



Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

16 May 2019*

(Reference for a preliminary ruling — Environment — Shipment of waste — Regulation (EC) No 1013/2006 — Waste subject to the prior written notification and consent procedure — Shipments within the European Union — Article 1(3)(b) — Exclusion from the regulation's scope — Waste generated on board ships — Waste on board a ship following damage at sea)

In Case C-689/17,

REQUEST for a preliminary ruling under Article 267 TFEU from the Landgericht München I (Regional Court, Munich I, Germany), made by decision of 29 November 2017, received at the Court on 8 December 2017, in the proceedings

Conti 11. Container Schiffahrts-GmbH & Co. KG Ms 'MSC Flaminia'

v

Land Niedersachsen,

THE COURT (Fifth Chamber),

composed of E. Regan, President of the Chamber, C. Lycourgos (Rapporteur), E. Juhász, M. Ilešič and I. Jarukaitis, Judges,

Advocate General: H. Saugmandsgaard Øe,

Registrar: D. Dittert, Head of Unit,

having regard to the written procedure and further to the hearing on 25 October 2018,

after considering the observations submitted on behalf of:

- Conti 11. Container Schiffahrts-GmbH & Co. KG Ms 'MSC Flaminia', by J.-E. Pötschke and W. Steingröver, Rechtsanwälte,
- Land Niedersachsen, by R. van der Hout, advocaat, and H. Jacobj, Rechtsanwalt,
- the European Commission, by A.C. Becker, E. Sanfrutos Cano and L. Haasbeek, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 24 January 2019,

gives the following

* Language of the case: German.

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 1(3)(b) of Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste (OJ 2006 L 190, p. 1).
- 2 The request has been made in proceedings between Conti 11. Container Schiffahrts-GmbH & Co. KG Ms ‘MSC Flaminia’ (‘Conti’) and Land Niedersachsen (the *Land* of Lower Saxony, Germany) concerning the obligation imposed by the latter on Conti to carry out a notification procedure relating to shipment of waste that was on board the ship *MSC Flaminia* (‘the *Flaminia*’) following damage at sea.

Legal context

EU law

Directives on waste

- 3 Article 1(1) of Directive 2006/12/EC of the European Parliament and of the Council of 5 April 2006 on waste (OJ 2006 L 114, p. 9) provided:

‘For the purposes of this Directive:

- (a) “waste” shall mean any substance or object in the categories set out in Annex I which the holder discards or intends or is required to discard;

...’

- 4 Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (OJ 2008 L 312, p. 3), which repealed Directive 2006/12, provides in Article 3:

‘For the purposes of this Directive, the following definitions shall apply:

1. “waste” means any substance or object which the holder discards or intends or is required to discard;

...’

Regulation No 1013/2006

- 5 Recitals 1, 7 and 14 of Regulation No 1013/2006 state:

‘(1) The main and predominant objective and component of this Regulation is the protection of the environment, its effects on international trade being only incidental.

...

- (7) It is important to organise and regulate the supervision and control of shipments of waste in a way which takes account of the need to preserve, protect and improve the quality of the environment and human health and which promotes a more uniform application of the Regulation throughout the [European Union].

...

- (14) In the case of shipments of waste destined for disposal operations and waste not listed in Annex III, IIIA or IIIB destined for recovery operations, it is appropriate to ensure optimum supervision and control by requiring prior written consent to such shipments. Such a procedure should in turn entail prior notification, which enables the competent authorities to be duly informed so that they can take all necessary measures for the protection of human health and the environment. It should also enable those authorities to raise reasoned objections to such a shipment.'

6 Article 1 of Regulation No 1013/2006 provides:

'1. This Regulation establishes procedures and control regimes for the shipment of waste, depending on the origin, destination and route of the shipment, the type of waste shipped and the type of treatment to be applied to the waste at its destination.

...

3. The following shall be excluded from the scope of this Regulation:

- (a) the offloading to shore of waste, including waste water and residues, generated by the normal operation of ships and offshore platforms, provided that such waste is subject to the requirements of the International Convention for the Prevention of Pollution from Ships, [signed in London on 2 November 1973, as supplemented by the Protocol of 17 February 1978] (Marpol 73/78), or other binding international instruments;
- (b) waste generated on board vehicles, trains, aeroplanes and ships, until such waste is offloaded in order to be recovered or disposed of;

...'

7 Article 2 of Regulation No 1013/2006 states:

'For the purposes of this Regulation:

1. "waste" is as defined in Article 1(1)(a) of Directive [2006/12];

...

34. "shipment" means the transport of waste destined for recovery or disposal ...;

...'

8 Article 3(1) of Regulation No 1013/2006 provides:

‘Shipments of the following wastes shall be subject to the procedure of prior written notification and consent as laid down in the provisions of this Title:

(a) if destined for disposal operations:

all wastes;

(b) if destined for recovery operations:

- (i) wastes listed in Annex IV, which include, inter alia, wastes listed in Annexes II and VIII to the Basel Convention [on the control of transboundary movements of hazardous wastes and their disposal, signed on 22 March 1989 and approved on behalf of the European Economic Community by Council Decision 93/98/EEC of 1 February 1993 (OJ 1993 L 39, p. 1)],
- (ii) wastes listed in Annex IVA,
- (iii) wastes not classified under one single entry in either Annex III, IIIB, IV or IVA,
- (iv) mixtures of wastes not classified under one single entry in either Annex III, IIIB, IV or IVA unless listed in Annex IIIA.’

9 Article 4 of Regulation No 1013/2006 provides:

‘Where the notifier intends to ship waste as referred to in Article 3(1)(a) or (b), he/she shall submit a prior written notification to and through the competent authority of dispatch and, if submitting a general notification, comply with Article 13.

When a notification is submitted, the following requirements shall be fulfilled:

1. notification and movement documents:

Notification shall be effected by means of the following documents:

- (a) the notification document set out in Annex IA; and
- (b) the movement document set out in Annex IB.

In submitting a notification, the notifier shall fill in the notification document and, where relevant, the movement document.

...

The notification document and the movement document shall be issued to the notifier by the competent authority of dispatch.

...’

German law

10 By virtue of Paragraph 2(2)(13) thereof, the Gesetz zur Förderung der Kreislaufwirtschaft und Sicherung der umweltverträglichen Bewirtschaftung von Abfällen (Kreislaufwirtschaftsgesetz — KrWG) (Law to promote the circular economy and ensure the environmentally sustainable management of waste) of 24 February 2012 (BGBl. 2012 I, p. 212) is not applicable to the collection and handing over of ship-generated waste and cargo residues in so far as this is governed by federal or *Land* law on the basis of international or supranational agreements.

- 11 Paragraph 32 of the Niedersächsisches Abfallgesetz (Law on Waste of the *Land* of Lower Saxony) provides:

‘For the purposes of this law, the following terms shall bear the following meanings:

...

6. Ship-generated waste:

- (a) all waste (including sewage and residues other than cargo residues) which is generated in connection with the operation of a ship and falls within the scope of Annexes I, IV and V to [Marpol 73/78], and
- (b) cargo-associated waste within the meaning of point 1.7.5 of the Guidelines for the implementation of [Marpol 73/78];

7. cargo residues: the remnants of any cargo material on board in cargo holds or tanks which remain after unloading procedures and cleaning operations are completed, including loading/unloading excesses and spillage.’

- 12 Under Paragraph 35(1) of the Law on Waste of the *Land* of Lower Saxony), the master is required to deliver all ship-generated waste on board to a port reception facility before leaving the port. Paragraph 36(1) imposes the same obligation as regards cargo residues.

The dispute in the main proceedings and the question referred for a preliminary ruling

- 13 The *Flaminia* is a container ship owned by Conti that flew the German flag at the material time.
- 14 On 14 July 2012, during a voyage from Charleston (United States) to Antwerp (Belgium), a fire broke out and explosions occurred on board that ship, which was transporting 4 808 containers, including 151 ‘hazardous substance’ containers. After the fire was put out, Conti obtained authorisation on 21 August 2012 to tow the ship into German waters. In accordance with the letter of the Havariekommando (Central Command for Maritime Emergencies, Germany) of 25 August 2012, Conti was required to draw up an action plan and to specify any contractor undertaking measures under that plan.
- 15 On 9 September 2012, the ship was towed to Wilhelmshaven (Germany).
- 16 Conti undertook with the German authorities, in particular, to ensure safe transfer of the ship to a ship-repair yard in Mangalia (Romania) and appropriate treatment of the substances on board.
- 17 By letter of 30 November 2012, the Niedersächsisches Umweltministerium (Ministry of the Environment of the *Land* of Lower Saxony, Germany) informed Conti that the ship itself ‘and the water on board used to extinguish the fire as well as the sludge and scrap metal [were] to be classified as waste’ and that a notification procedure was therefore necessary. Conti challenged that assessment by letter of 3 December 2012.
- 18 By decision of 4 December 2012, the Gewerbeaufsichtsamt Oldenburg (Trade and Industry Inspectorate, Oldenburg, Germany) (‘the Trade and Industry Inspectorate’) required Conti to carry out a notification procedure on account of the presence on board the ship of scrap metal and of fire-extinguishing water mixed with sludge and cargo residues. Conti was also prohibited from removing the ship before the notification procedure had been completed and a verifiable waste disposal plan had been submitted in German.

- 19 On 21 December 2012, the intact cargo was unloaded and the seaworthiness of the ship was confirmed up to a wave height of 6 metres.
- 20 A notification procedure for the shipment of the fire-extinguishing water to Denmark was begun and completed. The pumping of the fire-extinguishing water commenced on 18 February 2013. Once it was possible to estimate the quantity of extinguishing sludge that could not be pumped out of the ship, the further notification procedure was initiated with Romania on 26 February 2013.
- 21 Authorisation to leave, requested for 4 March 2013, was issued on 1 March 2013. However, before the ship could set sail from the port, 30 containers with waste had to be unloaded, which took until 7 March 2013. After the notification procedure with Romania was completed, the ship was able to sail on 15 March 2013. In Romania, it was found that approximately 24 000 tonnes of waste were on board.
- 22 On 4 January 2013, Conti lodged an administrative appeal with the Trade and Industry Inspectorate against the decision of 4 December 2012. It submitted, in essence, that it should not have been made subject to the notification procedure prescribed by Regulation No 1013/2006, on the ground that it did not fall within that regulation's scope, and it explained that it submitted to that procedure only in order to avoid delays. By letter of 3 April 2013, the Trade and Industry Inspectorate determined that the administrative appeal had become devoid of purpose.
- 23 Conti then brought an action against the *Land* of Lower Saxony before the referring court seeking compensation for the losses resulting, in particular, from the costs of the notification procedures which it had to incur. It takes the view that it was unlawful to classify the substances within the ship as waste and to order, consequently, that those procedures be carried out. It submits, in that regard, that a waste disposal plan under national law could not be required since Regulation No 1013/2006 precludes the application of national law where waste on board a ship is to be recovered or disposed of in another Member State.
- 24 The referring court considers that, in so far as the loss pleaded by Conti comprises the costs of carrying out the notification procedure, a right to compensation would exist only if Regulation No 1013/2006 were not applicable to the residues from the damage at sea which the ship at issue in the main proceedings suffered. It explains that those costs arose solely because the Trade and Industry Inspectorate considered the carrying out of a notification procedure to be necessary.
- 25 The referring court takes the view that a notification procedure within the meaning of Article 3(1) of Regulation No 1013/2006 was necessary as waste had to be shipped from Germany to Romania. However, it raises the question whether the exception laid down in Article 1(3)(b) of that regulation was applicable and points out that, if that was the case, shipment of the residues at issue in the main proceedings would have fallen outside the regulation's scope. In its view, it is not apparent from the wording of the latter provision, which includes the term 'waste generated on board ... ships', from the preparatory documents resulting in the adoption of Regulation No 1013/2006, from that regulation's recitals or from its scheme that waste and residues attributable to damage at sea should be covered by the exception under that provision.
- 26 In those circumstances, the Landgericht München I (Regional Court, Munich I, Germany) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:
- 'Are residues from damage to a ship at sea in the form of scrap metal and fire-extinguishing water mixed with sludge and cargo residues on board the ship "waste generated on board vehicles, trains, aeroplanes and ships" for the purposes of Article 1(3)(b) of Regulation No 1013/2006?'

The request to have the oral procedure reopened

- 27 After the Advocate General had delivered his Opinion, the *Land* of Lower Saxony, by document lodged at the Court Registry on 5 April 2019, requested the Court to order the reopening of the oral part of the procedure.
- 28 In support of its request, the *Land* of Lower Saxony submits, in essence, that a question of decisive importance for the outcome of the main proceedings has not yet really been discussed before the Court, namely whether, with regard to Article 1(3)(b), Regulation No 1013/2006 also applies when the ship concerned is on the high seas. In the view of the *Land* of Lower Saxony, application of that regulation to the first leg of the *Flaminia*'s voyage, which took place on the high seas, would raise the question whether the regulation is compatible with public international law, more specifically with the Basel Convention. The *Land* of Lower Saxony adds that a fresh reference for a preliminary ruling could prove necessary in the future if the oral procedure is not reopened.
- 29 It should be noted, in that regard, that under Article 83 of its Rules of Procedure the Court may at any time, after hearing the Advocate General, order the reopening of the oral part of the procedure, in particular if it considers that it lacks sufficient information or where a party has, after the close of that part of the procedure, submitted a new fact which is of such a nature as to be a decisive factor for the decision of the Court, or where the case must be decided on the basis of an argument which has not been debated between the parties or the interested persons referred to in Article 23 of the Statute of the Court of Justice of the European Union.
- 30 In the present instance, the request submitted by the *Land* of Lower Saxony to have the oral part of the procedure reopened does not refer to any new fact and seeks, in essence, a ruling from the Court on two questions which have not been asked by the referring court, relating, first, to the applicability of Regulation No 1013/2006 when the ship is on the high seas and, second, to the validity of the exemption set out in Article 1(3)(b) of that regulation in the light of the Basel Convention.
- 31 Furthermore, the Court has all the information necessary to give a ruling and does not have to decide the present case on the basis of an argument which has not been debated between the parties and the interested persons referred to in Article 23 of the Statute of the Court of Justice of the European Union.
- 32 Accordingly, the Court, after hearing the Advocate General, considers that there is no need to order that the oral part of the procedure be reopened.

Consideration of the question referred

- 33 By its question, the referring court asks, in essence, whether Article 1(3)(b) of Regulation No 1013/2006 must be interpreted as meaning that residues in the form of scrap metal and of fire-extinguishing water mixed with sludge and cargo residues, such as those at issue in the main proceedings, attributable to damage occurring on board a ship at sea, must be regarded as waste generated on board ships, within the meaning of that provision.
- 34 It should be stated first of all that it is clear from the order for reference that, as the residues at issue in the main proceedings are substances or objects which the holder intends to discard, they fall within the concept of 'waste' within the meaning of Article 2(1) of Regulation No 1013/2006, which refers to the definition of that term in Article 1(1)(a) of Directive 2006/12, a provision subsequently replaced by Article 3(1) of Directive 2008/98, which contains an essentially analogous definition of that term.

- 35 Following that preliminary point, it should be noted that Article 1(3)(b) of Regulation No 1013/2006 excludes from the regulation's scope waste generated on board vehicles, trains, aeroplanes and ships, until such waste is offloaded in order to be recovered or disposed of.
- 36 It follows that, as the referring court states, if the waste at issue in the main proceedings were to be regarded as covered by that provision, Regulation No 1013/2006 would not have been applicable to it until it left the ship in order to be recovered or disposed of.
- 37 According to the Court's settled case-law, in interpreting a provision of EU law it is necessary to consider not only its wording but also its context and the objectives pursued by the rules of which it forms part (judgment of 17 October 2018, *Günter Hartmann Tabakvertrieb*, C-425/17, EU:C:2018:830, paragraph 18 and the case-law cited).
- 38 It should also be pointed out that, since Article 1(3)(b) of Regulation No 1013/2006 lays down an exception to application of the regulation's provisions, it must, in principle, be interpreted strictly. Nonetheless, that principle of strict interpretation cannot mean that the words used by that provision to define the scope of the exception which it lays down are to be construed in such a way as to deprive that exception of its intended effect (see, by analogy, judgment of 11 September 2014, *Fastweb*, C-19/13, EU:C:2014:2194, paragraph 40 and the case-law cited).
- 39 As regards, in the first place, the wording of Article 1(3)(b) of Regulation No 1013/2006, according to that provision, in order for waste to fall within that exclusion from the regulation's scope it must be generated on board inter alia a ship and not have been offloaded from it.
- 40 In that connection, it is to be noted, first, that that provision does not contain any indication as to the waste's origin or as to how it is generated on board the ship concerned.
- 41 As the Advocate General has observed in point 47 of his Opinion, the EU legislature merely specified in Article 1(3)(b) of Regulation No 1013/2006 the place where the waste must be generated, that is to say, on board inter alia a ship, without laying down specific requirements as to the circumstances in which the waste is generated.
- 42 Second, it follows from the normal meaning of the words 'until such waste is offloaded' which are used in Article 1(3)(b) of Regulation No 1013/2006 that, as regards a ship, that provision applies only as long as the waste concerned has not left the ship, in order to be sent for recovery or disposal.
- 43 It thus follows from the wording of Article 1(3)(b) of Regulation No 1013/2006 that the exclusion from the regulation's scope which that provision lays down applies to waste generated on board a ship, irrespective of the circumstances in which such waste is generated, until the waste leaves the ship in order to be recovered or disposed of.
- 44 In the second place, this conclusion is borne out by the context of that provision. Article 1(3)(a) of Regulation No 1013/2006 relates to the offloading to shore of waste, including waste water and residues, generated by the normal operation of, inter alia, ships, provided that such waste is subject to the requirements of Marpol 73/78, or other binding international instruments.
- 45 Thus, in contrast to the wording of Article 1(3)(b) of Regulation No 1013/2006, Article 1(3)(a) of the regulation expressly refers to waste generated by the normal operation of, inter alia, a ship, which confirms the fact that the exclusion laid down in Article 1(3)(b), which does not so provide, covers waste generated on board a ship irrespective of the circumstances in which it has been generated.
- 46 In the third place, the interpretation of Article 1(3)(b) of Regulation No 1013/2006 that results from that provision's wording and context is not called into question by the objective pursued by the regulation.

- 47 It is true that, according to Article 1(1) of Regulation No 1013/2006 and recital 7 thereof, the regulation establishes procedures and control regimes for shipments of waste in a way which takes account of the need to preserve, protect and improve the quality of the environment and human health. In particular, it follows from Articles 3(1) and 4(1) of the regulation, read in conjunction with recital 14 thereof, that, for shipments between Member States of waste destined for disposal operations and hazardous waste destined for recovery operations, a prior written notification must be submitted to the competent authorities, enabling them to take the necessary measures for the protection of human health and the environment (judgment of 26 November 2015, *Total Waste Recycling*, C-487/14, EU:C:2015:780, paragraph 29 and the case-law cited).
- 48 However, that objective of environmental protection pursued by Regulation No 1013/2006 cannot mean that, despite the clear exclusion laid down in Article 1(3)(b) of that regulation, the movement of waste generated on board a ship accidentally must be subject to the regulation's rules and, in particular, under Article 3(1), to the requirement of prior written notification and consent. Given that the generation of that type of waste is sudden and unforeseeable, it would in practice be impossible or excessively difficult for the person responsible for the ship concerned to be able to be acquainted in sufficient time with the information necessary for the correct application of those rules, which are intended to ensure that the shipment of that waste is supervised and is controlled effectively, as referred to in that regulation.
- 49 Thus, in the case of waste generated by an accident at sea, such as the waste at issue in the main proceedings, the person responsible for the ship would in all likelihood not be in a position, before docking in a port, to be acquainted with and to provide all the information required by the forms set out in Annexes IA and IB to Regulation No 1013/2006, relating, inter alia, to the designation, composition and identification of the waste and the type of disposal or recovery operation envisaged.
- 50 Moreover, as the Advocate General has observed in point 65 of his Opinion, application of the rules laid down by Regulation No 1013/2006 to waste generated on board a ship as a result of damage on the high seas could have the effect of delaying the ship's entry into a safe port, which would increase the risk of marine pollution and thus undermine the objective pursued by that regulation.
- 51 It must, however, be pointed out that the exclusion laid down in Article 1(3)(b) of Regulation No 1013/2006 cannot apply in the event of abuse on the part of those responsible for the ship concerned. Such abuse would consist, inter alia, of conduct designed to delay, excessively and without justification, the offloading of the waste in order for it to be recovered or disposed of. Such a delay should be assessed in the light, in particular, of the nature of the waste and the significance of the danger that it represents for the environment and human health.
- 52 In the present instance, since the waste at issue in the main proceedings was brought about by the damage that occurred on board the *Flaminia* when it was sailing on the high seas, the waste must be regarded as having been generated on board a ship, within the meaning of Article 1(3)(b) of Regulation No 1013/2006. That provision thus applies to that waste until it leaves the ship in order to be recovered or disposed of.
- 53 It follows from the foregoing considerations that Article 1(3)(b) of Regulation No 1013/2006 must be interpreted as meaning that residues, in the form of scrap metal and of fire-extinguishing water mixed with sludge and cargo residues, such as those at issue in the main proceedings, attributable to damage occurring on board a ship at sea, must be regarded as waste generated on board ships, within the meaning of that provision, which is, therefore, excluded from that regulation's scope until it is offloaded in order to be recovered or disposed of.

Costs

- ⁵⁴ Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

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

Article 1(3)(b) of Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste must be interpreted as meaning that residues, in the form of scrap metal and of fire-extinguishing water mixed with sludge and cargo residues, such as those at issue in the main proceedings, attributable to damage occurring on board a ship at sea, must be regarded as waste generated on board ships, within the meaning of that provision, which is, therefore, excluded from that regulation's scope until it is offloaded in order to be recovered or disposed of.

[Signatures]