OPINION OF ADVOCATE GENERAL MENGOZZI
delivered on 15 February 2007 [1]

I — Introduction

1. In the present case, the Court is asked to rule 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 [2] ('the Regulation') with reference to certain categories of waste which appear in Annex II to the Regulation. In particular, the referring court asks the Court to determine whether obligations exist with respect to notification at the time of export, for purposes of recovery, of waste consisting of a combination of two different materials, a combination which is not, as such, included in Annex II to the Regulation but each of the constituent materials of which does appear in that annex.

1 — Original language: Italian.

2 — OJ 1993 L 30, p. 1, in the relevant version as amended by Commission Regulation (EC) No 2557/2001 of 28 December 2001 (OJ 2001 L 349, p. 1) and subsequently repealed by Regulation (EC) No 1013/2006 of the European Parliament and of the Council on shipments of waste (OJ 2006 L 190, p. 1).

II — Legal framework

The relevant provisions of Community law

2. The Regulation at issue in the present case was adopted in order to establish a system for the supervision and control of shipments of waste within, into and out of the Community, with reference both to EC countries and to non-member countries, with a view to preserving, protecting and improving the quality of the environment and also in the light of the obligations assumed by the Community under the Basle Convention and the OECD Decision of 30 March 1992 [3] ('the OECD Decision').

3 — OECD Decision C(92) 39 final on the control of transboundary movements of wastes destined for recovery operations.

3. The following recitals in the preamble to the Regulation are relevant for the purposes of the present case:

'Whereas the Community has signed the Basle Convention of 22 March 1989 on the control of transboundary movements of hazardous wastes and their disposal;

...

Whereas the Community has approved the Decision of the OECD Council of 30 March 1992 on the control of transfrontier movements of wastes destined for recovery operations;

...

Whereas it is important to organise the supervision and control of shipments of wastes in a way which takes account of the need to preserve, protect and improve the quality of the environment;

...

Whereas it is necessary to apply different procedures depending on the type of waste and its destination, including whether it is destined for disposal or recovery;

...

Whereas exports of waste for recovery to countries to which the OECD Decision does not apply must be subject to conditions providing for environmentally sound management of waste;

...

Whereas shipments of waste for recovery listed on the green list of the OECD Decision shall be generally excluded from the control procedures of this Regulation since such waste should not normally present a risk to the environment if properly recovered in the country of destination; ...'.

4. The procedures established by the Regulation for shipments of waste within, into and out of the Community are distinguished essentially on the basis of three criteria, namely the type of waste, whether it is destined for recovery or disposal in accordance with the classification of those operations laid down in Council Directive 75/442/EEC of 15 July 1975 on waste [4] and on the basis of the country of destination. In general, with some exceptions, including the transport of wastes on the green list, prior notification is required for all types of shipment.

5. With reference to the first criterion, the Regulation provides a classification of wastes in three lists: a 'green list of wastes' (Annex II), an 'amber list of wastes' (Annex III), and a 'red list of wastes' (Annex IV), ('the green list', 'the amber list' and 'the red list' respectively, or 'Annex II', 'Annex III' and 'Annex IV').

6. In accordance with the provision contained in the 14th recital in the preamble, cited above, materials on the green list are deemed not to present a risk to the environment if properly recovered and shipment of these materials is therefore generally excluded from the requirement of notification if they are destined for recovery in another Member State.

7. Article 1 of the Regulation contains the following provisions:

'...

(3) (a) 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).

(b) Such waste shall be subject to all the provisions of Directive 75/442/EEC ...'.

8. With reference to shipments of green waste for recovery in China, to which the OECD Decision does not apply, under Annex D to Commission Regulation (EC) No 1547/1999 of 12 July 1999, [5] in the version in force when the events at issue in the main proceedings occurred, prior notifi-

4 — OJ 1975 L 194, p. 39, in the version relevant for the purposes of the present case, as amended by Commission Decision 96/350/EC of 24 May 1996 (OJ 1996 L 135, p. 32), now consolidated by Directive 2006/12/EC of the European Parliament and of the Council of 5 April 2006 on waste (OJ 2006 L 114, p. 9).

5 — Regulation determining the control procedures under Council Regulation (EEC) No 259/93 to apply to shipments of certain types of waste to certain countries to which OECD Decision C(92) 39 final does not apply (OJ 1999 L 185, p. 1).

cation is not required from that country for the transport of certain categories of 'green wastes', including materials listed under headings GA 120 7404 00, GC 020 and GH, but they must be inspected by the CCIC (China National Import and Export Commodities Inspection Corporation) prior to shipment.

9. On the classification of wastes, I note that each list is subdivided into headings listed in alphabetical order (such as, for example, the general heading GH, cited above, which includes solid plastic wastes), which in turn are subdivided into more specific headings listed in numerical order. [6]

10. For the purposes of the waste at issue in the present case, the relevant headings are 'GA 120 7404 00 Copper waste and scrap', 'GH 013 (ex 3915 30) Polymers of vinyl chloride', general heading 'GC (Other wastes containing metals)', and the specific headings under that heading 'GC 010 Electrical assemblies consisting only of metals or alloys' and 'GC 020 Electronic scrap (e.g. printed circuit boards, electronic components, wire, etc.) and reclaimed electronic components suitable for base and precious metal recovery'.

11. The preamble to the green list, introduced by Commission Decision 94/721/EC of 21 October 1994, [7] adapting, pursuant to Article 42(3), Annexes II, III and IV to the Regulation, [8] provides that:

'Regardless of whether or not wastes are included on this list, they may not be moved as green wastes if they are contaminated by other materials to an extent which (a) increases the risks associated with the waste sufficiently to render it appropriate for inclusion in the amber or red lists, or (b) prevents the recovery of the waste in an environmentally sound manner'.

12. With respect to waste not included in any of the lists in Annexes II, III and IV,

6 — I also note that the letter G in the categories means that they are included in the green list in Annex II to the Regulation.

7 — I note that Annex D to Regulation No 1547/1999, cited above, lists the types of waste referred to in Annex II to Regulation No 259/93 to which the control procedures on exports to non-member countries mentioned in the said Annex D, including China, do not apply. I also note that, as regards heading GC 010, although in Annex II we find the wording '[waste from] electrical assemblies consisting only of metals or alloys', Annex D uses the different wording 'electrical assemblies containing only metals or alloys'.

8 — OJ 1994 L 288, p. 36.

Article 17(8) of the Regulation contains the following provision:

'Where waste for recovery listed in Annex[es] III and IV and waste for recovery which has not yet been assigned to Annex II, III or IV is exported to and through countries to which the OECD Decision does not apply:

— Article 15, except for paragraph 3, shall apply by analogy,

— reasoned objections may be raised in accordance with Article 7(4) only,

save as otherwise provided for in bilateral or multilateral agreements entered into in accordance with Article 16(1)(b) and on the basis of the control procedure of either paragraph 4 or 6 of this Article or Article 15.'

13. Article 15 of the Regulation lays down a prior notification and authorisation procedure applicable to red list waste.

14. Lastly, it should be noted that under Article 26 of the Regulation:

'1. Any shipment of waste effected:

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

(b) without the consent of the competent authorities concerned pursuant to the provisions of this Regulation; ...

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.'

III — The facts and the questions referred for a preliminary ruling

15. It appears from the decision of the referring court that in March 2004 Omni Metal Service ('OMS'), a company established in France, sold a consignment of cable scrap to a Chinese undertaking that is part of an Australian group of companies specialising in recycling metals.

16. OMS was shipping the scrap in question by sea from Bilbao, in Spain, to China, via the Netherlands. The shipment was authorised in advance by the Chinese authorities, following an inspection by the China National Import and Export Commodities Inspection Corporation, but the competent Netherlands authorities were not notified.

17. On inspection by the Netherlands customs authorities, it transpired that the cable that was being transported, classified in the accompanying documents as 'electrical', consisted of a copper core surrounded by PVC sheathing with diameters of up to 15 cm. The Netherlands authorities took the view that that composition of PVC and copper did not come under any of the headings in Annexes II, III, and IV to the Regulation, in particular the green list, and they therefore sent the consignment of scrap in question back to Spain, the country from which it had been shipped, on the ground that the shipment was in breach of the notification and authorisation procedures laid down in the Regulation and therefore constituted a case of illegal traffic of waste within the meaning of Article 26.

18. At the same time, criminal proceedings were brought against OMS for shipping waste without giving prior notification to the competent authorities of the country of transit in accordance with Article 15 of the Regulation.

19. The decision for reference issued by the Rechtbank te Rotterdam (District Court, Rotterdam) states that the Openbaar Ministerie (Public Prosecutor's Department) claimed that the waste in question did not come under heading GC 020 in the green list, in so far as, in its view, it was large-diameter earth cable, not classifiable as household flex and/or wire.

20. Also, according to the Openbaar Ministerie, as the combination of PVC and copper in the cable in question did not appear as such on the green list, it could not be held to be included on that list because, in view of the objectives of the Regulation and the fact that the procedure applicable to shipments of 'green' materials constitutes an exception to the system of control established by the Regulation, a restrictive interpretation and a limited application of that list are mandatory. In support of that position, the Openbaar Ministerie cited the judgment in *Beside and Besselsen*,[9] in which, it submitted, the Court had held that the prescribed procedure for shipments of waste referred to in Annex II may apply only in the case of 'properly sorted' green materials or of combinations of 'green' materials which, if not separated, appear in combination on the green list.

21. Consequently, Article 15 of the Regulation must, in its view, apply by analogy, in accordance with the provisions of Article 17(8), to a shipment to China, a non-OECD country, of waste consisting of a combination of 'green' materials which have not been separated and which do not appear in combination on any of the lists contained in the Regulation. In the present case, therefore, the Openbaar Ministerie continues, the competent authorities in the Netherlands ought to have been notified of the shipment.

22. OMS contested those views, contending that the cable in question comes under heading GC 020 because the decisive factor for the purposes of that classification is the composition of the cables and no importance should be attached to their origin or their diameter. Inasmuch as the cables in question are composed of PVC and copper, they should, in its view, be treated in the same way as the electronic scrap listed under heading GC 020 since the flex and/or wire in that category is generally composed of the same materials.

23. In the alternative, OMS argued that the green list procedure must in any case apply to a combination of two materials which appear on that list, even if those materials do not appear on the list in combination. According to OMS, that interpretation is confirmed by the practice followed in most Member States, including Spain, the country of dispatch, and which is also followed in China, the country of destination.

9 — Case C-192/96 [1997] ECR I-4029.

24. The referring court, having doubts as to the interpretation of the relevant provisions of the Regulation, decided to stay the proceedings pending before it and to refer the following questions to the Court for a preliminary ruling:

'(1) Can cable scrap such as that in issue in the present case (in part with a diameter of 15 cm) be classified as "electronic scrap (e.g. ... wire, etc.)" within the terms of heading GC 020 of the green list?

(2) If the Court of Justice should answer Question 1 in the negative, can or must a combination of green list materials, which is not as such mentioned on the green list, be regarded as a green list material and may that combination of materials be transported for purposes of recovery without the notification procedure being applicable?

(3) Is it necessary in this connection that the waste materials be offered or transported separately?'

25. Pursuant to the second paragraph of Article 23 of the Statute of the Court of Justice, OMS, the Commission, and the Netherlands and Portuguese Governments submitted written observations. OMS, the Commission and the Netherlands Government were represented at the hearing.

IV — Legal analysis

The first question

26. By the first question, the referring court seeks essentially to ascertain whether cables composed of PVC and copper, with various diameters, can be classified on the basis of heading GC 020 as electronic scrap and can be transported as green waste without prior notification.

27. In that connection, OMS contends that heading GC 020 is not an exhaustive list but a residual category in which the decisive factor for the purposes of classifying waste as 'electronic scrap and reclaimed electronic components' is the composition of the waste and that, in the case of cable and wire, the origin of the cable, whether household or municipal, and its dimensions, in terms of diameter and/or length, are of no consequence. In view of the Regulation's objective of environmental protection, OMS considers

that for cables to be included in that category it is sufficient that the materials of which they are composed have not been contaminated to an extent that would constitute risks to human health or environmental protection during the process of recovery. Consequently, the cable in question, composed like most electronic cable and wire of copper and PVC and not contaminated with other materials, should in its view be treated in the same way as electronic waste and it should be possible to ship it without prior notification.

28. In support of that broad interpretation of heading GC 020, OMS cites Directive 2002/96/EC of the European Parliament and of the Council of 27 January 2003, [10] which lays down common rules on the management of waste electrical and electronic equipment, inasmuch as the disposal or recovery of the two types of equipment does not present different risks to the environment, since the composition of the two types of equipment is identical.

29. The Netherlands Government, for its part, considers that the objective of the Regulation, set out in recitals 1 to 5 and 8 of the preamble and confirmed by the Court in the judgment in *Parliament* v *Council*, [11] to secure a high level of protection of the environment and human health requires (a) limited application of the simplified procedure provided for shipments for the purposes of recovery of wastes on the green list, inasmuch as it derogates from the ordinary system of control established by the Regulation, and (b) a restrictive interpretation of the categories of waste included on that list.

30. On the basis of that restrictive interpretation, the decisive factor for the purposes of the classification of waste under heading GC 020 is therefore, in its view, the 'origin' of the waste, which is to be understood as 'electronic equipment' and which must necessarily be differentiated from electrical equipment, which is expressly mentioned under heading GC 010.

31. Consequently, since the waste in question was classified as electrical cable in the documents accompanying the shipment and as that was to be understood as meaning 'earth cable for the transport of electricity', the Netherlands Government concludes that the said cable cannot come under category GC 020 of the green list.

10 — OJ 2003 L 37, p. 24, as last amended by Directive 2003/108/EC of the European Parliament and of the Council of 8 December 2003 (OJ 2003 L 345, p. 106).

11 — Case C-187/93 [1994] ECR I-2857, paragraphs 18 to 23.

32. In my view, and as the Commission observed in the course of the hearing, it appears from a semantic analysis of heading GC 020 that the terms 'scrap' and 'components' have a purely descriptive, not a prescriptive, value for purposes of the classification of waste. Nor can the generic composition of the waste in question (in this case copper and PVC of which cables and/or wire are for the most part composed) be held to be decisive for the purposes of classification under heading GC 020, since there is no reference to it in the text of that heading, and the same considerations apply to the origin of 'household or municipal' waste.

33. The only factor that appears to be relevant to the classification of waste for the purposes of the heading in question is the nature of the waste. Heading GC 020 in fact comprises electronic scrap, including cables and wires, which are mentioned merely by way of example. The factor that appears to be conclusive for the purposes of classification is therefore the 'electronic' nature of the waste, in other words, the fact that it is or has been part of electronic equipment, regardless of its composition, its dimensions or its household/municipal origin.

34. That interpretation is corroborated, on the one hand, by the uniformity of the various language versions with reference to the term 'electronic' and, on the other, by the systematic wording of the general category GC (Other wastes containing metals) to which the subcategory GC 020 belongs. In fact, the first heading in that general category is heading GC 010 and the origin and composition of the waste, namely electrical assemblies 'consisting only of metals or alloys',[12] appear to be conclusive for the purposes of that category. In that respect it is unlike the next category, GC 020 at issue in this case, which is more restricted in scope inasmuch as it comprises only waste of *electronic origin* suitable for 'base and precious metal recovery'.

35. It follows that not all wires or cables, which as I have already said are listed merely by way of example, come under heading GC 020 but only those which are or have been part of equipment that can be classified as electronic.

36. Moreover, as regards Directive 2002/96, known as the WEEE directive, while it is true that it lays down common rules on the management of waste electrical and electronic equipment, a fact that might lead one to suppose that any distinction between those categories of waste was irrelevant for the purposes of classification in the green list, some observations are nevertheless called for in this connection.

37. First, it should be noted that the abovementioned directive is of limited relevance for the purposes of the present case, since the period within which it had to be transposed had not yet expired when the facts at issue in the case occurred.

12 — See footnote 7 above.

38. Secondly, the arguments advanced by OMS are open to dispute, both on chronological grounds and in respect of legal basis and independent application. In particular, it is risky to interpret the provisions of the Regulation in question automatically in the light of a subsequent measure, especially a directive adopted nine years later. Moreover, the directive itself is subject to the provisions of the Regulation in respect of its application.

39. Lastly, the distinction between electrical assemblies and electronic equipment referred to in headings GC 010 and GC 020 of the Regulation in question is maintained in Regulation No 1013/2006, [13] which replaces the former Regulation and was adopted four years later than the directive in question.

40. In the light of the foregoing observations, I consider that the distinction between categories of waste based on the criterion of the electronic or electrical 'origin' of the waste is still relevant in the light of the rules laid down in the WEEE Directive 2002/96.

13 — Cited in footnote 2. I note, in this connection, that in accordance with the provisions of Annex III to that regulation (the green list), the distinction referred to in headings GC 010 and GC 020 takes precedence over the classification referred to in heading B 1100 of Annex IX to the Basle Convention — contained in Annex V, Part I, List B, to the Regulation — under which electrical and electronic assemblies are subject to the same rules.

41. That said, it will be for the referring court to determine, as a matter of fact which is not within the Court's jurisdiction, whether the 'origin' of the cables in question was in electronic equipment — a subject on which a further dispute between the parties emerged in the course of the hearing — for the purpose of including those cables under heading GC 020 of the Regulation, with the consequence that the simplified green list procedure would apply to their shipment.

The second and third questions

42. I shall now proceed to a combined analysis of the second and third questions by which the Rechtbank te Rotterdam essentially asks the Court to determine whether a combination of materials mentioned on the green list, a combination not as such included in the list, can or must be regarded as coming under the list and whether for that purpose it is necessary that the two elements comprising the combination be offered or transported separately.

43. The determination in question is important because it provides the basis for identifying which of the control systems established under the Regulation at issue is applicable to the shipment of the materials. In the event of combinations of green list materials being considered to be included in that list, it may be held on the basis of Annex D to Regulation No 1547/1999, cited above, that China need not be notified of their shipment.

If, on the contrary, combinations of 'green' materials cannot be included in the green list because they are not mentioned in any of the annexes to the Regulation, it must be held that there is a duty to apply the system of prior notification applicable to shipments of materials on the red list (Article 15 of the Regulation).

44. With reference to the second and third questions, the Netherlands Government, referring again to the Regulation's specific objectives of protecting the environment and human health, argues in favour of a restrictive interpretation of the green list on a number of grounds. In the first place, it says, the list includes various types of waste consisting of a combination of two 'green' materials, which suggests that the list is exhaustive and definitive. In the second place, it points out that the inclusion of a material in the green list follows a preliminary assessment of the risks connected with the recovery of the material, considered singly, which excludes the inclusion, in combination, of materials that do not appear on the list because the possible risks connected with their recovery have not been assessed.

45. Lastly, the Netherlands Government argues that, in the case of combinations of a number of 'green' materials, there may be a heightened risk to the environment in cases where only one of the materials is recovered, leaving the others for disposal. The fact that there may be such a risk, in that case, should in its view undoubtedly exclude such combinations from the system established for the green list. According to the Netherlands Government, this was clearly so in the present case, inasmuch as, by its account, the copper of which electrical cables are generally composed is recovered in China by removing the PVC by incineration in an operation that is not subject to controls.

46. This restrictive view as to the interpretation of the green list is shared by the Portuguese Government.

47. OMS considers, on the contrary, that a combination of two green list materials destined for recovery does not in itself present any risks to the environment other than those connected with the various materials comprising the combination, considered singly, with the result that that kind of waste is included in the green list. In its view, that interpretation, as already observed earlier, is supported by the practice followed in various Member States and also in China, the country of destination of the shipment in question.

48. The abovementioned view is also, according to OMS, corroborated by the provision of the 2001 OECD Decision, [14]

14 — Decision C(2001) 107 final of 21 May 2002.

under which a mixture of 'green wastes' is subject to the green list procedure, provided the composition of this mixture does not impair its environmentally sound recovery. OMS contends that that decision represents an important instrument for the interpretation of the rules laid down by the Regulation at issue, although those rules are not directly applicable to the present case since China is not a party to that decision.

49. The Commission, for its part, while it shares the extensive approach adopted by OMS in interpreting the green list, nevertheless considers that the rule that shipments of combinations of green materials are exempt from the notification requirement cannot apply automatically. On the contrary, the risks connected with the recovery of two green materials in combination should be assessed on a case-by-case basis. In the case in question, in view of the risks connected with the recovery of the PVC, it takes the view that the cable at issue cannot be included in the green list and that the procedures applicable to the transport of materials that do feature on that list cannot therefore apply to that type of waste.

50. For my own part, I consider that, although the green list appears prima facie to contain an exhaustive and definitive list of the cases in which the procedures for the control of shipments of waste set out in the Regulation in question do not apply, various factors oppose such a restrictive interpretation of the list in question.

51. In the first place, while it is true that the wastes on the green list represent a particular category which does not come within the scope of the Regulation, as set out in Article 1(3), and that, as those wastes are generally not hazardous, they are not subject to the control system established by the legislation in question, nevertheless I do not consider that it therefore follows that the list in question is definitive and exhaustive inasmuch as such an interpretation would, in my view, be contrary both to the objectives of the Regulation and to the wording of the preamble to the green list.

52. In this connection, the preamble to the green list, which is relevant in respect not only of its wording but also of its significance for the purposes of reconstructing the objectives of the Regulation, provides that, 'regardless of whether or not wastes are included' in the green list, they may not be moved as green wastes if 'they are contaminated with other materials' to an extent which increases the risks associated with the waste sufficiently to render it appropriate for inclusion in the amber or red lists or prevents the recovery of the waste in an environmentally sound manner.

53. In the second place, the open character of the preamble to the green list, shown by the mention of a possibility of excluding wastes from the system of that list, whether or not they are included in the list, [15] is not an isolated instance: it is also found in expressions contained in various headings of the green list, such as 'including but not limited to', 'other', 'other ... , e.g. ...', or 'other, including but not limited to:'. Wording which likewise implies that, although not expressly mentioned on the green list, materials may be deemed to be included in it if they can be assigned to certain specific headings of 'green' waste.

54. Thirdly, but not necessarily lastly, the Court has had occasion to rule on the preamble to the green list in *Beside and Besselsen*, in which it held that the expression 'municipal/household waste' referred to under AD 160 in the amber list in Annex III to the Regulation, as amended by Decision 94/721, includes both waste which for the most part consists of waste mentioned on the green list in Annex II to the Regulation, mixed with other categories of waste appearing on that list, and that 'municipal/household waste' does not cease to be 'amber waste', and therefore does not come within the green list, unless it has been collected separately or properly sorted.

55. The Court ruled in paragraph 34 of that judgment that 'the expression "municipal/household waste" referred to under AD 160 in the amber list in Annex III to the Regulation ... includes both waste which for the most part consists of waste mentioned on the green list in Annex II to the Regulation, mixed with other categories of waste appearing on that list, and waste mentioned on the green list mixed with a small quantity of materials not referred to on that list'. I do not think that that paragraph in the judgment can be relied upon, as it has been by the Netherlands Government in the present case and by the Openbaar Ministerie in the proceedings which gave rise to the reference for a preliminary ruling, to maintain that in the system of the Regulation the rules on green list waste represent an exception and that the green list must therefore be interpreted restrictively.

56. In order to understand that ruling correctly, it is essential first to bear in mind the question that the Court was seeking to answer in paragraphs 32 to 34 of the

15 — I note however, in this connection, that the various language versions of the Regulation are not uniform: thus, while the Italian, Portuguese and English versions, for example, employ the following expressions: 'indipendentemente dal fatto che vi figuri o meno', 'regardless of whether or not wastes are included', 'independentemente de estarem ou não incluídos', the Spanish and French versions employ the expressions: 'independientemente de su inclusión', 'indépendamment de son inclusion', which appear to be less at odds with the possibility that the listing referred to in the green list may be exhaustive and definitive.

judgment in that case and to consider the ruling in paragraph 34 in the context of the line of reasoning in which it was delivered.

57. As to the first point, it is clear, as the Court itself noted in paragraph 21 of its judgment, that it was being asked to rule on waste generally mixed with other waste in a form that would normally be described as 'external contamination', not on a mixture that could be classified as an 'inherent mix', such as the mixture at issue in the present case.

58. Although, as we have seen, the Court held in *Beside and Besselsen* that the waste in question had to be properly separated in order to be classified as coming within the green list, it did so because the main proceedings concerned 'contamination' with external materials, that is to say, a number of materials that were classifiable as 'green' had come into contact, in the course of shipment, with other materials that were not included in that category, rendering it impossible to classify them correctly. Hence the need for appropriate separation and sorting in order to identify and classify them as green waste and prevent materials, the recovery of which was not without risks to the environment, from being in fact concealed among materials that were classified as being on the green list.

59. The present case, by contrast, concerns a combination of wastes in a form that can be classified as an inherent mix, that is to say, a conjunction of materials, the severance of which, by separating the PVC from the copper either by incineration or by mechanical means, constitutes the first stage of recovery within the meaning of Directive 75/442.[16] It follows that neither the transporter nor the producer of the waste could have sorted the materials in question with a view to separating them.

60. It is therefore impossible to extend the criterion of 'proper sorting and separate collection' imposed by the Court with reference to what may be called external contamination of waste to the present case, which concerns an 'inherent mix' of two distinct materials.

61. As to the context in which the Court delivered the ruling contained in paragraph 34 of *Beside and Besselsen*, it should be noted that if, in reaching that conclusion, the Court stated in paragraph 32 that municipal/household waste does not cease to be amber waste and therefore does not come within the green list unless it has been collected separately or properly sorted, it did so for a reason explained in the next paragraph, paragraph 33, *a reason which*, in point of fact, *contains the criterion which, in the Court's view, ought to apply in the matter.*

16 — In particular, the Commission cites stages R 4 and R 11 in Annex IIB to the directive, 'Recycling/reclamation of metals and metal compounds' and 'Use of wastes obtained from any of the operations numbered R 1 to R 10' respectively.

Paragraph 33 reads: '[a]s is clear from the introduction to the green list of waste, waste may not, regardless of whether or not it is included on that list, be moved as green waste if it is contaminated by other materials to an extent which (a) increases the risks associated with the waste sufficiently to render it appropriate for inclusion in the amber or red lists, or (b) prevents the recovery of the waste in an environmentally sound manner'. The criterion that the Court employed in that way is, first, a criterion which, while it may easily entail the exclusion of a general mixture from the green list or its readmission, is designed to be certainly much less applicable with regard to inherent mixes; and also, and above all, it is a criterion which clearly involves, according to the Court, exclusion of the view that the green list represents an exception or that it must be interpreted restrictively so as to consider, definitively and generally, that only combinations of 'green' waste materials specifically mentioned on the list may benefit from the system on which that list is based. The only conclusion that can be drawn from it is that a combination of items included in the green list must be assessed on a case-by-case basis with reference to the circumstances in each particular case.

62. These considerations lead me to conclude that the Community legislature did not intend to exclude application of the system referred to in the green list both in the case of external contamination of green materials with other materials and in the case of what is known as inherent contamination between green materials, provided that the risks associated with the recovery of such materials in the country of destination are not increased as a result of such contamination.

63. The fact that that is the case is further confirmed by the fact that Advocate General Jacobs, in point 33 of his Opinion in *Beside and Besselsen*, (a) explained, with reference to the view that green waste falling within one general category should never be mixed with waste falling within another general category for the purposes of exemption from notification, that that view is not valid with reference to a 'mix ... inherent in the items concerned' and (b) classified as an inherent mix items of waste such as glass bottles with paper labels, an item that is certainly comparable to the case, here in issue, of cables consisting of a copper core surrounded by PVC sheathing. [17]

64. In my view, the interpretation expounded above is corroborated not only by the system and purpose of the green list but also by the general objectives underlying the Community rules on the transport of waste.

17 — See the Opinion of Advocate General Jacobs in *Beside and Besselsen*.

65. In fact, I note that, as expressly mentioned in the 14th recital in the preamble to the Regulation, the purpose of the green list is to exclude from the normal control procedures shipments of waste which are destined for recovery and which do not present risks to the environment or human health in connection with their treatment. The aim in this regard is, on the one hand, to enable the competent authorities to concentrate on shipments of waste that constitute a specific risk to the environment by preventing those authorities from being overburdened with notifications that are not considered to be essential and, on the other, to encourage the recovery 'business' by simplifying the procedures for the transport of waste destined for that type of treatment.

66. It would be inconsistent with those aims if two materials which do not in themselves present a risk to the environment associated with their recovery (a) were not to benefit from the system referred to in the green list merely on the ground that they are presented in the form of an inherent mix, even though the fact that they are combined in no way impairs the recovery of the materials in an environmentally sound manner, and (b) were to be subject, in any event and despite the absence of risk, to the stricter control system applicable to shipments of materials deemed to be hazardous (such as the materials listed on the red list).

67. Moreover, the restrictive approach set out in the preceding point is excluded by the aims of the Regulation.

68. Thus, while it is true that in general the objective of the Regulation is to establish a harmonised system of control procedures to limit movements of waste in order to ensure the protection of natural resources, it should nevertheless be noted that the whole system of control is based on a fundamental distinction between waste destined for 'disposal' and waste destined for 'recovery'.

69. In order to protect the environment, the Regulation seeks to limit, by means of control procedures, cross-border movements of waste for disposal in accordance with the principles of 'self-sufficiency and proximity', but the application of those principles is excluded in the case of waste for recovery. [18] In the case of waste for recovery, the Community legislature has established a system of free movement in order to encourage recovery, provided only that transport poses no threat to the environment, allowing the economic operator to process that type of waste in the country and through the undertakings that offer the most favourable terms.

18 — See, to that effect, *ex multis*, Case C-203/96 *Dusseldorp and Others* [1998] ECR I-4075, paragraphs 32 to 34.

70. It follows that, in the light of the abovementioned objectives of simplifying administrative procedures and encouraging the reintroduction of waste into the production cycle, combinations of materials that feature individually on the green list may be held to be subject to the system of that list, even if they are not mentioned in combination, only if the conditions set out in points (a) and (b) in the preamble to the list are respected.

71. In particular, I consider that shipments of combined forms of waste are subject to the system referred to in the green list if certain conditions are met, notably (a) if the combinations in question are combinations of two materials on the green list, (b) if those types of combined waste are destined for recovery in accordance with Directive 75/442, and (c) if the combination of the materials in question does not produce contamination that is liable to pose a greater risk to the environment in connection with their recovery than there would be if they were processed separately.

72. It follows that, with regard to the present case, it is first of all necessary to determine whether the cable in question was intended for recovery in the country of destination by ascertaining, in particular, whether the first stage of the treatment it will undergo is a 'recovery' operation in accordance with the classification referred to in Annex B to Directive 75/442. [19] In particular, assuming for example that the first treatment that the cable in question will undergo is the separation of the copper core from the PVC sheathing, that separation must be effected in accordance with one of the operations included in Annex B to the aforementioned directive in order to qualify as 'recovery'.

73. Secondly, it is necessary to determine whether, in view of the form in which they are combined, both the materials comprising the cables can be recovered in an environmentally sound manner and whether the risk to the environment is not greater than the risk connected with recovery of the copper and the PVC considered as individual items.

74. In support of the abovementioned interpretation of the green list, it should also be noted that not only in the Spanish legal order, that is to say the legal order of the country of dispatch of the waste, but also in the legal order of the country of transit — the Netherlands — wastes consisting of combinations of materials featuring individually on the green list that are not included in the list in combination have been regarded as being included in the green list, at least in

19 — As we have already seen, one of the criteria specified in the Regulation for the purpose of determining which control system should apply to a shipment of waste is the purpose of the shipment; in that connection, the first operation that the waste will undergo must be classified (see, to that effect, Case C-116/01 *Sita* [2003] ECR I-2969, paragraphs 40 to 49). Only if the first operation in the treatment of the waste that is being shipped can be classified as 'recovery' within the meaning of Directive 75/442 will the first condition be met for the green list system to apply to the shipment in question.

judicial rulings. That is apparent, with regard to Spain, from the written observations submitted by OMS, and, with regard to the Netherlands, from the reference in the decision of the Rechtbank te Rotterdam to the ruling of the Raad van State (Council of State) of 11 May 2005.

75. I also take the view that that interpretation of the green list is not invalidated, as the Netherlands Government maintains, by the fact that the list expressly mentions combinations consisting of wastes that appear on it singly, such as for example 'used pneumatic tyres' under heading GK 020 or 'single-use cameras without batteries' under heading GO 050. These represent, in my view, classic combinations of waste with respect to which it may be held that the Community legislature merely intended to mention them directly for the sake of convenience and by way of examples.

76. Similarly, what has been mentioned in point 70 et seq. above is not discounted by the fact that the Regulation in question has recently been replaced by Regulation No 1013/2006, which contains specific rules on shipments of 'mixtures composed' of wastes that are listed singly on the green list but do not appear on the list in combination, providing that the system of the green list is to be applicable only to mixtures which, in addition to consisting of two 'green' materials, are also included in a specific Annex (IIIA) which may be amended on a proposal from the Member States in accordance with the procedure known as comitology. That amendment of the system is clearly justified by the requirement to combine protection of the environment with legal certainty, a requirement that can certainly be satisfied better by moving from a system based on judgments made on a case-by-case basis to a system founded on detailed rules applicable to specific cases.

77. However, the fact that, prior to such a change in the legislation, the applicable system presented the characteristics described above means that the new system, set out in the recent rules on the transport of waste, cannot be relied on in the application of the old system. That applies in particular, in accordance with the principle of *nulla poena sine lege*, in view of the fact that the system in question, as the facts at issue show clearly, is designed to apply in conjunction with a system of criminal sanctions.

V — Conclusion

78. In the light of the considerations set out above, I propose that the Court reply as follows to the questions referred by the Rechtbank te Rotterdam:

(1) Cable scrap is included in heading GC 020 of the green list (Annex II) contained in 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 if it is or has been part of electronic equipment.

(2) A combination of green list materials, which is not as such mentioned on the green list in Regulation (EEC) No 259/93, may be regarded as a green list material and may be subject to the relevant system of shipment if it is transported for purposes of recovery in the country of destination, provided that the conditions set out in points (a) and (b) in the preamble to the green list are respected.

(3) In the case of combinations of a number of materials on the green list in Regulation (EEC) No 259/93, it is not necessary that the materials be transported or offered separately in order for the green list system to be applicable to their shipment.