fourth question must therefore be that Articles 3 to 5 of the Regulation preclude a Member State from applying to shipments between Member States of waste for disposal, before the implementation of the notification procedure laid down in the Regulation, its own procedure in relation to the offer and allocation of the waste.

Costs

77 The costs incurred by the German, Danish, Netherlands, Austrian and United Kingdom 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 action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the questions referred to it by the Bundesverwaltungsgericht by judgment of 24 June 1999, hereby rules:

1. Where a national measure generally prohibiting exports of waste for disposal is justified by the principles of proximity, priority for recovery and self-sufficiency, in accordance with Article 4(3)(a)(i) 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, it is not necessary for that national measure to be subject to a further and separate review of its compatibility with Articles 34 and 36 of the EC Treaty (now, after amendment, Articles 29 EC and 30 EC).

2. Article 4(3) of Regulation No 259/93 does not authorise a Member State which has adopted legislation introducing an obligation to offer waste for disposal to an approved body to provide that, where the waste is not allocated to a treatment centre for which that body is responsible, its shipment to treatment installations in other Member States is authorised only on condition that the intended disposal satisfy the requirements of the environmental protection legislation of that Member State.

3. **Articles 3 to 5 of Regulation No 259/93 preclude a Member State from applying to shipments between Member States of waste for disposal, before the implementation of the notification procedure laid down in the regulation, its own procedure in relation to the offer and allocation of the waste.**

Rodríguez Iglesias Colneric Gulmann

Edward La Pergola Sevón Wathelet

Schintgen Skouris Cunha Rodrigues Timmermans

Delivered in open court in Luxembourg on 13 December 2001.

R. Grass

Registrar

G.C. Rodríguez Iglesias

President