JUDGMENT OF THE COURT (First Chamber)

16 February 2006 *

In Case C-215/04,

REFERENCE for a preliminary ruling under Article 234 EC, by the l'Østre Landsret (Denmark), made by decision of 14 May 2004, received at the Court on 21 May 2004, in the proceedings

Marius Pedersen A/S

v

Miljøstyrelsen,

THE COURT (First Chamber),

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

* Language of the case: Danish

Advocate General: P. Léger,
Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 26 May 2005,

after considering the observations submitted on behalf of:

— Marius Pedersen A/S, by H. Banke, advokat,

— the Miljøstyrelse, by P. Biering, advokat,

— the Danish Government, by J. Molde and P. Biering, acting as Agents,

— the Belgian Government, by D. Haven, acting as Agent,

— the Austrian Government, by E. Riedl, acting as Agent,

— the Polish Government, by J. Pietras, acting as Agent,

— the Commission of the European Communities, by M. Konstantinidis and H. Støvlbæk, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 14 July 2005,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Articles 2(g), 6(5) and 7(1), (2) and (4)(a) 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).

2 The reference has been made in the course of proceedings between Marius Pedersen A/S ('Pedersen'), an undertaking authorised to collect electronic scrap, established in Denmark, and the Miljøstyrelse (Environment Agency), concerning transport to Germany of that waste for recovery.

Legal context

3 Pursuant to the ninth recital in the preamble to Regulation No 259/93:

'... shipments of waste must be 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 these authorities may take all necessary measures for the protection of human health and the environment, including the possibility of raising reasoned objections to the shipment'.

4 Article 2(g) of that regulation defines 'notifier' as follows:

'... any natural person or corporate body to whom or to which the duty to notify is assigned, that is to say the person referred to hereinafter who proposes to ship waste or have waste shipped:

(i) the person whose activities produced the waste (original producer); or

(ii) where this is not possible, a collector licensed to this effect by a Member State or a registered or licensed dealer or broker who arranges for the disposal or the recovery of waste

...'

5 Article 6 of the same regulation provides:

'1. Where the notifier intends to ship waste for recovery listed in Annex III from one Member State to another ..., he shall notify the competent authority of destination and send copies of the notification to the competent authorities of dispatch and transit and to the consignee.

...

4. In making notification, the notifier shall complete the consignment note and shall, if requested by competent authorities, supply additional information and documentation.

5. The notifier shall supply on the consignment note information with particular regard to:

— the source, composition and quantity of the waste for recovery, including the producer's identity and, in the case of waste from various sources, a detailed inventory of the waste and, if known, the identity of the original producer,

...'

6 Pursuant to Article 7 of Regulation No 259/93:

'1. On receipt of the notification the competent authority of destination shall send, within three working days, an acknowledgement to the notifier and copies thereof to the other competent authorities and to the consignee.

2. The competent authorities of destination, dispatch and transit shall have 30 days following dispatch of the acknowledgement to object to the shipment. Such objection shall be based on paragraph 4. Any objection must be provided in writing to the notifier and to other competent authorities concerned within the 30-day period.

...

4. (a) The competent authorities of destination and dispatch may raise reasoned objections to the planned shipment:

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

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

...

...

5. If within the time limit laid down in paragraph 2 the competent authorities are satisfied that the problems giving rise to their objections have been solved and that the conditions in respect of the transport will be met, they shall immediately inform the notifier in writing, with copies to the consignee and to the other competent authorities concerned.

If there is subsequently any essential change in the conditions of the shipment, a new notification must be made.'

7 Article 4 of 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, hereinafter 'Directive 75/442'), provides:

'Member States shall take the necessary measures to ensure that waste is recovered or disposed of without endangering human health and without using processes or methods which could harm the environment, and in particular:

— without risk to water, air, soil and plants and animals,

— without causing a nuisance through noise or odours,

— without adversely affecting the countryside or places of special interest.

Member States shall also take the necessary measures to prohibit the abandonment, dumping or uncontrolled disposal of waste.'

The main proceedings and the questions referred for a preliminary ruling

8 By its notification of 21 February 2000, Pedersen asked the Miljøstyrelse for authorisation to transport 2 000 tonnes of electronic scrap to its partner undertaking established in Germany, for the purposes of recovery. The Agency refused to authorise the transport on the ground that Pedersen had failed to supply it with the information necessary for it to consider the request for authorisation, particularly:

(1) letters of authorisation from the original producers of the waste stating that Pedersen represented them for the purposes of exporting the waste collected;

(2) proof that the installation established in Germany would treat the waste in a manner giving a level of environmental protection corresponding to that required under the Danish rules;

(3) sufficient information regarding the composition of the waste, Pedersen having stated merely, in the notification form relating to cross-border transport, that the transport was of 'electronic scrap'.

9 Furthermore, in the light of the alleged incompleteness of the notification, the Miljøstyrelse took the view that the 30-day period laid down in Article 7 of Regulation No 259/93 for the competent authority to give its consent or to raise objections could not begin to run.

10 On 22 May 2001, Pedersen brought an action before the Østre Landsret (Eastern Regional Court), taking the view that it had provided sufficient material to enable the Miljøstyrelse to issue the authorisation requested and considering that the period within which objections could be raised had expired and that, consequently, it was entitled to proceed with the transports at issue in the main proceedings.

11 In those circumstances, the Østre Landsret decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

'1. Must the expression "where this is not possible" in Article 2(g)(ii) of Regulation ... No 259/93 ... be understood as meaning that an approved collection undertaking cannot automatically be the notifier of exports of waste for recycling?

If the answer is in the affirmative: which criteria determine whether an approved collection undertaking can be the notifier of exports of waste for recycling?

May the criterion be that the waste producer is unknown or that there are so many waste producers, the individual contribution of each of which is so modest, that it would be unreasonable for each individually to be required to notify the exportation of the waste?

2. Does Article 7(2) of Regulation ... No 259/93 ..., in conjunction with Article 7(4)(a), first and second indents in particular, provide a possibility for the competent authorities of the country of dispatch to raise an objection against a specific request for authorisation to export waste for the purpose of recycling if there is no information from the notifier that the recipient plant's treatment of the waste in question will, from the environmental point of view, be of the same standard as is required under national rules in the country of dispatch?

3. Must the first indent of Article 6(5) of Regulation ... No 259/93 ... be construed as meaning that the requirement as to information on the composition of the waste may be regarded as being satisfied if the notifier indicates that the waste in question is of only one specific kind, for example, "electronic scrap"?

4. Must Article 7(1) and (2) of Regulation ... No 259/93 ... be construed as meaning that the period in Article 7(2) begins to run when the competent authority of destination has sent the acknowledgement, irrespective of the fact that the competent authority of dispatch does not consider that it has received all of the information set out in Article 6(5)?

If the answer is in the negative: what information must a notification contain before the 30-day period indicated in Article 7(2) can begin to run?

Does the fact of having exceeded the 30-day period for reply have the effect in law that the authority cannot raise further objections or request further information?'

The first question

12 By its first question, the national court asks, essentially, whether Article 2(g)(ii) of Regulation No 259/93 is to be interpreted as meaning that the licensed waste collector is not automatically authorised to give notification of the transport thereof for recovery.

13 It is apparent from the actual wording of Article 2(g)(ii) that, where the person whose activity has produced the waste in question, in this case the original producer, is unable to give notification of the transport, a licensed collector may fulfil the role of notifier, but solely in such a case.

14 Thus that article expressly precludes the licensed collector being automatically considered the sole notifier of the transport of waste.

15 In addition, the national court seeks determination of the criteria on the basis of which the licensed collector may be the notifier of a shipment of waste for recovery.

16 Although the obligation to notify the transport of waste falls firstly on the original producer, the phrase 'where this is not possible' means that, where the original producer cannot give the notification, the licensed collector may do so. In the light of one of the objectives of Regulation No 259/93, as set out in the ninth recital in the preamble thereto, namely the prior notification to the competent authorities of shipments of waste enabling them to be duly informed, so that they may take all necessary measures for the protection of human health and the environment, it is necessary to give a wide interpretation of the phrase 'where this is not possible' in order to ensure that, where it is impossible for the notification of the transport to the competent authorities to be given by the original producer, it may be given by the licensed collector.

17 In that context, the situations referred to by the national court, such as the fact that the producer of the waste is unknown or that there are so many waste producers, the individual contribution of each of which is so modest that it would be unreasonable for each individually to be required to notify the transport of the waste, constitute criteria which allow the licensed collector to notify the competent authorities of the transport and which fall within the scope of the phrase 'where this is not possible'.

18 In particular, where the identity of the original producer is unknown, it is entirely justified and even desirable that it be the licensed collector who notifies the competent authorities. Furthermore, as the Advocate General noted in point 26 of his Opinion, the multiplication of notifications resulting from the large number of producers each producing small amounts of waste would be incompatible with the obligation on the competent authorities pursuant to Regulation No 259/93 to examine those notifications within a relatively short time.

19 The answer to the first question must therefore be that the phrase 'where this is not possible' in Article 2(g)(ii) of Regulation No 259/93 must be interpreted as meaning

that the simple fact that a person is a licensed collector does not confer on him the status of notifier of a shipment of waste for recovery. However, the situation that the producer of the waste is unknown or that the number of waste producers is so great and the individual contribution of each of them so small that it would be unreasonable for each individually to be required to notify the transport of the waste may justify the licensed collector being considered as the notifier of a shipment of waste for recovery.

The second question

20 By its second question, the national court asks essentially whether the competent authorities of the State of dispatch are entitled to raise an objection against a request for authorisation to export waste for the purpose of recovery to a State of destination for the sole reason that the information supplied by the notifier does not indicate that the legislation of the State of destination requires the same level of environmental protection as that of the State of dispatch.

21 It must be observed, as a preliminary point, that the question of shipments of waste is regulated in a harmonised manner at Community level by Regulation No 259/93, in order to ensure the protection of the environment (Case C-324/99 *Daimler-Chrysler* [2001] ECR I-9897, paragraph 42, and Case C-6/00 *ASA* [2002] ECR I-1961, paragraph 35).

22 The cases in which Member States may object to a shipment of waste between Member States are, for shipments of waste for recovery, those exhaustively listed in Article 7(4) of that regulation as provided by Article 7(2) thereof (*ASA*, paragraph 36).

23 Application of Article 7(4), which defines the cases in which the competent authorities of dispatch, transit and destination may raise objections to transports of waste for recovery, assumes that the competent authority has the information necessary in order to check whether or not a shipment falls within one of those cases.

24 In that regard, Article 6(5) of Regulation No 259/93 provides that the notifier must supply certain information.

25 Furthermore, it is clear from Article 6(4) of that regulation that the competent authorities may request additional information and documentation from the notifier.

26 Since Regulation No 259/93 does not provide for a specific procedure where such a request for additional information or documents is not complied with, the competent authority may raise an 'objection', provided for in Article 7(2) of that regulation, if it does not have the information necessary in order to check whether a shipment raises problems in the light of Article 7(4) of the regulation.

27 In that context, the level of information which is to be considered necessary and which the competent authority may consequently request varies according to the situation referred to in Article 7(4) of Regulation No 259/93.

28 Thus, with regard to the situation referred to in the first indent of Article 7(4)(a) of Regulation No 259/93, the Court has held, in paragraph 43 of the judgment in Case C-277/02 *EU-Wood-Trading* [2004] ECR I-11957, that the competent authorities may base an objection on considerations relating not only to the transport operation itself but also to the recovery operation planned for that shipment.

29 Since under Article 4 of Directive 75/442 the Member States are to take the measures necessary to ensure that waste is recovered or disposed of without endangering human health and without the use of processes or methods capable of harming the environment, the provisions of the first indent of Article 7(4)(a) of Regulation No 259/93 must be interpreted as authorising the competent authorities of dispatch to raise objections to a shipment of waste for recovery on the ground that the planned recovery disregards the requirements arising from Article 4 of that directive (*EU-Wood-Trading*, paragraph 42).

30 In the judgment in *EU-Wood-Trading*, the Court held that the provisions of the first indent of Article 7(4)(a) of Regulation No 259/93 imply that the competent authorities, in assessing the risks which recovery of waste carried out in the State of destination would entail for human health and the environment, may take account of all relevant criteria in that regard, including those which are in force in the State of dispatch, even if they are stricter than those of the State of destination, and provided they are intended to avoid those risks. The competent authorities of dispatch cannot, however, be bound by the criteria of their State if such criteria are no more apt to avoid those risks than those of the State of destination (*EU-Wood-Trading*, paragraph 46).

31 Moreover, opposition by the competent authority of dispatch on the basis of its national waste recovery standards to a shipment can only be lawful in so far as those standards, in compliance with the principle of proportionality, are apt to attain the

objectives pursued which are intended to prevent risks for human health and the environment, and do not go beyond what is necessary to attain them (*EU-Wood-Trading*, paragraph 49). Those risks must be measured, not by the yardstick of general considerations, but on the basis of relevant scientific research (*EU-Wood-Trading*, paragraph 50).

32 Thus, in the context of the prior notification put into place by Article 6 of Regulation No 259/93, the notifier must, in accordance with Article 6(5) thereof, supply on the consignment note supplementing the notification information concerning not only the composition and quantity of waste for recovery and the method of transport but also the conditions under which the waste will be recovered.

33 However, the notifier cannot be required to prove that the recovery in the State of destination will be equivalent to that required by the rules in the State of dispatch. On the contrary, if the competent authority of dispatch wishes, pursuant to the first indent of Article 7(4)(a) of Regulation No 259/93, to object to a shipment on the basis of its national standards for recovery, it is for it to show the risks to human health and the environment which recovery in the State of destination would entail.

34 In the light of the foregoing, the answer to the second question must be that the competent authority of dispatch is entitled, pursuant to Article 7(2) and the first indent of Article 7(4)(a) of Regulation No 259/93, to object to a shipment of waste in the absence of information on the conditions of recovery of that waste in the State of destination. However, the notifier cannot be required to prove that the recovery in the State of destination will be equivalent to that required by the rules in the State of dispatch.

The third question

35 By its third question, the national court asks whether the mention, in the context of the notification of a shipment, of a category of waste such as 'electronic scrap' satisfies the obligation to supply information concerning the composition of waste under the first indent of Article 6(5) of Regulation No 259/93.

36 As has already been noted in paragraph 16 of the present judgment, one of the objectives of Regulation No 259/93 is to ensure prior notification is given to the competent authorities of shipments of waste enabling them to be duly informed, so that they may take all necessary measures for the protection of human health and the environment.

37 Only a complete notification, giving detailed information regarding the source, composition and quantity of the waste for recovery and, in the case of waste from various sources, a detailed inventory of the waste, can ensure that that objective is achieved.

38 The mention of 'electronic scrap' does not meet that condition, given its abstract and imprecise nature and because of the lack of details giving the competent authority information on the specific characteristics of the waste in question.

39 In the light of the foregoing, the answer to the third question must be that the first indent of Article 6(5) of Regulation No 259/93 must be interpreted as meaning that the obligation to supply information relating to the composition of the waste is not satisfied by the notifier declaring a category of waste under the heading 'electronic scrap'.

The fourth question

40 By its fourth question, the national court asks whether the fact that the competent authority of dispatch considers that it does not have all the information necessary concerning the shipment of waste for recovery affects the date from which the period of 30 days laid down in Article 7(2) of Regulation No 259/93 starts to run. In addition, that court asks whether the expiry of that period precludes the competent authorities' objecting to the shipment or requesting additional information from the notifier.

41 To answer the question referred, it is appropriate to consider the machinery for notification of shipments of waste as provided for by Regulation No 259/93.

42 According to Article 6(1) of that regulation, where the notifier intends to ship waste for recovery from one Member State to another Member State, he is to notify the competent authority of destination and send copies of the notification to the competent authorities of dispatch and transit and to the consignee.

43 Article 7(1) of the regulation provides that, on receipt of the notification, the competent authority of destination is to send, within three working days, an acknowledgement to the notifier and copies thereof to the other competent authorities and to the consignee.

44 Pursuant to the first subparagraph of Article 7(2), the competent authorities of destination, dispatch and transit are to have 30 days following dispatch of the acknowledgement to object to the shipment.

45 It is therefore apparent from the actual wording of Article 7 of Regulation No 259/93 that the period of 30 days begins to run when the competent authority of destination has sent an acknowledgement of receipt. The fact that the competent authority of dispatch, as is the case in the main proceedings, considers that it has not received all the information necessary should not cause that period not to start to run. The period of 30 days laid down by that regulation provides the notifier with a guarantee that the 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 (see to that effect, with regard to an objection raised by the competent authority of dispatch concerning the erroneous classification of a shipment, *ASA*, paragraph 49).

46 For that reason, having regard to considerations of legal certainty, Article 7(2) of Regulation No 259/93 should be interpreted strictly. Since the period of 30 days laid down in that article constitutes a guarantee of sound administration, the competent authorities may raise objections only if they comply with that time-limit.

47 Thus, the lack of certain information which the competent authority, in the present case the competent authority of dispatch, considers it useful, or indeed necessary, to request must not prevent the period of 30 days laid down in Article 7(2) of Regulation No 259/93 from starting to run.

48 In their written observations, the Danish, Austrian and Polish Governments made known their fears with regard to that interpretation, submitting that the fact of accepting that the period of 30 days starts to run when the acknowledgement of receipt has been sent by the competent authority of destination, without taking into account the fact that the notification is incomplete, would lead to a situation where the competent authorities were not in a position to object to the shipment.

49 In that regard, taking account of the fact that the competent authorities must be duly informed, by way of prior notification, 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, it is necessary to maintain the rights of those authorities to request additional information when they consider that the notification is incomplete, rights conferred on them by Article 6(4) of Regulation No 259/93.

50 However, the interpretation given in paragraphs 46 and 47 of the present judgment do not prejudice those rights. Since Regulation No 259/93 does not lay down any specific procedure for the introduction by the competent authorities of requests for additional information and documents pursuant to Article 6(4) of that regulation, such requests may be formulated by the competent authorities, in the present case the authority of dispatch, within the 30-day period, in the form of an 'objection' provided for in Article 7(2) of the regulation. Such a solution allows strict interpretation of Article 7(2) to be reconciled with maintaining the rights of the competent authorities to request additional information.

51 Should the additional information requested by the competent authority of dispatch be received within the 30-day period and that authority be satisfied that the problems giving rise to their objections have been solved, it will, in accordance with Article 7(5) of Regulation No 259/93, immediately inform the notifier in writing, with a copy to the consignee and the other competent authorities involved. If subsequently there is an essential change to the transport arrangements, a new notification must be given.

52 In those circumstances, the answer to the fourth question must be that the period in Article 7(2) begins to run when the competent authorities of the State of destination have sent the acknowledgement of receipt of the notification, irrespective of the fact

that the competent authorities of the State of dispatch do not consider that they have received all of the information set out in Article 6(5) of that regulation. The effect of the expiry of that time-limit is that the competent authorities can no longer raise objections to the shipment or request additional information from the notifier.

Costs

53 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. **The phrase 'where this is not possible' in Article 2(g)(ii) 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 must be interpreted as meaning that the simple fact that a person is a licensed collector does not confer on him the status of notifier of a shipment of waste for recovery. However, the situation that the producer of the waste is unknown or that the number of waste producers is so great and the individual contribution of each of them so small that it would be unreasonable for each individually to be required to notify the transport of the waste may justify the licensed collector being considered as the notifier of a shipment of waste for recovery;**

2. **The competent authority of dispatch is entitled, pursuant to Article 7(2) and the first indent of Article 7(4)(a) of Regulation No 259/93, to object to a shipment of waste in the absence of information on the conditions of recovery of that waste in the State of destination. However, the notifier cannot be required to prove that the recovery in the State of destination will be equivalent to that required by the rules in the State of dispatch;**

3. **The first indent of Article 6(5) of Regulation No 259/93 must be interpreted as meaning that the obligation to supply information relating to the composition of the waste is not satisfied by the notifier declaring a category of waste under the heading 'electronic scrap';**

4. **The period in Article 7(2) of Regulation No 259/93 begins to run when the competent authorities of the State of destination have sent the acknowledgement of receipt of the notification, irrespective of the fact that the competent authorities of the State of dispatch do not consider that they have received all of the information set out in Article 6(5) of that regulation. The effect of the expiry of that time-limit is that the competent authorities can no longer raise objections to the shipment or request additional information from the notifier.**

[Signatures]