



## Reports of Cases

JUDGMENT OF THE COURT (Seventh Chamber)

26 November 2015\*

(Reference for a preliminary ruling — Environment — Waste — Shipments — Regulation (EC) No 1013/2006 — Shipments within the European Union — Point of entry different from that specified in the notification and in the prior consent — Essential change to the details of a shipment of waste — Illegal shipment — Proportionality of the administrative fine)

In Case C-487/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Fővárosi Közigazgatási és Munkaügyi Bíróság (Administrative and Labour Court, Budapest, Hungary), made by decision of 22 October 2014, received at the Court on 4 November 2014, in the proceedings

**SC Total Waste Recycling SRL**

v

**Országos Környezetvédelmi és Természetvédelmi Főfelügyelőség,**

THE COURT (Seventh Chamber),

composed of J.L. da Cruz Vilaça, President of the Fifth Chamber, acting as President of the Seventh Chamber, C. Lycourgos (Rapporteur) and J.-C. Bonichot, Judges,

Advocate General: Y. Bot,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— the European Commission, by L. Havas and D. Loma-Osorio Lerena, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

\* Language of the case: Hungarian.

## Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Articles 2(35)(d), 17(1) and 50 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), as amended by Commission Regulation (EC) No 669/2008 of 15 July 2008 (OJ 2008 L 118, p. 7) ('Regulation No 1013/2006').
- 2 The request has been made in proceedings between SC Total Waste Recycling SRL ('Total Waste Recycling') and the Országos Környezetvédelmi és Természetvédelmi Főfelügyelőség (National Inspectorate of Environment and Nature, 'the national inspection authority'), concerning an administrative fine imposed by the latter for infringements of the rules on shipments of waste.

### Legal context

#### *EU law*

- 3 Recitals 1, 7, 13, 14 and 33 in the preamble to 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 Community.  
...
  - (13) Although the supervision and control of shipments of waste within a Member State is a matter for that Member State, national systems concerning shipments of waste should take account of the need for coherence with the Community system in order to ensure a high level of protection of the environment and human health.
  - (14) In the case of shipments of waste destined for disposal operations and waste not listed in Annex III, III A or III B destined for recovery operations, it is appropriate to ensure optimum supervision and control by requiring prior written consent to such shipments [(‘consent’)]. 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.  
...
  - (33) The necessary steps should be taken to ensure that, in accordance with Directive 2006/12/EC and other Community legislation on waste, waste shipped within the Community and waste imported into the Community is managed, throughout the period of shipment and including recovery or disposal in the country of destination, without endangering human health and without using processes or methods which could harm the environment.  
...

4 Article 2 of that regulation, entitled ‘Definitions’, provides:

‘For the purposes of this Regulation:

...

(35) “illegal shipment” means any shipment of waste effected:

...

(d) in a way which is not specified materially in the notification or movement documents; ...’

5 Article 3(1)(b)(i) of Regulation No 1013/2006 provides that shipments of wastes destined for recovery operations and included in the ‘amber’ list of waste in Annex IV to that regulation are to be subject to the procedure of prior written notification and consent, as laid down in the provisions of Title II to that regulation.

6 In accordance with Article 4 of Regulation No 1013/2006, in submitting a notification of shipments of waste referred to in Article 3(1)(a) or (b), the notifier shall fill in the notification document included in Annex I A to that regulation and, where relevant, the movement document included in Annex I B to that regulation, by supplying on those two documents, or by annexing thereto the notification document information and documentation as listed in Annex II, Parts 1 and 2, to that regulation.

7 Article 9 of Regulation No 1013/2006 lays down the procedure relating to consents by the competent authorities of destination, dispatch and transit granted to the shipments of waste notified to them.

8 Article 17 of Regulation No 1013/2006, entitled ‘Changes in the shipment after consent’, provides:

‘1. If any essential change is made to the details and/or conditions of the consented shipment, including changes in the intended quantity, route, routing, date of shipment or carrier, the notifier shall inform the competent authorities concerned and the consignee immediately and, where possible, before the shipment starts.

2. In such cases a new notification shall be submitted, unless all the competent authorities concerned consider that the proposed changes do not require a new notification.

...’

9 Article 49(1) of Regulation No 1013/2006, entitled ‘Protection of the environment’, provides:

‘The producer, the notifier and other undertakings involved in a shipment of waste and/or its recovery or disposal shall take the necessary steps to ensure that any waste they ship is managed without endangering human health and in an environmentally sound manner throughout the period of shipment and during its recovery and disposal. In particular, when the shipment takes place in the Community, the requirements of Article 4 of Directive 2006/12/EC and other Community legislation on waste shall be respected.

...’

10 Article 50 of that regulation, entitled ‘Enforcement in Member States’ provides:

‘1. Member States shall lay down the rules on penalties applicable for infringement of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. Member States shall notify the Commission of their national legislation relating to prevention and detection of illegal shipments and penalties for such shipments.

...

3. Checks on shipments may take place in particular:

...

(d) during the shipment within the Community.

4. Checks on shipments shall include the inspection of documents, the confirmation of identity and, where appropriate, physical checking of the waste.

...’

11 Block 8 of Annex I A to Regulation No 1013/2006, which is entitled ‘Notification document for transboundary movements/shipments of waste’, is presented as follows:

<b>8. Intended carrier(s)</b>	
Registration No:	
Name (*):	
Address:	
Contact person:	
Tel.:	Fax:
E-mail:	
Means of transport (*):	

12 Blocks 15 and 16 of Annex I A are presented as follows:

<b>15. Countries/States concerned (a), code No of competent authorities where applicable (b), specific points of exit or entry (c)</b>				
State of export/dispatch	State(s) of transit (entry and exit)			State of import/destination
(a)				
(b)				
(c)				
<b>16. Customs offices of entry and/or exit and/or export (European Community):</b>				
Entry:		Exit:		Export:

- 13 Block 8 of Annex I B to Regulation No 1013/2006, which is entitled ‘Notification document for transboundary movements/shipments of waste’, is presented as follows:

<b>B (a) 1st carrier (3):</b> Registration No: Name: Address:  Tel.: Fax: E-mail:	<b>B (b) 2nd carrier:</b> Registration No: Name: Address:  Tel.: Fax: E-mail:	<b>B (c) Last carrier:</b> Registration No: Name: Address:  Tel.: Fax: E-mail:
----- To be completed by carrier's representative -----		More than three carriers (2) <input type="checkbox"/>
Means of transport (1): Date of transfer: Signature:	Means of transport (1): Date of transfer: Signature:	Means of transport (1): Date of transfer: Signature:

- 14 Paragraph 26 of Annex I C to Regulation No 1013/2006, which is entitled ‘Specific instructions for completing the notification and movement documents’, reads as follows:

‘**Block 15** (See Annex II, Part 1, points 8-10, 14): On line (a) of block 15, provide the name of the countries ... of dispatch, transit and destination or the codes for each country by using the ISO standard 3166 abbreviations ... . On line (b), provide, where applicable, the code number of the respective competent authority for each country and on line (c) insert the name of the border crossing or port and, where applicable, the customs office code number as the point of entry to or exit from a particular country. For transit countries give the information in line (c) for points of entry and exit. If more than three transit countries are involved in a particular shipment, attach the appropriate information in an annex. Provide the intended route between points of exit and entry, including possible alternatives, also in cases of unforeseen circumstances, in an annex.’

- 15 Annex II to Regulation No 1013/2006, relating to information and documentation related to notification, provides, in Part 1, entitled ‘Information to be supplied on, or annexed to, the notification document’:

‘...

13. Means of transport envisaged.

14. Intended routing (point of exit from and entry into each country concerned, including customs offices of entry into and/or exit from and/or export from the Community) and intended route (route between points of exit and entry), including possible alternatives, also in case of unforeseen circumstances.

...’

- 16 Under the heading ‘Information to be supplied on, or annexed to, the movement document’, Part 2 of Annex II reads as follows:

‘...

3. Means of transport.

...

5. Routing (point of exit from and entry into each country concerned, including customs offices of entry into and/or exit from and/or export from the Community) and route (route between points of exit and entry), including possible alternatives, also in case of unforeseen circumstances.

...'

*Hungarian law*

- 17 Article 19(1) of Law No CLXXXV of 2012 on waste (a hulladékról szóló 2012. évi CLXXXV. törvény), provides:

'Waste may be imported into Hungarian territory in accordance with the provisions of Regulation (EC) 1013/2006 of the European Parliament and of the Council and of the Government Decree on crossborder carriage of waste.'

- 18 Article 86(1) of that law states:

'Any natural or legal person, self-employed person or organisation without legal personality who (which):

- a) breaches a legal provision, a directly applicable legal act of the European Union or a decision by the authorities concerning waste management,
- b) without consent, approval, registration or notification, or in a manner that deviates therefrom, performs a waste management act requiring the consent or approval of the authorities, registration by the authorities or notification to the authorities, or
- c) fails to inform, or does not duly inform, the environmental protection authority of the production or generation of a by-product, or uses, markets or stores waste as a product or by-product,

shall be required to pay a waste management fine in accordance with the Government Decree laying down detailed provisions concerning waste management fines adopted by the environmental protection authority.'

- 19 Paragraph 1 of Government Decree No 271 of 21 December 2001 concerning the amount and the manner of determination and imposition of the waste management fine (a hulladékgazdálkodási bírság mértékéről, valamint kiszabásának és megállapításának módjáról szóló 271/2001. (XII. 21.) Kormányrendelet ('the Government Decree'), provides:

'1. The amount of the fine — without prejudice to the provisions of Paragraph 2(4) to (8) and Paragraph 3(4) — shall be the amount obtained by multiplying the basic fines laid down in this decree by the factors modifying the those fines, as stipulated in the annex.

...

3. The maximum amount of the basic waste management fine ("the basic fine"):

...

(g) in the case of illegal carriage of hazardous waste across the national border: HUF 1 million.'

- 20 Paragraph 3 of that Government Decree provides:

'1. In setting the fine, the amount of the basic fine shall first be determined.

...

4. In the case of illegal carriage of waste across the national border (import, export or transit through the territory of the country), the amount of the fine payable shall be determined by multiplying the basic fine provided for by Paragraph 1(3)(f) to (g) by the figure denoting the quantity of the waste. If the quantity of waste cannot be determined exactly, the mean of the range of values, expressed in tonnes, arrived at by estimation shall be used.'

### **The dispute in the main proceedings and the questions referred for a preliminary ruling**

- 21 On 21 October 2013, upon entry into Hungary, a Total Waste Recycling heavy goods vehicle, which was transporting 8 380 tonnes of waste coming under the 'amber' list in Annex IV to Regulation No 1013/2006, namely waste subject to the notification and prior written consent procedures, was subject to an inspection at the Nagylak border crossing point.
- 22 That inspection established that the consignment was accompanied by the notification documents referred to in Annex I A to Regulation No 1013/2006, the movement document referred to in Annex I B to that regulation, and the administrative authority's consents laid down by that regulation. However, that notification document and those consents indicated, as the specific point of entry into Hungary, the Ártánd (Hungary) border crossing point, located almost 180 kilometres north of Nagylak (Hungary). In that regard, Total Waste Recycling stated that, because of a breakdown in communication, the driver of that heavy goods vehicle sought to enter Hungary at the Nagylak border crossing point, which was closer to his home.
- 23 By its decision of 4 February 2014, the national inspection authority, pursuant to Law No CLXXXV of 2012 on waste, ordered Total Waste Recycling to pay a fine of HUF 8 380 000 (approximately EUR 26864.26), and HUF 256 500 (approximately EUR 822.158) in procedural costs, for breaching a waste management requirement. It justified its decision by stating that the consignment in question had not entered Hungarian territory at the border crossing point referred to in the consents, and that Total Waste Recycling had failed to inform the competent authorities of the deviation from the route authorised in advance, as a result of which the consignment was being shipped illegally within the meaning of Article 2(35)(d) of Regulation No 1013/2006. To determine the amount of that fine, that authority, by applying the Government Decree, used the maximum basic amount of HUF 1 million (approximately EUR 3205.099) which it multiplied by the weight of the shipped waste.
- 24 In its action before the Fővárosi Közigazgatási és Munkaügyi Bíróság (Administrative and Labour Court, Budapest), Total Waste Recycling seeks the annulment of that decision. It claims that the waste was not an 'illegal shipment' within the meaning of Article 2(35)(d) of Regulation No 1013/2006, because the 'way' in which the shipment took place within the meaning of that provision, in the present case, by road, did not change and only the routing had been changed. It also argued that it is clear from the annexes to that regulation that the concepts of 'means of transport' and 'routing' are different, point 13 of Annex II to that regulation concerns the 'means of transport', whereas point 14 thereof concerns the 'routing'.
- 25 The national inspection authority contends that the action should be dismissed. It claims that, because the routing in the present case had been changed, Total Waste Recycling ought to have immediately informed the competent authorities, pursuant to Article 17(1) of Regulation 1013/2006. It takes the view that Total Waste Recycling's reliance on Annex II is inadmissible and that it is irrelevant that Total Waste Recycling seeks to base its position on the list of abbreviations and codes which follow Annex I A to that regulation.
- 26 The referring court considers that the text of Regulation No 1013/2006 does not clearly indicate whether the fact for a shipment of waste, which enters the country of transit at a place other than the border crossing point indicated in the notification document and in the consent must be considered to be a change of means of transport or to be a shipment of waste carried out in a way which is not



indicated in the notification and, therefore, to be an ‘illegal shipment’ of waste within the meaning of Article 2(35)(d) of that regulation, also taking into account the notifier’s obligation, pursuant to Article 17(1) of that regulation, to inform immediately the competent authorities of any essential changes made to the details of the shipment, including the route and intended routing. On the assumption that that shipment ought to be considered to be illegal, that court questions, in addition, the proportionality of the fine imposed, taking account of the circumstances of the case in the main proceedings.

27 In those circumstances, the Fővárosi Közigazgatási és Munkaügyi Bíróság (Administrative and Labour Court, Budapest) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

- ‘(1) Should the shipment of waste ‘in a way which is not specified materially in the notification or movement documents’, within the meaning of Article 2(35)(d) of Regulation 1013/2006, be understood to refer to the means of transport stipulated in Annexes I A and I B to Regulation 1013/2006/EC (road, train/rail, sea, air, inland waterway)?
- (2) In the event of any essential change being made to the details and/or conditions of the consented shipment, within the meaning of Article 17(1) of Regulation 1013/2006, does failure to notify the competent authorities justify a finding that waste has been shipped ‘in a way which is not specified materially in the notification or movement documents’, within the meaning of Article 2(35)(d) of Regulation 1013/2006, and hence shipped illegally?
- (3) Should it be regarded as an essential change to the details and/or conditions of the consented consignment, within the meaning of Article 17(1) of Regulation 1013/2006, if the waste consignment enters the notified country of transit at another, different border crossing point than that stated in the consent or the notification document?
- (4) If a waste shipment is to be regarded as illegal because it enters the country of transit at a place which differs from that stated in the consent or the notification document, is it possible to regard the fine which has been imposed for that reason as proportionate if the amount is the same as the amount of the fine prescribed for a breach of the requirement to obtain consent and to give prior notification in writing?’

### **Consideration of the questions referred**

#### *Questions 1 to 3*

28 By Questions 1 to 3, which should be considered together, the referring court asks, in essence, whether Article 17(1) of Regulation No 1013/2006 must be interpreted as meaning that the shipment of waste, such as that listed in Annex IV to that regulation, in a country of transit at a different border crossing point than that which is provided in the notification document and which the competent authorities consented to, must be considered to be an essential change made to the details and/or conditions of the shipment which received consent under the terms of that provision and, if so, whether the fact of not having informed the competent authorities of that change results in the shipment of waste being illegal because it was ‘effected in a way which is not specified materially in the notification’ within the meaning of Article 2(35)(d) of that regulation.

29 At the outset, it should be borne in mind that, according to Article 1(1) of Regulation No 1013/2006 and recital 7 thereto, that regulation establishes procedures and control regimes for the shipment 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 that regulation,



read in conjunction with recital 14 thereto, that shipments between Member States of waste for disposal or dangerous waste must be subject to prior written notification to the competent authorities enabling them to take all necessary measures for the protection of human health and the environment (see, to that effect, judgments *Ragn-Sells*, C-292/12, EU:C:2013:820, paragraph 52, and *Shell Nederland and Belgian Shell*, C-241/12 and C-242/12, EU:C:2013:821, paragraph 32).

- 30 To make such a notification, Article 4 of Regulation No 1013/2006 requires the notifier to complete the notification document in Annex I A to that regulation and, where relevant, the movement document in Annex I B to that regulation, by supplying on those two documents or by annexing thereto the notification document information and documentation as listed in Annex II, Parts 1 and 2 to that regulation. It is on the basis of all of those documents and the information notified to those authorities that those authorities grant or refuse their consent to each shipment of waste, in accordance with Article 9 of Regulation No 1013/2006.
- 31 After consent has been granted and if changes are made to the details and/or conditions of the consented shipment, including changes in the intended quantity, route, routing, date of shipment or carrier, Article 17(1) of Regulation No 1013/2006 requires the notifier to inform the competent authorities concerned and the consignee immediately and, where possible, before the shipment starts.
- 32 In that regard, it should be noted that it is clear from reading Article 17(1) that routing changes constitute an ‘essential change ... made to the details and/or conditions of the consented shipment.’ By use of the words ‘including changes in ... routing’, that provision indicates that such changes may constitute an essential change to the details and/or conditions of the shipment considered as being essential.
- 33 As is apparent from Annex II, Part 1, point 14 to Regulation No 1013/2006, ‘routing’ is defined as being a ‘point of exit from and entry into each country concerned’ by the shipment, namely, as specified in block 15 of the ‘[n]otification document’ referred to in Annex I A to that regulation, border crossing points.
- 34 Those points of exit and entry must be included in block 15 of the ‘notification document’, as is explained both by the wording of that document and of Annex I C, point 26, to Regulation No 1013/2006, which contains specific instructions for completing the document in question.
- 35 Consequently, the change of a border crossing point, such as that at issue in the case in the main proceedings, amounts to a change of routing, which constitutes, according to Article 17(1) of that regulation an ‘essential change’ made to the details and/or conditions of the consented shipment, which must be communicated to the competent authorities.
- 36 Where such a change has occurred, Article 17(2) of Regulation No 1013/2006 provides that a new notification must, in principle, be submitted. As a result of that change, the details of the shipment previously notified and consented to by the authorities concerned no longer correspond to reality and therefore can no longer be considered to have been consented to.
- 37 That transfer, which differs from that stated in the submitted notification, ought to be categorised as ‘illegal’ because it was effected ‘in a way which is not specified materially in the notification’, within the meaning of Article 2(35)(d) of that regulation.
- 38 That literal and contextual analysis of Regulation No 1013/2006 is supported by a teleological interpretation thereof.

- 39 It should be noted, in that regard, that recital 1 in the preamble to Regulation No 1013/2006 states that the objective of that regulation is the protection of the environment. Moreover, according to recital 7 to that regulation, 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.
- 40 As regards shipments of waste included in the ‘amber’ list of waste in Annex IV to Regulation No 1013/2006, such as that at issue in the case in the main proceedings, recital 14 to that regulation states that it is appropriate to ensure optimum supervision and control by requiring prior written consent to such shipments and that such a procedure should in turn entail prior notification, enabling the competent authorities to be duly informed so that they can take all necessary measures for the protection of the environment and human health. It should also enable those authorities to raise reasoned objections to such a shipment.
- 41 The information required in the notification document in Annex I A to Regulation No 1013/2006, such as the shipment border crossing point, is accordingly necessary for the effective performance of the competent authorities’ tasks.
- 42 Accordingly, if a change in the shipment border crossing point indicated in the notification document and on the basis of which those authorities gave their consent were to occur without those authorities being informed, in infringement of Article 17(1) of Regulation No 1013/2006, those supervision and control tasks could no longer be performed optimally, in accordance with that regulation.
- 43 Consequently, such a change can only be considered to be essential and to come under Article 17(1) so that a shipment effected in the country of transit at a different border crossing point than that indicated in the notification document, without the competent authorities concerned having been informed and without a new notification of the shipment having been made, must be categorised as an ‘illegal shipment’. A contrary interpretation would deprive the procedures and control regimes established by Regulation No 1013/2006 of any practical effect.
- 44 That conclusion cannot be called into question by the problem of terminology which is the subject of the first question raised by the referring court. By that question, it asks, in essence, whether, in the expression effected ‘in a way which is not specified materially in the notification’, contained in the definition of an ‘illegal shipment’ in Article 2(35)(d) of Regulation No 1013/2006, the word ‘way’ (‘módon’ in Hungarian) covers only means of transport (szállítás módjai) (road, train/rail, sea, air, inland waterway) such as provided in Annexes I A and I B to that regulation.
- 45 The reason why that question is referred to the Court relates to the Hungarian version of Regulation No 1013/2006, which diverges from the other language versions of that regulation. Apart from block 8 of the [n]otification document’, which is included in Annex I A to that regulation, where the words ‘szállítási eszköz’ are correctly used to translate the words ‘means of transport’, those last words have been translated, in the list of abbreviations and codes which follow Annex I A and Annexes I B (block 8 and list of abbreviations and codes which follow Annex I B) and II (Part 1, point 13 and Part 2, point 3 to Annex II) of that regulation, by the words ‘szállítás módjait’, accordingly using the Hungarian equivalent of the French word ‘manière’, namely the word ‘mód’. That has enabled Total Waste Recycling to claim that there is an ‘illegal shipment’, within the meaning of Article 2(35)(d) of Regulation No 1013/2006, only where the means of transport used differ from that indicated in the notification.
- 46 According to the settled case-law of the Court, the wording used in one language version of a provision of EU law cannot serve as the sole basis for the interpretation of that provision, or be made to override the other language versions in that regard. Provisions of EU law must be interpreted and applied uniformly in the light of the versions existing in all EU languages. Where there is divergence

between the various language versions of text of EU law, the provision in question must be interpreted by reference to the purpose and general scheme of the rules of which it forms part (see, *inter alia*, judgment in *Léger*, C-528/13, EU:C:2015:288, paragraph 35 and the case-law cited).

- 47 As regards the general scheme and purpose of Regulation No 1013/2006, it has been stated in paragraphs 33 to 43 of the present judgment that, to enable the competent authorities, in relation to shipments of waste, to take all necessary measures for the protection of the environment and human health in the context of their supervision and control tasks, those authorities must be duly informed and, that, in that regard, it is essential that they have the information required in the notification document in Annex I A to that regulation, and not solely the information concerning the means of transport used.
- 48 It follows that the general scheme and purpose of Regulation No 1013/2006 lead to adopting the interpretation that the word ‘way’ in Article 2(35)(d) of that regulation cannot be understood as meaning only ‘means of transport’, but must, on the contrary, be given a wide meaning, in that it covers circumstances or ways of shipment which include the routing of that shipment.
- 49 In the light of the foregoing considerations, the answer to the first three questions referred is that Article 17(1) of Regulation No 1013/2006 must be interpreted as meaning that the shipment of waste, such as that referred to in Annex IV to that regulation, in the country of transit at a different border crossing point than that which is provided in the notification document and which the competent authorities consented to, must be considered to be an essential change made to the details and/or conditions of the shipment which received consent, so that the fact of not having informed the competent authorities of that change results in the shipment of waste being illegal because it was ‘effected in a way which is not specified materially in the notification’ within the meaning of Article 2(35)(d) of that regulation.

#### *Question 4*

- 50 By Question 4, the referring court asks, in essence, whether Article 50(1) of Regulation No 1013/2006, according to which the penalties applied by the Member States for infringement of the provisions of that regulation must be proportionate, must be interpreted as precluding the imposition of a fine penalising the illegal shipment of waste, such as that referred to in Annex IV to that regulation, in the country of transit at a border crossing point which differs from that provided in the notification document, having been consented to by the competent authorities, since the amount of that fine is the same as the fine imposed for a breach of the requirement to obtain consent and to give prior notification in writing.
- 51 In that regard, it is appropriate to state that Article 50(1) of Regulation No 1013/2006 requires the Member States to lay down ‘the rules on penalties applicable for infringement of the provisions of [that] regulation ... . The penalties provided for must be effective, proportionate and dissuasive’. It is clear that that regulation does not contain more precise rules with regard to the establishment of those national penalties and, in particular, that it does not establish any express criterion for the assessment of the proportionality of such penalties.
- 52 According to settled case-law, in the absence of harmonisation of EU legislation in the field of penalties applicable where conditions laid down by arrangements under that legislation are not complied with, Member States are empowered to choose the penalties which seem to them to be appropriate. They must, however, exercise that power in accordance with EU law and its general principles, and, consequently, in accordance with the principle of proportionality (see, *inter alia*, judgment in *Urbán*, C-210/10, EU:C:2012:64, paragraph 23 and the case-law cited).

- 53 In that regard, it should be borne in mind that, in order to assess whether the penalty in question is consistent with the principle of proportionality, account must be taken inter alia of the nature and the degree of seriousness of the infringement which the penalty seeks to sanction and of the means of establishing the amount of the penalty (see, inter alia, judgment in *Rodopi-M 91*, C-259/12, EU:C:2013:414, paragraph 38 and the case-law cited). The Member States are thus required to comply with the principle of proportionality also as regards the assessment of the factors which may be taken into account in the fixing of a fine (judgment in *Urbán*, C-210/10, EU:C:2012:64, paragraph 54).
- 54 However, it is ultimately for the national court, by taking into account all the factual and legal circumstances of the case before it, to assess whether the amount of the penalty does not go beyond what is necessary to attain the objectives pursued by the legislation in question. As regards the specific application of that principle of proportionality, it is for the national court to determine whether the national measures are compatible with EU law, the competence of the Court of Justice being limited to providing the national court with all the criteria for the interpretation of EU law which may enable it to make such a determination as to compatibility (see, inter alia, to that effect, judgment in *Profaktor Kulesza, Frankowski, Józwiak, Orłowski*, C-188/09, EU:C:2010:454, paragraph 30 and the case-law cited).
- 55 As regards the penalties imposed for infringement of the provisions of Regulation No 1013/2006, which aims to ensure a high level of protection of the environment and human health, the national court is required, in the context of the review of the proportionality of such penalty, to take particular account of the risks which may be caused by that infringement in the field of protection of the environment and human health.
- 56 Accordingly, the imposition of a fine penalising the illegal shipment of waste, such as that referred to in Annex IV to that regulation, in the country of transit at a border crossing point which differs from that provided in the notification document, having been consented to by the competent authorities, of which the basic amount is the same as the fine imposed for a breach of the requirement to obtain consent and to give prior notification in writing, is to be considered to be proportionate only if the circumstances of the infringement make it possible to find that they involve equally serious infringements.
- 57 In the light of the foregoing considerations, the answer to the fourth question referred is that Article 50(1) of Regulation No 1013/2006, according to which the penalties applied by the Member States for infringement of the provisions of that regulation must be proportionate, must be interpreted as meaning that the imposition of a fine penalising the illegal shipment of waste, such as that referred to in Annex IV to that regulation, in the country of transit at a border crossing point which differs from that provided in the notification document which had been consented to by the competent authorities, of which the basic amount is the same as the fine imposed for a breach of the requirement to obtain consent and to give prior notification in writing, is to be considered to be proportionate only if the circumstances of the infringement make it possible to find that they involve equally serious infringements. It is for the national court to determine, by taking into account all the factual and legal circumstances of the case before it, and, in particular, the risks which may be created by that infringement in the field of the protection of the environment and human health, whether the amount of the penalty does not go beyond what is necessary to attain the objectives of ensuring a high level of protection of the environment and human health.

## Costs

- 58 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 (Seventh Chamber) hereby rules:

- 1. Article 17(1) of Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste, as amended by Commission Regulation (EC) No 669/2008 of 15 July 2008, must be interpreted as meaning that the shipment of waste, such as that referred to in Annex IV to that regulation, in the country of transit at a different border crossing point than that which is provided in the notification document and which the competent authorities consented to, must be considered to be an essential change made to the details and/or conditions of the shipment which received consent, so that the fact of not having informed the competent authorities of that change results in the shipment of waste being illegal because it was ‘effected in a way which is not specified materially in the notification’ within the meaning of Article 2(35)(d) of that regulation.**
- 2. Article 50(1) of Regulation No 1013/2006, as amended by Regulation (EC) No 669/2008, according to which the penalties applied by the Member States for infringement of the provisions of that regulation must be proportionate, must be interpreted as meaning that the imposition of a fine penalising the illegal shipment of waste, such as that referred to in Annex IV to that regulation, in the country of transit at a border crossing point which differs from that provided in the notification document which had been consented to by the competent authorities, of which the basic amount is the same as the fine imposed for a breach of the requirement to obtain consent and to give prior notification in writing, is to be considered to be proportionate only if the circumstances of the infringement make it possible to find that they involve equally serious infringements. It is for the national court to determine, by taking into account all the factual and legal circumstances of the case before it, and, in particular, the risks which may be created by that infringement in the field of the protection of the environment and human health, whether the amount of the penalty does not go beyond what is necessary to attain the objectives of ensuring a high level of protection of the environment and human health.**

[Signatures]