ORDER OF THE COURT (Fifth Chamber)
27 February 2003 *

In Joined Cases C-307/00 to C-311/00,

REFERENCES to the Court under Article 234 EC by the Raad van State (Netherlands) for preliminary rulings in the proceedings pending before that court between

Oliehandel Koeweit BV (C-307/00),

Slibverwerking Noord-Brabant NV,

Glückauf Sondershausen Entwicklungs- und Sicherungsgesellschaft mbH (C-308/00),

PPG Industries Fiber Glass BV (C-309/00),

Stork Veco BV (C-310/00),

* Language of the case: Dutch.

Sturing Afvalverwijdering Noord-Brabant NV,

Afvalverbranding Zuid Nederland NV,

Mineralplus Gesellschaft für Mineralstoffaufbereitung und Verwertung mbH, formerly UTR Umwelt GmbH (C-311/00)

and

Minister van Volkshuisvesting, Ruimtelijke Ordening en Milieubeheer,

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), Council Directive 75/442/EEC of 15 July 1975 on waste (OJ 1975 L 194, p. 39), as amended by Council Directive 91/156/EEC of 18 March 1991 (OJ 1991 L 78, p. 32) and by Commission Decision 96/350/EC of 24 May 1996 (OJ 1996 L 135, p. 32), Council Directive 96/59/EC of 16 September 1996 on the disposal of polychlorinated biphenyls and polychlorinated terphenyls (PCB/PCT) (OJ 1996 L 243, p. 31) and Council Directive 75/439/EEC of 16 June 1975 on the disposal of waste oils (OJ 1975 L 194, p. 23), as amended by Council Directive 87/101/EEC of 22 December 1986 (OJ 1987 L 42, p. 43), and on the validity of Article 4(3)(b)(i) of Regulation No 259/93,

THE COURT (Fifth Chamber),

composed of: D.A.O. Edward, acting for the President of the Fifth Chamber, A. La Pergola (Rapporteur), P. Jann, S. von Bahr and A. Rosas, Judges,

Advocate General: P. Léger,
Registrar: R. Grass,

after informing the national court that the Court proposes to give its decision by reasoned order in accordance with Article 104(3) of its Rules of Procedure,

after asking the interested parties referred to in Article 20 of the EC Statute of the Court of Justice to submit their observations on the matter,

after hearing the views of the Advocate General,

makes the following

Order

1 By orders of 8 August 2000, received at the Court on 16 August 2000, the Raad van State (Council of State) referred to the Court for preliminary rulings under

Article 234 EC a number of questions concerning 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, hereinafter 'the regulation'), Council Directive 75/442/EEC of 15 July 1975 on waste (OJ 1975 L 194, p. 39), as amended by Council Directive 91/156/EEC of 18 March 1991 (OJ 1991 L 78, p. 32) and by Commission Decision 96/350/EC of 24 May 1996 (OJ 1996 L 135, p. 32), (hereinafter 'the waste directive'), Council Directive 96/59/EC of 16 September 1996 on the disposal of polychlorinated biphenyls and polychlorinated terphenyls (PCB/PCT) (OJ 1996 L 243, p. 31, hereinafter 'the PCB/PCT directive') and Council Directive 75/439/EEC of 16 June 1975 on the disposal of waste oils (OJ 1975 L 194, p. 23), as amended by Council Directive 87/101/EEC of 22 December 1986 (OJ 1987 L 42, p. 43) (hereinafter 'the waste oils directive'), and on the validity of Article 4(3)(b)(i) of the regulation.

2 Those questions have been raised in proceedings between, on the one hand, Oliehandel Koeweit BV ('OHK') (C-307/00), Slibverwerking Noord-Brabant NV and Glückauf Sondershausen Entwicklungs- und Sicherungsgesellschaft mbH ('SNB' and 'GSES' respectively) (C-308/00), PPG Industries Fiber Glass BV ('PPGIFG') (C-309/00), Stork Veco BV (hereinafter 'SV') (C-310/00), and Sturing Afvalverwijdering Noord-Brabant NV, Afvalverbranding Zuid Nederland NV and Mineralplus Gesellschaft für Mineralstoffaufbereitung und Verwertung mbH ('SANB', 'AZN' and 'MGMV' respectively) (C-311/00) and, on the other, the Minister van Volkshuisvesting, Ruimtelijke Ordening en Milieubeheer (Minister for Housing, Planning and the Environment, hereinafter 'the Minister') concerning objections raised by the latter to planned shipments of waste between the Netherlands and Germany notified by OHK, SNB, SV and AZN and regarding a penalty imposed by the Minister on PPGIFG for having carried out such a waste shipment without prior notification.

Legal framework

Community legislation

The waste directive

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

4 Article 1(e) of the waste directive defines '*disposal*' as 'any of the operations provided for in Annex IIA', and Article 1(f) defines '*recovery*' as 'any of the operations provided for in Annex IIB'.

5 Article 2(2) of the waste directive states:

'Specific rules for particular instances or supplementing those of this Directive on the management of particular categories of waste may be laid down by means of individual Directives.'

6 Under Article 3(1) of that directive:

'Member States shall take appropriate measures to encourage:

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

(b) secondly:

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

or

(ii) the use of waste as a source of energy.'

7 Article 5 of the waste 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.'

8 Under Article 7 of the waste directive:

'1. In order to attain the objectives referred to in Article 3, 4 and 5, the competent authority or authorities referred to in Article 6 shall be required to draw up as soon as possible one or more waste management plans....

...

3. Member States may take the measures necessary to prevent movements of waste which are not in accordance with their waste management plans. They shall inform the Commission and the Member States of any such measures.'

9 Annex IIA to the waste directive, entitled 'Disposal operations', states:

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

D1 Deposit into or onto land (e.g. landfill, etc.)

...

D3 Deep injection (e.g. injection of pumpable discards into wells, salt domes or naturally occurring repositories, etc.)

...

D9 Physico-chemical treatment not specified elsewhere in this Annex which results in final compounds or mixtures which are discarded by means of any of the operations numbered D1 to D12 (e.g. evaporation, drying, calcination, etc.)

D10 Incineration on land

...

D12 Permanent storage (e.g. emplacement of containers in a mine, etc.)

D13 Blending or mixing prior to submission to any of the operations numbered D1 to D12

...'

10 According to Annex IIB to that directive, entitled 'Recovery operations':

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

R1 Use principally as a fuel or other means to generate energy

...

R4 Recycling/reclamation of metals and metal compounds

R5 Recycling/reclamation of other inorganic materials

R6 Regeneration of acids or bases

...

R10 Land treatment resulting in benefit to agriculture or ecological improvement

R11 Use of wastes obtained from any of the operations numbered R1 to R10

...'

The regulation

11 The regulation lays down rules for, *inter alia*, the monitoring and control of shipments of waste between Member States.

12 Article 2(i) of the regulation defines 'disposal' as the operations defined in Article 1(e) of the waste directive, and Article 2(k) defines 'recovery' as the operations defined in Article 1(f) of that directive.

13 According to Article 1(3)(a) of the regulation:

'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).'

14 Title II of the regulation, entitled 'Shipments of waste between Member States', contains a Chapter A, comprising Articles 3 to 5, which deals with the procedure applicable to shipments of waste for disposal, and a Chapter B, comprising Articles 6 to 11, which lays down the procedure applicable to shipments of waste for recovery.

15 Article 6(1) of the regulation provides:

'Where the notifier intends to ship waste for recovery listed in Annex III from one Member State to another Member State and/or pass it in transit through one or several other Member States, and without prejudice to Articles 25(2) and 26(2), 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.'

16 Article 3(1) of the regulation is worded as follows:

'Where the notifier intends to ship waste for disposal from one Member State to another Member State and/or pass it in transit through one or several other Member States, and without prejudice to Articles 25(2) and 26(2), he shall notify the competent authority of destination and send a copy of the notification to the competent authorities of dispatch and of transit and to the consignee.'

17 Under Article 4(2)(c) of the regulation, the objections and conditions which the competent authorities of destination, dispatch and transit may raise in respect of a shipment of waste for disposal are to be based on paragraph 3 of that article.

18 Article 4(3)(b) of the regulation provides that:

'The competent authorities of dispatch and destination, while taking into account geographical circumstances or the need for specialised installations for certain

types of waste, may raise reasoned objections to planned shipments if they are not in accordance with Directive 75/442/EEC, especially Articles 5 and 7:

(i) in order to implement the principle of self-sufficiency at Community and national levels.'

19 Article 10 of the regulation states:

'Shipments of waste for recovery listed in Annex IV... shall be subject to the same procedures as referred to in Articles 6 to 8 except that the consent of the competent authorities concerned must be provided in writing prior to commencement of shipment.'

20 The wastes listed in Annex IV to the regulation include, *inter alia*, '[w]astes, substances and articles containing, consisting of or contaminated with polychlorinated biphenyl (PCB) and/or polychlorinated terphenyl (PCT) and/or polybrominated biphenyl (PBB), including any other polybrominated analogues of these compounds, at a concentration level of 50 mg/kg or more'.

21 Article 26 of the regulation provides:

'1. Any shipment of waste effected:

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

...

(e) which results in disposal or recovery in contravention of Community or international rules

...

shall be deemed to be illegal traffic.

2. If such illegal traffic is the responsibility of the notifier of the waste, the competent authority of dispatch shall ensure that the waste in question is:

(a) taken back by the notifier or, if necessary, by the competent authority itself, into the State of dispatch,

or if impracticable;

(b) otherwise disposed of or recovered in an environmentally sound manner,

within 30 days from the time when the competent authority was informed of the illegal traffic or within such other period of time as may be agreed by the competent authorities concerned.

In this case a further notification shall be made. No Member State of dispatch or Member State of transit shall oppose the return of this waste at the duly motivated request of the competent authority of destination and with an explanation of the reason.

...

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

The waste oils directive

22 It is apparent from the sixth recital in the preamble to Directive 87/101/EEC amending the waste oils directive that, in view of the particularly dangerous character of PCBs and PCTs, the Community legislature intended to strengthen the Community provisions concerning the combustion or regeneration of waste oils contaminated by those substances.

23 According to the fifth indent of Article 1 of the waste oils directive:

'For the purposes of this Directive:

...

"*combustion*" means:

the use of waste oils as fuel with the heat produced being adequately recovered.'

24 Article 8(2)(b) of that directive provides:

'The Member States shall... ensure that:

(b) the waste oils used as fuel... do not contain PCB/PCT in concentrations beyond 50 ppm.'

25 Under the first paragraph of Article 10(2) of the waste oils directive, as amended by the PCB/PCT directive, the provisions of the latter directive are to apply to waste oils containing more than 50 ppm of PCB/PCT.

The PCB/PCT directive

26 Article 1 of the PCB/PCT directive states that its purpose is to approximate the laws of the Member States on the controlled disposal of PCBs, the decontamination or disposal of equipment containing PCBs and/or the disposal of used PCBs in order to eliminate them completely on the basis of the provisions of that directive.

27 According to Article 2(a) and (c) of the PCB/PCT directive, for the purposes thereof, 'PCB' means, *inter alia*, any mixture whose total content of PCBs and PCTs is more than 0.005% by weight, and 'used PCBs' means any PCBs which are waste within the meaning of the waste directive.

28 Article 2(f) of the PCB/PCT directive defines, for the purposes thereof, 'disposal' as 'operations D8, D9, D10, D12 (only in safe, deep, underground storage in dry rock formations and only for equipment containing PCBs and used PCBs which cannot be decontaminated) and D15' referred to in Annex IIA to the waste directive.

29 Article 3 of the PCB/PCT directive provides:

'Without prejudice to their international obligations, Member States shall take the necessary measures to ensure that used PCBs are disposed of and PCBs and equipment containing PCBs are decontaminated or disposed of as soon as possible....'

30 Article 8(2) of that directive provides:

'Where incineration is used for disposal, Council Directive 94/67/EC of 16 December 1994 on the incineration of dangerous waste... shall apply. Other methods of disposing of PCBs, used PCBs and/or equipment containing PCBs may be accepted provided they achieve equivalent environmental safety standards — compared with incineration — and fulfil the technical requirements referred to as best available techniques.'

National legislation

31 In the Netherlands, the regulation was implemented principally by the Wet milieubeheer (Law on the protection of the environment, *Staatsblad* 1994, 311, hereinafter 'the WMB').

32 Article 10.44e of the WMB prohibits shipments which are considered illegal traffic under Article 26(1) of the regulation.

33 The Meerjarenplan gevaarlijke afvalstoffen (Multiannual hazardous waste plan, hereinafter 'the MJP GA II') is a waste management plan within the meaning of Article 7 of the waste directive. The hazardous wastes to which the MJP GA II applies are listed in the Besluit aanwijzing gevaarlijke afvalstoffen (Decree on the designation of hazardous waste) of 25 November 1993 (*Staatsblad*, 617, hereinafter 'the BAGA').

34 It follows from Paragraph 8.2 of the MJP GA II that, when the Netherlands has sufficient capacity to ensure the final disposal of hazardous waste, its shipment for the purpose of disposal is in principle prohibited, in order to guarantee the continuity of such disposal in the Netherlands, in accordance with the principle of self-sufficiency at national level.

35 Part II of the MJP GA II also lays down more specific sectoral rules.

36 Sectoral Plan 18 of the MJP GA II, entitled 'Incineration of Hazardous Waste', thus provides that the incineration of oil containing PCBs always constitutes a disposal operation within the meaning of operation D10 of Annex IIA to the waste directive, in the light of the risk of the formation and/or incomplete incineration of substances harmful to the environment associated with its use as a fuel. It also provides that only when there is temporarily insufficient capacity or where that waste cannot be incinerated in the Netherlands for technical reasons can export to a foreign installation specialising in the incineration of hazardous waste by way of final disposal be authorised.

37 Sectoral Plan 8, entitled 'Acids, bases and waste containing sulfur', of the MJP GA II refers to Paragraph 8.2 thereof, as does Sectoral Plan 20, entitled 'C2 waste to be tipped', which also specifies that the export of type C2 waste with a view to deep burial or dumping is not authorised.

38 Point 4.1.6 of the Noord-Brabantse Provinciaal Milieubeleid (hereinafter 'the NBPM'), a waste management plan within the meaning of Article 7 of the waste directive, adopted at the provincial level and applicable to non-hazardous waste, provides that the principle of self-sufficiency, under which each Member State or each province is in principle required to treat its own waste, is a guiding principle in the assessment of an application to import or export wastes.

The disputes in the main proceedings

Case C-307/00

39 By decision of 25 February 1998, adopted pursuant to Article 4(3)(b) of the regulation in conjunction with the provisions of the MJP GA II, the Minister raised an objection to the plan by OHK to ship to Germany 1 000 tonnes of waste oils containing more than 50 ppm of PCBs, which constitutes a hazardous waste under the BAGA. According to OHK's notification, that oil was to be recovered by means of an operation referred to in R1 of Annex IIB to the waste directive. Specifically, it was to be used as fuel to generate energy for the oil refinery operated by the firm Mineralöl Raffinerie Dollbergen GmbH.

40 After its complaint was rejected by the Minister, by decision of 9 October 1998, OHK brought an action before the Raad van State.

41 On the basis, in particular, of Sectoral Plan 18 of the MJP GA II, the Minister takes the view that the proposed operation is a disposal operation within the meaning of D10 of Annex IIA to the waste directive. Taking into account the existence of sufficient disposal capacity in the Netherlands, he argues that he is therefore required to object to the shipment at issue in the main proceedings, in accordance with Paragraph 8.2 of the MJP GA II, in order to secure that capacity and to maintain self-sufficiency at national level.

42 In support of its action, OHK essentially claims that the Minister's objection to the planned shipment was unfounded, in that the proposed use of the waste would constitute a recovery operation within the meaning of operation R1 of Annex IIB to the waste directive. It points out, *inter alia*, that PCBs figure in the list of waste set out in Annex IV to the regulation which may be recovered under Article 10 thereof. In addition, the use of the oil in question as fuel would generate a net positive energy contribution and, in contrast to incineration, make it possible entirely to eliminate the PCBs contained therein.

43 In the alternative, OHK maintains that, even if the proposed combustion were to be classified as disposal, the objection raised by the Minister misinterprets the principle of self-sufficiency referred to in Article (4)(3)(b)(i) of the regulation. As shown by Article 5 of the waste directive, *inter alia*, the main intention of the Community legislature was to achieve the objective of self-sufficiency at Community level, and pursuit of the objective of self-sufficiency at national level is subordinate to that main objective. If that principle were to be interpreted as seeking to ensure self-sufficiency at national level, to the detriment of the free movement of waste and of the quality treatment thereof, it would be in breach of Article 29 EC, because none of the grounds of justification admitted under Article 30 EC could be invoked.

44 Before the national court, the Minister contended that the operation at issue in the main proceedings does in fact constitute disposal. He maintained in this

regard, *inter alia*, that it is not possible to recover the waste in question in the main proceedings by combustion, in view of both the requirement of complete elimination of PCBs laid down by the PCB/PCT directive and Article 8(2)(b) of the waste oils directive.

45 The Minister also denied having misapplied the principle of self-sufficiency at national level. He also maintained that the principle does not infringe Article 29 EC and that an overriding need for environmental protection can, in a case such as that in the main proceedings, warrant measures which restrict the export of waste.

Case C-308/00

46 By decision of 1 December 1998, adopted pursuant to the provisions of Article 4(3)(b)(i) of the regulation in conjunction with those of the NBPM, the Minister raised an objection to the plan by SNB to ship to Germany 5 000 tonnes of fly ash resulting from the incineration of sewage sludge. According to the notification made by SNB, that ash was to be recovered by means of an operation referred to in R5 of Annex IIB to the waste directive. Specifically, it was to be used by GSES in the production of concrete mortar intended as filler for galleries in disused potash mines, in order to brace the ground at selected locations in those mines, thereby preventing possible damage arising from subsidence.

47 Since their complaint was rejected by the Minister, by decision of 26 July 1999, SNB and GSES brought an action before the Raad van State.

48 According to the Minister, adding fly ash to mortar constitutes a disposal operation within the meaning of D9 or D13 of Annex IIA to the waste directive, and filling in galleries with that mortar is a disposal operation within the meaning of D1, D3 or D12 of that annex. The Minister therefore objected to the export, relying on the principle of self-sufficiency laid down in Point 4.1.6 of the annexes to the NBPM.

49 The Minister considers that the main objective pursued is, in this instance, the disposal of ash by underground burial. The operation at issue in the main proceedings does not, moreover, correspond to any of the recovery operations referred to in the exhaustive list set out in Annex IIB to the waste directive. In particular, it cannot be classified as recycling on the ground that it does not entail processing which would allow the waste to be re-used as a secondary raw material but, rather, eliminates it without any possibility of subsequent re-use. Moreover, even where such an operation can be classified as both recovery and disposal, that second classification must be upheld and the stricter protection scheme laid down in the Regulation be applied.

50 In support of their action, SNB and GSES essentially maintain that the Minister had no ground for objecting to the shipment as the proposed use constitutes a recovery operation within the meaning of R5 of Annex IIB to the waste directive. The use of fly ash in the manufacture of mortar makes it possible to avoid using primary raw materials for the purpose of complying with a statutory filling obligation, and the proposed operation is environmentally sound as a whole.

51 SNB and GSES argue that the fact that the preparation of mortar is not specifically mentioned in the list set out in Annex IIB to the waste directive is not relevant, because that list is not exhaustive. Both protection of the environment and the need to ensure the free movement of goods would in this instance favour classifying the proposed operation as recovery. Until November 1998, moreover,

the Minister refrained, on the basis of such a classification, from raising an objection to comparable shipments. Ministerial practice also indicates that the use of fly ash in the preparation of bituminous concrete in the Netherlands is considered to be a recovery operation.

52 In the alternative, SNB and GSES claim that, even if the proposed operation were to be classified as disposal, the Minister's objection to the shipment is unlawful inasmuch as, first, it has not been proved that the disposal of fly ash in the Netherlands is necessary in order to establish and maintain an integrated and adequate disposal network at national level and, secondly, the free movement of goods as well as environmental considerations require favouring a disposal operation which serves a purpose in another Member State as against disposal with no useful effect in the Member State in which the waste originates.

53 The Minister contends that the regulation and the waste directive are directed at protection of the environment, not attainment of the free movement of goods. The principle of self-sufficiency at national level complies with Article 174(2) EC, which states that environmental damage should as a priority be rectified at source, and with the Basel 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).

Case C-309/00

54 PPGIFG entered into a contract with the German firm AVG/Nottenkamper OHG (hereinafter 'AVG') pursuant to which the latter undertook to treat 9 000 tonnes a year of fibreglass-E waste produced by PPGIFG.

55 AVG was authorised by the Landrat des Kreises Wesel (Administrative Head of the Wesel District Authority) to extract clay from pits in Hünxe (Germany), with responsibility for restoring the landscape to its original state following the extraction. AVG has the right to fill in the spaces resulting from working the quarry with the substances exhaustively listed in the authorisation issued to it and within the limits established therein. Fibreglass waste is among the inorganic substances used to that end by AVG.

56 Referring to the provisions of Article 10.44e of the WMB in conjunction with Article 26(1) of the regulation, the Minister, by decision of 22 March 1999, imposed on PPGIFG a penalty of NLG 500 per tonne of fibreglass waste shipped by the firm without preliminary notification in accordance with the regulation.

57 Since its complaint was rejected by the Minister, by decision of 15 July 1999, PPGIFG brought an action before the Raad van State.

58 According to the Minister, filling a clay quarry constitutes a disposal operation within the meaning of D1, D9 or D13 of Annex IIA to the waste directive, so that a preliminary notification is required in accordance with Article 3(1) of the regulation.

59 In the event, the main objective pursued is the disposal of fibreglass waste. The operation at issue in the main proceedings does not, moreover, correspond to any of the recovery operations set out in the exhaustive list in Annex IIB to the waste directive. It cannot, in particular, be classified as recycling, as it does not entail any treatment intended to make the waste re-usable as a secondary raw material.

Moreover, even if such an operation could be classified as both recovery and disposal, the second classification must be upheld and the stricter protection scheme laid down by the regulation be applied.

60 In support of its action, PPGIFG claims that, inasmuch as they concern waste referred to in Annex II to the regulation and destined for recovery, the shipments at issue in the main proceedings did not have to be notified under the regulation.

61 According to PPGIFG, the proposed filling constitutes a recovery operation within the meaning of R5 of Annex IIB to the waste directive. Fibreglass waste, which is recognised as a construction material, improves the stability and water-resistance of quarry slopes and sandy areas and supports their hydrological regime. Its use makes it possible to avoid using primary raw materials for the purpose of complying with a statutory filling obligation. The fact that a filling operation such as that at issue in the main proceedings is not specifically referred to in the list set out in Annex IIB to the waste directive is not relevant, since that list is not exhaustive. Both environmental protection and the need to guarantee the free movement of goods in this instance favour the classification of the operation concerned as recovery.

62 PPGIFG also states that the Landrat of the Wesel District Authority confirmed, in a letter of 28 January 1997, that filling the quarries at Hünxe constitutes a recovery operation within the meaning of Paragraph 4(3) of the Gesetz zur Förderung der Kreislaufswirtschaft und Sicherung des umweltverträglichen Beseitigung von Abfällen (Law to promote recycling and ensure environmentally sound disposal of waste). That opinion should be decisive as regards waste to be used in Germany.

63 By decision of 10 December 1998, adopted pursuant to the provisions of Article 4(3)(b)(i) of the regulation in conjunction with those of MJP GA II, the Minister raised an objection to a plan by SV to ship to Germany 150 tonnes of iron chloride solution, which constitutes a hazardous waste within the meaning of the BAGA. According to the notification made by SV, that solution was intended for recovery by means of an operation referred to in R4, R6 or R10 of Annex IIB to the waste directive. Specifically, it was to be used in the waste disposal facilities of the firm Edelhoff Abfallbereitungstechnik GmbH & Co. to stabilise the bonding of other metallic wastes, thereby facilitating the formation of a precipitate. That stabilising function can also be performed by primary iron chloride. The precipitate thus obtained is subsequently made into filter cakes, which are disposed of.

64 Since its complaint was rejected by the Minister, by decision of 3 August 1999, SV brought an action before the Raad van State.

65 According to the Minister, the proposed use constitutes a disposal operation within the meaning of D9 of Annex IIA to the waste directive. To that extent, taking into account the existence of sufficient disposal capacity in the Netherlands, he is required to oppose the shipment at issue in the main proceedings, in accordance with Sectoral plan 8 and Paragraph 8.2 of the MJP GA II, in order to secure that capacity and to maintain self-sufficiency at national level.

66 The Minister considers that the main objective pursued is, in this instance, the disposal of waste. The operation at issue in the main proceedings does not, moreover, correspond to any of the recovery operations referred to in the

exhaustive list set out in Annex IIB to the waste directive. In particular, it cannot be classified as recycling on the ground that it does not entail processing which would allow the waste to be re-used as a secondary raw material. In addition, even when such an operation can be classified as both recovery and disposal, that second classification must be upheld and the stricter protection scheme laid down in the regulation be applied.

67 In support of its action, SV essentially maintains that the Minister was not entitled to object to the shipment as the proposed use constitutes a recovery operation within the meaning of R4, R6 or R10 of Annex IIB to the waste directive. That use would make it possible efficiently to re-use the iron chloride solution while reducing the volume of waste to be disposed of and avoiding recourse to primary raw materials.

Case C-311/00

68 By decision of 19 February 1999 adopted pursuant to the provisions of Article 4(3)(b)(i) of the regulation in conjunction with those of the MJP GA II, the Minister raised an objection to AZN's planned shipment to Germany of 15 000 tonnes of waste incinerator fly ash, which is itself a hazardous waste within the meaning of the BAGA. According to the notification made by AZN, that ash was destined for recovery by means of an operation referred to in R11 of Annex IIB to the waste directive. Specifically, it was to be used by MGMV in manufacturing concrete mortar.

69 MGMV holds an authorisation under the Bundesimmissionsschutzgesetz (Federal Law on pollution control) to produce a variety of construction materials, including concrete mortar. Those materials must meet the quality criteria set in

the Bundesgesetzliche Gesundheitsschutz-Bergverordnung (Federal regulation on the protection of health for mineworkers). They are intended to be used in mines for the purposes of reinforcing galleries and shafts, stabilising rock strata and preventing subsidence, as well as for constructing seals to prevent gas build-up and explosions.

70 Since their complaint was rejected by the Minister, by decision of 2 August 1999, SANB, AZN and MGMV brought an action before the Raad van State.

71 According to the Minister, adding fly ash to mortar constitutes a disposal operation within the meaning of D9 or D13 of Annex IIA to the waste directive, and filling in galleries with that mortar is a disposal operation within the meaning of D1, D3 or D12 of that annex. Therefore, taking into account the existence of sufficient disposal capacity in the Netherlands, he is required to object to the export at issue in the main proceedings, in accordance with Sectoral plan 20 and Paragraph 8.2 of the MJP GA II, in order to secure that capacity and to maintain self-sufficiency at the national level.

72 The Minister considers that the main objective pursued is, in this instance, the disposal of ash by underground burial. The operation at issue in the main proceedings does not, moreover, correspond to any of the recovery operations referred to in the exhaustive list set out in Annex IIB to the waste directive. In particular, it cannot be classified as recycling on the ground that it does not involve processing which would allow the waste to be re-used as a secondary raw material, but would instead eliminate it without any possibility of subsequent re-use. In addition, even when such an operation can be classified as both recovery and disposal, that second classification must be upheld and the stricter protection scheme laid down in the regulation must be applied.

73 In support of their action, SANB, AZN and MGMV essentially maintain that the Minister had no reason to object to the shipment inasmuch as the proposed use constitutes a recovery operation within the meaning of R5 or R11 of Annex IIB to the waste directive. The use of fly ash in the manufacture of construction materials has little effect on the environment and makes it possible to avoid using primary raw materials, while the concrete mortar thus obtained would itself be used to strengthen galleries and walls in working mines. Moreover, the decision challenged in the present action breaks with previous ministerial practice and undermines legal certainty.

Questions referred for preliminary rulings

74 Forming the view that the outcome of the disputes in the main proceedings called for an interpretation of Community law, the Raad van State decided to stay proceedings and to refer several questions to the Court for preliminary rulings.

75 In Case C-307/00, the Raad van State referred the following questions for a preliminary ruling:

'(1) Is the effect of Directive 96/59/EC of 16 September 1996 on the disposal of polychlorinated biphenyls and polychlorinated terphenyls (PCB/PCT) and Directive 87/101/EEC of 22 December 1986 amending Directive 75/439/EEC on the disposal of waste oils that 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 is to be interpreted as meaning that the

shipment of waste oils containing more than 50 ppm of PCB must always be considered to be a shipment of waste for disposal within the meaning of Title II, Chapter A, of Regulation No 259/93 in conjunction with Article 1(e) of Directive 75/442/EEC of 15 July 1975 on waste?

(2) (a) If the answer to the first question is affirmative, and therefore a shipment of waste oils containing more than 50 ppm of PCB must always be considered to be a shipment of waste for disposal, can an objection be raised to the shipment pursuant to Article 4(3)(b)(i) of Regulation No 259/93 solely on the ground that it is necessary to achieve self-sufficiency at national level, without showing that self-sufficiency at national level is necessary to achieve self-sufficiency at Community level?

(b) If so, is Regulation No 259/53, in so far as it permits such an export prohibition solely on the basis of the principle of self-sufficiency at national level, compatible with Article 29 EC?'

76 In Case C-308/00, the Raad van State referred the following questions for a preliminary ruling:

'(1) (a) Does operation R5, recycling/reclamation of other inorganic materials, referred to in Annex IIB to Council Directive 75/442/EEC of 15 July 1975 on waste, also include the "re-use" mentioned in Article 3(1)(b)(i) of that directive?

(b) In the light of, *inter alia*, the answer to point (a) of the first question, how is operation R5 to be interpreted? In order for that operation to be applicable, is it necessary that the substance undergo treatment, can be used several times or can be reclaimed?

(2) If it follows from the answer to the above questions that an operation such as the transformation of fly ash does not fall within the scope of operation R5, are the lists of operations set out in Annexes IIA and IIB to Directive 75/442 exhaustive or is only one of them exhaustive and, if so, which one?

(3) (a) What criteria are to be used to determine whether an operation should be regarded as disposal or recovery within the meaning of Article 1 of Directive 75/442?

(b) If an operation can be classified as a disposal operation and as a recovery operation, must priority then be given to Annex IIA or Annex IIB for the purpose of classifying that operation, or does neither of the two lists take precedence over the other?

(4) Should the opinion of the competent authority of the Member State of dispatch or that of the Member State of destination be decisive in classifying an operation as disposal or recovery?

(5) (a) If a shipment of fly ash must be considered as a shipment of waste for disposal, can an objection to the shipment be raised pursuant to Article 4(3)(b)(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 solely on the ground that it is necessary to achieve self-sufficiency at national level, without showing that self-sufficiency at national level is necessary to achieve self-sufficiency at Community level?

(b) If so, is Regulation No 259/53, in so far as it permits such an export prohibition solely on the basis of the principle of self-sufficiency at national level, compatible with Article 29 EC?'

77 In Case C-309/00, the Raad van State referred the following questions for a preliminary ruling:

'(1) (a) Does operation R5, recycling/reclamation of other inorganic materials, referred to in Annex II B to Council Directive 75/442/EEC on waste, also include the "re-use" mentioned in Article 3(1)(b)(i) of that directive?

(b) In the light of, *inter alia*, the answer to point (a) of the first question, how is operation R5 to be interpreted? In order for that operation to be applicable, is it necessary that the substance undergo treatment, can be used several times or can be reclaimed?

(2) If it follows from the answer to the above questions that an operation such as the filling-in of clay pits does not fall within the scope of operation R5, are the lists of operations set out in Annexes IIA and IIB of Directive 75/442 exhaustive, or is only one of them exhaustive and, if so, which one?

(3) (a) What criteria are to be used to determine whether an operation should be regarded as constituting disposal or recovery within the meaning of Article 1 of Directive 75/442?

(b) If an operation can be classified as a disposal operation and as a recovery operation, must priority then be given to Annex IIA or to Annex IIB for the purpose of classifying that operation, or does neither of the two lists take precedence over the other?

(4) Should the opinion of the competent authority of the Member State of dispatch or that of the competent authority of the Member State of destination be decisive in classifying an operation as disposal or recovery?'

78 In Case C-310/00, the Raad van State referred the following questions for a preliminary ruling:

'(1) (a) Does operation R4, recycling/reclamation of metals and metal compounds, referred to in Annex IIB to Council Directive 75/442/EEC of 15 July 1975 on waste, also include the "re-use" mentioned in Article 3(1)(b)(i) of that directive?

(b) In the light of, *inter alia*, the answer to point (a) of the first question, how is operation R4 to be interpreted? In order for that operation to be applicable, is it necessary that the substance undergo treatment, can be used several times or can be reclaimed?

(2) If it follows from the answer to the above questions that an operation such as the processing of iron chloride solution does not fall within the scope of operation R4, are the lists of operations set out in Annexes IIA and IIB of the waste directive exhaustive, or is only one of them exhaustive and, if so, which one?

(3) (a) What criteria are to be used to determine whether an operation should be treated as constituting disposal or recovery within the meaning of Article 1 of Directive 75/442?

(b) If an operation can be classified as a disposal operation and as a recovery operation, must priority be given to Annex IIA or Annex IIB for the purpose of classifying that operation or does neither of the two lists take precedence over the other?

(4) (a) If a shipment of iron chloride must be regarded as constituting a shipment of waste for disposal, can an objection to the shipment be raised pursuant to Article 4(3)(b)(i) of 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 solely on the ground that it is necessary to achieve self-sufficiency at national level, without showing that self-sufficiency at national level is necessary to achieve self-sufficiency at Community level?

(b) If so, is Regulation No 259/93, in so far as it permits such an export prohibition solely on the basis of the principle of self-sufficiency at national level, compatible with Article 29 EC?'

79 In Case C-311/00, the Raad van State referred the following questions for a preliminary ruling:

'(1) (a) Does operation R5, recycling/reclamation of other inorganic materials, referred to in Annex IIB to Council Directive 75/442/EEC of 15 July 1975 on waste, also include the "re-use" mentioned in Article 3(1)(b)(i) of that directive?

(b) In the light of, *inter alia*, the answer to point (a) of the first question, how is operation R5 to be interpreted? In order for that operation to be applicable, is it necessary that the substance undergo treatment, can be used several times or can be reclaimed?

(2) If it follows from the answer to the above questions that an operation such as the processing of fly ash does not fall within the scope of operation R5, are the lists of operations set out in Annexes IIA and IIB of Directive 75/442 exhaustive, or is only one of them exhaustive and, if so, which one?

(3) (a) What criteria are to be used to determine whether an operation is to be treated as constituting disposal or recovery within the meaning of Article 1 of Directive 75/442?

(b) If an operation can be classified as a disposal operation and as a recovery operation, must priority then be given to Annex IIA or Annex IIB when classifying that operation, or does neither of the two lists take precedence over the other?

(4) (a) If a shipment of fly ash must be considered as a shipment of waste for disposal, can an objection to the shipment be raised pursuant to Article 4(3)(b)(i) of 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 to the shipment solely on the ground that it is necessary to achieve self-sufficiency at national level, without showing that self-sufficiency at national level is necessary to achieve self-sufficiency at Community level?

(b) If so, is Regulation No 259/53, in so far as it permits such an export prohibition solely on the basis of the principle of self-sufficiency at national level, compatible with Article 29 EC?

Application of Article 104(3) of the Rules of Procedure

80 As it takes the view that the answer to the questions referred for preliminary ruling in Case C-307/00 leaves no room for reasonable doubt and that the answers to the questions referred for preliminary ruling in Cases C-308/00 to C-311/00 can be clearly inferred from the judgment of 27 February 2002 in Case C-6/00 *ASA* [2002] ECR I-1961, which was given subsequent to the delivery of the orders for reference, the Court, in accordance with Article 104(3) of its Rules of Procedure, informed the referring court that it proposed to give its decision by reasoned order and requested the persons referred to in Article 20 of the EC Statute of the Court of Justice to submit any observations in that regard.

81 The German and United Kingdom Governments, together with the Commission, have indicated that they have no observations to make regarding the Court's intention to give its decision by reasoned order in the present cases. SNB, GSES, PPGIFG and MGMV have indicated that they support the adoption of an order by the Court.

82 OHK maintains that the referring court erred in holding that the products at issue in the main proceedings in Case C-307/00 constituted waste oils within the meaning of the waste oils directive. According to OHK, they were in fact oil waste containing used PCBs, a category which must be distinguished from that of waste oils.

83 The Netherlands Government, finally, takes the view that the answers to point (b) of the first question and point (a) of the third question in Cases C-308/00 to Case C-311/00 do not follow clearly from the judgment in *ASA*, cited above.

The first question in Cases C-308/00 to C-311/00

84 By its first questions in Cases C-308/00 to C-311/00, the Raad van State in essence asks, first, whether recovery operations involving the recycling or reclamation of metals or metal compounds or the recycling or reclamation of other inorganic materials, as referred to in operations R4 and R5, respectively, of Annex IIB to the waste directive, may also cover the 're-use' referred to in Article 3(1)(b)(i) of that directive and, secondly, whether such operations imply that the substance in question undergoes processing, can be used several times or can subsequently be reclaimed.

85 In contrast to what the Netherlands Government maintains, the answer to that question can be clearly deduced from the judgment in *ASA*.

86 It is evident from paragraphs 65 to 71 of that judgment that the deposit of slag and ashes in a disused mine constitutes an operation which may fall within the scope of the recovery operation referred to in R5 of Annex IIB to the waste directive. It is also clear that confirmation of such a classification in a given case requires an assessment as to whether the principal objective of the planned tipping is that the waste should serve a useful purpose in replacing other materials which would have had to be used for that purpose.

87 The Court also expressly held in that regard that, while the term 'recovery operation' generally implies a prior treatment of the waste, it does not follow from Article 3(1)(b) or from any other provision of the waste directive that the fact that waste has been subject to such processing is a necessary condition for classifying an operation as 'recovery' within the meaning of Article 1(f) of that directive (*ASA*, paragraph 67).

88 Moreover, it clearly does not follow from Article 3(1)(b) or from any other provision of the waste directive that the fact that waste can be used several times or can subsequently be reclaimed is a necessary condition for classifying an operation as 'recovery' within the meaning of Article 1(f) of that directive.

89 The observations set out in paragraphs 86 to 88 of the present order, from which it follows, *inter alia*, that the operation referred to in R5 of Annex IIB to the waste directive is likely to cover the 're-use' referred to in Article 3(1)(b)(i) of that

directive, also apply to operations which may be related to the recovery operation referred to in R4 of that annex.

90 In view of the foregoing, the answer to the first question in Cases C-308/00 to C-311/00 must be, first, that recovery operations involving the recycling or reclamation of metals and metal compounds or the recycling or reclamation of other inorganic materials, as referred to in R4 and R5, respectively, of Annex IIB to the waste directive, may also cover the 're-use' referred to in Article 3(1)(b)(i) of that directive and, secondly, that those operations do not necessarily imply that the substance in question undergoes processing, can be used several times or can subsequently be reclaimed.

The second question in Cases C-308/00 to C-311/00

91 By its second question in Cases C-308/00 to C-311/00, the Raad van State in essence asks, where the answer to the first question in those cases is that operations such as those at issue in the main proceedings may not fall within the scope of a recovery operation covered by R4 or R5 of Annex IIB to the waste directive, whether the lists of disposal and recovery operations set out in Annexes IIA and IIB, respectively, of that directive, or one of those lists, is exhaustive.

92 In view of the answer to the first question in Cases C-308/00 to C-311/00, it is not necessary to answer the second question in those cases.

The third question in Cases C-308/00 to C-311/00

93 By its third question in Cases C-308/00 to C-311/00, the Raad van State in essence seeks to establish the criteria which make it possible to ascertain whether a waste treatment operation must be classified as disposal or recovery within the meaning of the waste directive and, where the same operation can be classified as both disposal and recovery, whether one or the other classification must take precedence.

94 In contrast to what the Netherlands Government maintains, the answer to that question can be clearly deduced from the judgment in *ASA*.

95 It must first be recalled in that regard that, as the Court held in paragraph 63 of *ASA*, for the purpose of applying the waste directive, it must be possible to classify any waste treatment operation as either a disposal or a recovery operation, and a single operation may not be classified simultaneously as both a disposal and a recovery operation.

96 The Court then made clear that, when dealing with an operation which, having regard solely to its wording, may fall within the scope of a disposal operation set out in Annex IIA to the waste directive or within that of a recovery operation referred to in Annex IIB to that directive, that operation must be classified on a case-by-case basis in the light of the objectives of that directive (*ASA*, paragraph 64).

97 In that regard, the Court stated that it follows from Article 3(1)(b) of and from the fourth recital in the preamble to the waste directive that the essential characteristic of a waste recovery operation is that its principal objective is that

the waste should serve a useful purpose in replacing other materials which would have had to be used for that purpose, thereby conserving natural resources (*ASA*, paragraph 69).

98 Finally, as the Court pointed out in paragraph 70 of the judgment in *ASA*, it is for the national court to apply that criterion in each case, in order to determine whether the operation in question should be classified as recovery or disposal.

99 In view of the foregoing, the answer to the third question in Cases C-308/00 to C-311/00 must be that a waste treatment operation may not be classified simultaneously as both disposal and recovery within the meaning of the waste directive. Where an operation, having regard solely to its wording, may a priori be covered by a disposal operation set out in Annex IIA to that directive or a recovery operation referred to in Annex IIB to that directive, it must be determined on a case-by-case basis whether the main objective of the operation in question is that the waste should serve a useful purpose, by replacing the use of other materials which would have had to be used to fulfil that function, and in such a case to uphold the classification as recovery.

The fourth question in Cases C-308/00 and C-309/00

100 By its fourth question in Cases C-308/00 and C-309/00, the Raad van State in essence asks whether, for the purpose of classifying a waste treatment operation as disposal or as recovery, the opinion of the competent authority of the Member State of dispatch or of the competent authority of the Member State of destination must, should the case arise, prevail.

101 The answer to that question can be clearly deduced from the judgment in *ASA*.

102 It is evident from paragraph 44 of that judgment that the classification chosen by the competent authorities of the Member State of destination as regards a given operation cannot bind the competent authorities of the Member State of dispatch, any more than the classification chosen by the latter can bind the competent authorities of the Member State of destination. The risk of differences in classification is inherent in the system established by the regulation, which confers simultaneously on all the competent authorities the responsibility of ensuring that the shipments are carried out in accordance with that regulation.

103 The answer to the fourth question in Cases C-308/00 and C-309/00 must therefore be that the classification chosen by the competent authorities of the Member State of destination as regards a given operation does not prevail over the classification chosen by the competent authorities of the Member State of dispatch, any more than the classification chosen by the latter prevails over that chosen by the competent authorities of the Member State of destination.

The fifth question in Case C-308/00 and the fourth question in Cases C-310/00 and C-311/00

104 In point (a) of its fifth question in Case C-308/00 and point (a) of its fourth question in Cases C-310/00 and C-311/00, the Raad van State in essence asks whether, in the case of a planned shipment of waste for disposal, an objection to such a shipment can be raised pursuant to Article 4(3)(b)(i) of the regulation

solely on the ground that it is necessary to achieve self-sufficiency at national level, without it being necessary also to demonstrate that the objection is necessary in order to achieve self-sufficiency at Community level. If so, the Raad van State also asks, in point (b) of the same questions, whether that provision of the regulation is compatible with Article 29 EC in so far as it allows an export prohibition solely on the basis of the principle of self-sufficiency at national level.

105 First of all, according to settled case-law, as regards the division of jurisdiction between national courts and the Court of Justice under Article 234 EC, the national court, which alone has direct knowledge of the facts of the case and of the arguments put forward by the parties, and which will have to give judgment in the case, is in the best position to determine, with full knowledge of the matter before it, the relevance of the questions of law raised by the dispute before it and the need for a preliminary ruling to enable it to give judgment. However, where the questions are inappropriately framed or exceed the jurisdiction devolved upon it under Article 234 EC, the Court is free to extract from all the factors provided by the national court, and in particular from the statement of grounds contained in the reference, the elements of Community law requiring an interpretation having regard to the subject-matter of the dispute (see, in particular, Case 83/78 *Pigs Marketing Board* [1978] ECR 2347, paragraphs 25 and 26, and Case C-425/98 *Marca Mode* [2000] ECR I-4861, paragraph 21).

106 The Court can thus provide the national court with the elements of interpretation of Community law which may assist it in deciding the case in the main proceedings (see, *inter alia*, Case C-304/00 *Strawson and Gagg & Sons* [2002] ECR I-10737, paragraph 57). It may therefore deem it necessary to consider provisions of Community law to which the national court has not referred in the text of its question (see, *inter alia*, Case 35/85 *Tissier* [1986] ECR 1207, paragraph 9, and *Strawson and Gagg & Sons*, cited above, paragraph 58).

107 In order to provide a useful response to the national court, it should be recalled, as is clear from paragraph 47 of *ASA*, that if the competent authority of the Member State of dispatch considers that the purpose of the waste shipment has been incorrectly classified in the notification, the ground for its objection to the shipment must be the classification error itself, without reference to one of the specific provisions of the regulation setting out the objections which the Member States may raise against a shipment of waste. The effect of that objection is, as with the other objections provided for in the regulation, to prevent the shipment.

108 In particular, it is not for the competent authority to reclassify on its own initiative the purpose of the shipment of waste, as such a unilateral reclassification would result in one and the same shipment being examined by different competent authorities in the light of provisions falling under different chapters of the regulation, which would be incompatible with the system established thereby (*ASA*, paragraph 48).

109 It follows that, in order to comply with the provisions of the regulation, the Minister ought, in the present case, to have based his objections to the planned shipments by SNB, SV and AZN solely on the basis of the error in classification which he claims was made by each of those companies, by stating, as he in any case did, that he regarded the planned operations as falling within the scope of disposal and not recovery.

110 By contrast, given that the respective notifications of SNB, SV and AZN classified the proposed operations as recovery, it was not open to the Minister to express objections based on Article 4(3)(b)(i) of the regulation, which concerns shipments of waste for disposal.

111 It follows that the outcome of the disputes in the main proceedings cannot depend on the interpretation or the validity of that provision, but must rather take into account the principles flowing from the Court's case-law, as recalled in paragraphs 107 and 108 of the present order.

112 In light of the foregoing, the answer to the fifth question in Case C-308/00 and the fourth question in Cases C-310/00 and C-311/00 must be that it follows from the system put in place by the regulation that, when the competent authority of the Member State of dispatch forms the view that the purpose of a waste shipment has been incorrectly classified as recovery in the notification, that authority must base its objection to the shipment on the ground of that error in classification, without reference to a particular provision of the regulation which, such as Article 4(3)(b)(i) in particular, defines the objections which Member States may make to shipments of waste for disposal.

The first question in Case C-307/00

113 First, it should be remembered that the dispute in the main proceedings in Case C-307/00 concerns an objection raised to a shipment of waste oils containing more than 50 ppm of PCB, to be used as fuel, and that, in its action in the main proceedings, OHK disputes the assertion that that use constitutes disposal within the meaning of the regulation and of the waste directive.

114 As is apparent from paragraph 82 of the present order, OHK maintains that the products at issue in the main proceedings do not constitute waste oils within the meaning of the waste oils directive. Further, it should be observed that, in proceedings under Article 234 EC, which are based on a clear separation of functions between the national courts and the Court, any assessment of the facts in the case is a matter for the national court (see, *inter alia*, Case 36/79 *Denkavit* [1979] ECR 3439, paragraph 12, and Case C-318/98 *Fornasar and Others* [2000] ECR I-4785, paragraph 31). In this instance, the national court has clearly and systematically referred to the products at issue in the main proceedings as waste oils, and that circumstance, *inter alia*, has led it to request the Court to deliver a preliminary ruling on the scope of the waste oils directive.

115 In view of the foregoing, the first question in Case C-307/00 should be understood as asking whether, in the light of the provisions of the waste oils directive and those of the PCB/PCT directive, the shipment of waste oils containing more than 50 ppm of PCB for use as a fuel must always be regarded as constituting a shipment of waste for disposal within the meaning of the provisions of the regulation, in conjunction with those of the waste directive, so that objections to such a shipment may be raised by the competent authorities of the Member State of dispatch on the basis of Article 4(3) of the regulation.

116 Having regard, *inter alia*, to the arguments set out in paragraphs 105 and 106 of the present order, there can be no reasonable doubt as to the answer to the question as thus rephrased.

117 Under Article 26(1)(e) of the regulation, any shipment of waste which results in disposal or recovery in contravention of Community or international rules constitutes illegal traffic within the meaning of that regulation, and, under

Article 26(5), the Member States are required to take appropriate legal action to prohibit and punish such illegal traffic.

118 Under the clear terms of Article 8(2)(b) of the waste oils directive, which constitutes a specific rule for particular instances within the meaning of Article 2(2) of the waste directive, the Member States are required to prohibit the use as fuel of waste oils containing more than 50 ppm of PCB.

119 From this it follows that the shipment of waste oils proposed by OHK would, if carried out, constitute illegal traffic within the meaning of Article 26(1)(e) of the Regulation.

120 Clearly, therefore, independently of whether a combustion operation such as that proposed by OHK would have constituted disposal or recovery within the meaning of the regulation and of the waste directive, the competent authority of the Member State of dispatch is required to oppose such a shipment.

121 That obligation derives, in particular, from Article 26 of the regulation, which requires Member States to prohibit and punish any illegal traffic, and from Article 30(1) of the Regulation, which expressly imposes a general duty on Member States to take the requisite measures to ensure that waste is shipped in accordance with the provisions of the regulation (see, by analogy, *ASA*, paragraph 41).

122 Therefore, as regards illegal traffic within the meaning of Article 26(1)(e) of the regulation, the competent authority must base its objection to such a shipment solely on its illegality, and may not refer to one of the specific provisions of the regulation setting out the objections which the Member States may raise against a shipment of waste (see, by way of analogy, *ASA*, paragraph 47). Those specific provisions cannot apply in the case of such an illegal shipment.

123 In the light of the foregoing, the answer to the first question in Case C-307/00 must be that, having regard to Article 8(2)(b) of the waste oils directive, the shipment of waste oils containing more than 50 ppm of PCB for use as a fuel constitutes illegal traffic in waste within the meaning of Article 26(1)(e) of the Regulation, to which the competent authority is required to object on the ground solely of that illegality, without reference to any of the specific provisions of the regulation setting out the objections which Member States may raise to waste shipments.

The second question in Case C-307/00

124 It follows from the answer to the first question in Case C-307/00 that the outcome of the main proceedings cannot be based on the interpretation or the validity of Article 4(3)(b)(i) of the Regulation. There is for that reason no need to answer the second question in that case.

Costs

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

On those grounds,

THE COURT (Fifth Chamber),

in answer to the questions referred to it by the Raad van State by orders of 8 August 2000, hereby orders:

1. **Recovery operations involving the recycling or reclamation of metals and metal compounds or the recycling or reclamation of other inorganic materials, as referred to in operations R4 and R5, respectively, of Annex IIB to Council Directive 75/442/EEC of 15 July 1975 on waste, as amended by Council Directive 91/156/EEC of 18 March 1991 and by Commission Decision 96/350/EC of 24 May 1996, may also cover the**

're-use' referred to in Article 3(1)(b)(i) of that directive. Those operations do not necessarily imply that the substance in question undergoes processing, can be used several times or can subsequently be reclaimed.

2. A waste treatment operation may not be classified simultaneously as both disposal and recovery within the meaning of Directive 75/442, as amended by Directive 91/156 and by Decision 96/350. Where an operation, having regard solely to its wording, may a priori be covered by a disposal operation set out in Annex IIA to that directive or a recovery operation referred to in Annex IIB to that directive, it must be determined on a case-by-case basis whether the main objective of the operation in question is that the waste should serve a useful purpose, by replacing the use of other materials which would have had to be used to fulfil that function, and in such a case to uphold the classification as recovery.

3. The classification chosen by the competent authorities of the Member State of destination as regards a given waste treatment operation does not prevail over the classification chosen by the competent authorities of the Member State of dispatch, any more than the classification chosen by the latter prevails over that chosen by the competent authorities of the Member State of destination.

4. It follows from the system put in place by Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community that, when the competent authority of the Member State of dispatch forms the view that the purpose of a waste shipment has been incorrectly classified as recovery in the notification, that authority must base its objection to the shipment on the ground of that error in classification, without reference to a particular provision of that regulation which, such as Article 4(3)(b)(i) in particular, defines the objections which Member States may make to shipments of waste for disposal.

5. **Having regard to Article 8(2)(b) of Council Directive 75/439/EEC of 16 June 1975 on the disposal of waste oils, as amended by Council Directive 87/101/EEC of 22 December 1986, the shipment of waste oils containing more than 50 ppm of PCB for use as a fuel constitutes illegal traffic in waste within the meaning of Article 26(1)(e) of Regulation No 259/93, to which the competent authority is required to object on the ground solely of that illegality, without reference to any of the specific provisions of that regulation setting out the objections which Member States may raise to waste shipments.**

Luxembourg, 27 February 2003.

R. Grass — Registrar

M. Wathelet — President of the Fifth Chamber