JUDGMENT OF THE COURT (Fifth Chamber)

19 October 2004 *

In Case C-472/02,

REFERENCE for a preliminary ruling under Article 234 EC from the Cour d'appel de Bruxelles (Belgium), made by decision of 20 December 2002, received at the Court on 27 December 2002, in the proceedings

Siomab SA

v

Institut bruxellois pour la gestion de l'environnement,

THE COURT (Fifth Chamber),

composed of: R. Silva de Lapuerta, President of the Chamber, C. Gulmann, (Rapporteur) and S. von Bahr, Judges,

Advocate General: P. Léger,
Registrar: M.-F. Contet, Principal Administrator,

* Language of the case: French.

having regard to the written procedure and further to the hearing on 10 June 2004,

after considering the observations submitted on behalf of:

— Siomab SA, by J. Vanden Eynde and J.-M. Wolter, avocats,

— the Institut bruxellois pour la gestion de l'environnement (IBGE), by J. Sambon, avocat,

— the Federal Republic of Gemany, by W.-D. Plessing, M. Lumma and C.-D. Quassowski, acting as Agents,

— the Italian Republic, by I. Braguglia, acting as Agent, and F. Fiorilli, avvocato dello Stato,

— the Kingdom of the Netherlands, by H. Sevenster, acting as Agent,

— the Commission of the European Communities, by F. Simonetti and M. Konstantinidis, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 15 July 2004,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community (OJ 1993 L 30, p. 1), as amended by Commission Decision 98/368/EC of 18 May 1998 (OJ 1998 L 165, p. 20) and Commission Decision 1999/816/EC of 24 November 1999 (OJ 1999 L 316, p. 45) ('the Regulation').

2 The reference was made in the course of proceedings between Siomab SA ('Siomab') and the Institut bruxellois pour la gestion de l'environnement ('the IBGE') concerning a shipment of waste that Siomab intended to make to Germany.

I — Legal background

Community law

3 The essential objective 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) and Commission Decision 96/350/EC of 24 May 1996 (OJ 1996 L 135, p. 32, 'the Directive'), is the protection of human health and the environment against harmful effects caused by the collection, transport, treatment, storage and tipping of waste.

4 In Article 1(e) of the Directive 'disposal' is defined as 'any of the operations provided for in Annex II A', and in Article 1(f) 'recovery' is defined as 'any of the operations provided for in Annex II B'.

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

6 Article 2(i) of the Regulation provides that '*disposal* is as defined in Article 1(e) of Directive 75/442/EEC' and Article 2(k) provides that '*recovery* is as defined in Article 1(f) of Directive 75/442/EEC'.

7 Title II of the Regulation, entitled 'Shipments of waste between Member States', contains two separate Chapters, one of which concerns the procedure applicable to shipments of waste for disposal (Chapter A, Articles 3 to 5) and the other the procedure applicable to shipments of waste for recovery (Chapter B, Articles 6 to 11).

8 Under Articles 3(1) and 6(1) of the Regulation, where a waste producer or holder ('the notifier') intends to ship waste for disposal or recovery from one Member State to another Member State and/or pass it in transit through one or several other

Member States, he is to notify the authority designated by the Member State in which the shipment is to be received ('the competent authority of destination'). He must also send copies of the notification to the authorities designated by the Member State from which the shipment is dispatched ('the competent authority of dispatch') and by the Member State through which the shipment is in transit ('the competent authority of transit') and to the person or undertaking to whom or to which the waste is shipped ('the consignee').

9 According to Articles 3(3) and 6(3) of the Regulation, notification is to be effected by means of a consignment note issued by the competent authority of dispatch. Articles 3(5) and 6(5) specify the information that the notifier is to supply on the consignment note, which includes information relating to the disposal or recovery operations.

10 Under Articles 3(6) and 6(6) of that regulation, the notifier is required to conclude a contract with the consignee and a copy of that contract must be supplied to the competent authority on request.

11 Article 3(8), first subparagraph, and Article 6(8) of the Regulation provide that a competent authority of dispatch may, in accordance with national legislation, decide to transmit the notification itself instead of the notifier to the competent authority of destination, with copies to the consignee and to the competent authority of transit.

12 The second subparagraph of Article 3(8) of the Regulation, which concerns waste for disposal, adds:

'The competent authority of dispatch may decide not to proceed with notification if it has itself immediate objections to raise against the shipment in accordance with Article 4(3). It shall immediately inform the notifier of these objections.'

13 In accordance with Articles 4(1) and 7(1) of the Regulation, on receipt of the notification of a planned shipment the competent authority of destination is to send, within three working days, an acknowledgement to the notifier and copies thereof to the other authorities concerned and to the consignee.

14 Article 7(2) of the Regulation prescribes a period of 30 days following dispatch of the acknowledgement within which the competent authorities of destination, dispatch and transit must raise any objections they have to the notified shipment of waste for recovery. That provision states, in particular, that objections must be based on Article 7(4).

15 Article 7(4)(a) of the Regulation lists the cases in which the competent authorities of destination and dispatch may raise reasoned objections to the planned shipment.

National rules

16 Pursuant to Article 3 of the Order of 7 July 1994 of the Government of the Brussels Capital Region, relating to the import and export of waste, the IBGE is itself to transmit, in accordance with Article 6(8) of the Regulation, the notifications concerning the export of waste to the competent authorities of destination, with a copy to the consignee.

The dispute in the main proceedings and the question referred to the Court

17 Siomab operates an incineration plant for household waste and similar products in Brussels. The plant produces residues, in particular, salts.

18 On 30 November 2001, Siomab concluded a contract with GTS-Grunde Teutschenthal Sicherungs GmbH & Co. KG for burying the salts in the galleries of the salt mines at Teutschenthal, in Germany.

19 In order to ship that waste, Siomab sent the IBGE a notification file on 4 December 2001 for transmission to the competent authority of destination, the Landesamt für Geologie und Bergwesen Sachsen-Anhalt.

20 In the documents sent under that cover to the IBGE, Siomab classified the planned shipment as a recovery operation of type 'R 5 Recycling/reclamation of other inorganic materials', listed in Annex II B to the Directive. The IBGE took the view that the operation concerned was a shipment of waste for disposal of type 'D 12 Permanent storage (e.g. emplacement of containers in a mine, etc.', listed in Annex II A to the Directive. After consulting Siomab, the IBGE amended the notification form to reflect its view and, on 20 December 2001, informed Siomab that its export application had been sent to the competent authority in Germany. That authority objected to the requested shipment on the ground that under national mining law only recovery, and not disposal, is permissible in the Teutschenthal mine.

21 On 9 April 2002, Siomab once again sent its file to the IBGE, retaining the classification of the operation as a shipment of type R 5, and relying on the case-law of the Court (Case C-6/00 *ASA* [2002] ECR I-1961) to argue that the IBGE was required to transmit the notification, in its original version, to the competent authority of destination, and that it was not entitled to reclassify the purpose of the shipment.

22 On 29 April 2002, the IBGE, adhering to its assessment, returned the file to Siomab on the ground that the classification of the operation was incorrect.

23 Siomab then brought an action before the Conseil d'État (Council of State) seeking annulment of the IBGE's decision to refuse to transmit the notification of the shipment of waste to the competent authority of destination.

24 On 14 May 2002, in interlocutory proceedings, Siomab requested the President of the Tribunal de première instance de Bruxelles (Court of First Instance, Brussels), Belgium, to order the IBGE to transmit, without amendment, the notification of the shipment of waste to the competent authority of destination. That request was rejected by order of 8 July 2002.

25 Siomab lodged an appeal against that order with the Cour d'appel de Bruxelles (Court of Appeal, Brussels), claiming, inter alia, that it was not for the IBGE to reclassify on its own initiative the purpose of the shipment of waste and that, in the context of the specific procedure for recovery operations, the Regulation does not empower the competent authority of dispatch to refuse to transmit the notification. The IBGE contended that, on the contrary, it had a duty to verify the classification of the planned shipment and that it was therefore not required to make notification in the case of abuse of the Regulation.

26 In those circumstances, the Cour d'appel de Bruxelles took the view that an interpretation of the Regulation was necessary in order to settle the dispute before it and decided to stay proceedings and refer the following question to the Court for a preliminary ruling:

'Where a Member State has recourse to the mechanism by which the competent authority of dispatch gives notice of a consignment note under Articles 3(8) and 6(8) of [the] Regulation ..., must Articles 3(8), 4(3), 6(8), 7(4) and 26 of the Regulation be interpreted as meaning:

(a) that the competent authority of dispatch within the meaning of the Regulation, which is empowered to verify whether a planned shipment classified in the notification as a "shipment of waste for recovery" actually fits that classification, may, when it considers that the classification is incorrect,

— refuse to transmit the consignment note because of that incorrect classification and ask the notifier to transmit a new consignment note to it,

— transmit the consignment note after reclassifying the planned shipment as a "shipment of waste for disposal",

— transmit the consignment note containing the incorrect classification, immediately accompanying its transmission with an objection based on that incorrect classification,

(b) or, on the contrary, that the competent authority of dispatch is required to send the notification as classified by the notifier to the competent authority of destination, while retaining the power, if it considers that the purpose of the shipment has been incorrectly classified, also to raise a reasoned objection on the basis of that erroneous classification, at the same time or subsequently?'

The question referred by the national court

27 It should be noted first of all that, under the system established by the Regulation, all the competent authorities to which notification of a planned shipment of waste is addressed must check that the classification by the notifier is consistent with the provisions of the Regulation and object to a shipment which is incorrectly classified (*ASA*, paragraph 40, and Case C-458/00 *Commission* v *Luxembourg* [2003] ECR I-1553, paragraph 21).

28 If the competent authority of dispatch considers that the purpose of the 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 (*ASA*, paragraph 47). However, it is not for the competent authority of dispatch to reclassify on its own initiative the purpose of the shipment of waste, since 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 by the Regulation (*ASA*, paragraph 48).

29 Moreover, the Court has held that the procedure laid down by the Regulation provides the notifier with a guarantee that the planned 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. Therefore, any objection in respect of the incorrect classification of the notified shipment as a shipment of waste for recovery must be raised by the competent authority of dispatch within the period prescribed by Article 7(2) of the Regulation (*ASA*, paragraph 49).

30 That interpretation of the Regulation also applies in situations where, as is the case here, the competent authority of dispatch, which considers that it has to raise an objection to a shipment declared as a shipment of waste for recovery, has been notified of the planned shipment under the specific procedure provided for in Article 6(8) of the Regulation, according to which the authority itself, rather than the notifier, notifies the other authorities and the consignee of the planned shipment.

31 There is no reason to consider that the mere fact that the procedure to be followed when notifying the planned shipment to the parties concerned is not the standard procedure ought to result in the competent authority of dispatch being empowered to reclassify on its own initiative the purpose of the shipment.

32 Against that background, it should be noted that the second subparagraph of Article 3(8) of the Regulation, which concerns the procedure for shipments of waste for disposal, grants the competent authority of dispatch the option of refusing to transmit the notification of a planned shipment where 'it has itself immediate objections to raise against the shipment in accordance with Article 4(3)'. Therefore, by not granting the competent authority of dispatch that option under the procedure for shipment of waste for recovery, the Community legislature meant, by implication but necessarily, to exclude it in that procedure.

33 In those circumstances, it must be held that, in a situation such as the one at issue in the main proceedings, a competent authority of dispatch which considers that the classification of the purpose of a shipment is incorrect cannot on its own initiative reclassify that purpose and refuse to transmit the consignment note to the other authorities and the consignee. It is entitled only, at the latest by the end of a period of 30 days following dispatch of the acknowledgement of receipt of the notification of the shipment by the authority of destination, to inform the notifier and the other competent authorities concerned, by any appropriate means, of its objection based on the incorrectness of that classification.

34 For the reasons given by the Advocate General in points 37 and 38 of his Opinion, such an interpretation of the Regulation in no way compromises the powers of the competent authority of dispatch under that regulation to object to a shipment which has been incorrectly classified by the notifier and, at the same time, protects the notifier's interest in knowing the position of the other authorities regarding that planned shipment.

35 In the light of the foregoing, the answer to the question referred by the national court must be that the Regulation is to be interpreted as meaning that, where a Member State has recourse, under Article 6(8) of that regulation, to the specific procedure whereby the competent authority of dispatch transmits the consignment note for a shipment of waste for recovery, that authority, if it considers it necessary to object to the shipment on the ground that it has been incorrectly classified by the notifier, may not reclassify the shipment on its own initiative and is required to transmit that document to the other competent authorities and the consignee. It is then for that authority to inform the notifier and the other competent authorities concerned of its objection by any appropriate means before the end of the period laid down in Article 7(2) of the Regulation at the latest.

Costs

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

On those grounds, the Court (Fifth Chamber) rules as follows:

Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community, as amended by Commission Decision 98/368/EC of 18 May 1998 and Commission Decision 1999/816/EC of 24 November 1999, is to be interpreted as meaning that, where a Member State has recourse, under Article 6(8) of that regulation, to the specific procedure whereby the competent authority of dispatch transmits the consignment note for a shipment of waste for recovery, that authority, if it considers it necessary to object to the shipment on the ground that it has been incorrectly classified by the notifier, may not reclassify the shipment on its own initiative and is required to transmit that document to the other competent authorities and the consignee. It is then for that authority to inform the notifier and the other competent authorities concerned of its objection by any appropriate means before the end of the period laid down in Article 7(2) of the Regulation at the latest.

Signatures.