

ORDER OF THE COURT

(Fifth Chamber)

of 27 February 2003

In Joined Cases C-307/00 to C-311/00 (Reference for a preliminary ruling from the Raad van State): 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), 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 ⁽¹⁾

(Article 104(3) of the Rules of Procedure — Environment — Directive 75/442/EEC on waste — Regulation (EEC) No 259/93 concerning the shipment of waste — Directive 75/439/EEC on the disposal of waste oils — Classification — Waste disposal and recovery operations — Objections to shipments — Legal basis — Illegal shipments)

(2003/C 101/19)

(Language of procedure: Dutch)

(Provisional translation; the definitive translation will be published in the European Court Reports)

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), 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; P. Léger, Advocate General; R. Grass, Registrar, has made an order on 27 February 2003, the operative part of which is as follows:

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 reuse 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.

(¹) OJ C 335 of 25.11.2000.

ORDER OF THE COURT

(Fourth Chamber)

of 25 February 2003

in Case C-445/01 (reference for a preliminary ruling from the Tribunale di Biella): Roberto Simoncello, Piera Boerio v Direzione Provinciale di Lavoro (¹)

(Freedom of establishment — Freedom of movement for workers — Public undertaking — Requirements concerning hiring of workers — Inadmissibility)

(2003/C 101/20)

(Language of the case: Italian)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-445/01: reference to the Court under Article 234 EC from the Tribunale di Biella (Italy) for a preliminary ruling in the proceedings pending before that court between Roberto Simoncello, Piera Boerio and Direzione Provinciale di Lavoro — on the interpretation of Articles 48 and 52 of the EC Treaty (now, after amendment, Articles 39 EC and 43 EC), and Article 90 of the EC Treaty (now Article 86 EC) — the Court (Fourth Chamber), composed of: C.W.A. Timmermans (Rapporteur), President of the Chamber, A. La Pergola and S. von Bahr, Judges; D. Ruiz-Jarabo Colomer, Advocate General; R. Grass, Registrar, has made an order on 25 February 2003, in which it has ruled:

The reference for a preliminary ruling made by the Tribunale di Biella by order of 18 October 2001 is inadmissible.

(¹) OJ C 84 of 6 April 2002.

ORDER OF THE COURT OF JUSTICE

(Fourth Chamber)

of 5 December 2002

in Case C-461/01 P: Polyxeni Tessa and Andreas Tessas v Council of the European Union (¹)

(Appeal — State aid — Decision adopted on the basis of the third subparagraph of Article 93(2) of the EC Treaty (now the third subparagraph of Article 88(2) EC — Application for annulment — Appeal in part manifestly inadmissible and in part manifestly unfounded)

(2003/C 101/21)

(Language of the case: Greek)

(Provisional translation; the final translation will be published in the European Court Reports)

In Case C-461/01 P, Polyxeni Tessa and Andreas Tessas, residing in Larissa (Greece), (lawyer: A. Tessas) — appeal against the order of the Court of First Instance of the European Communities (Fourth Chamber Extended Composition) of 11 September 2001 in Case T-270/99 Tessa and Tessas v Council [2001] ECR II-2401, and seeking the annulment of that order, the other parties to the proceedings being: the Council of the European Union, (Agents: J. Carbery and D. Zahariou), and the Hellenic Republic, (Agents: I. Chalkias and P. Mylonopoulos), — the Court of Justice (Fourth Chamber), composed of M. Timmermans, (Judge-Rapporteur), President of the Chamber, D.A.O. Edward and S. von Bahr, Judges; Advocate General F.G. Jacobs; Registrar: R. Grass, made an order on 5 December 2002, the operative part of which is as follows:

1. The appeal is dismissed.
2. Ms Tessa and Mr Tessas will bear their own costs and pay those of the Council. The Hellenic Republic will bear its own costs.

(¹) OJ C 17 of 19.1.2002.