



Reports of Cases

OPINION OF ADVOCATE GENERAL
SAUGMANDSGAARD ØE
delivered on 24 January 2019¹

Case C-634/17

ReFood GmbH & Co. KG

v

Landwirtschaftskammer Niedersachsen

(Request for a preliminary ruling by the Verwaltungsgericht Oldenburg (Administrative Court of Oldenburg, Germany))

(Reference for a preliminary ruling — Environment — Shipments of waste within the EU — scope of Regulation (EC) No 1013/2006 — Article 1(3)(d) — Scope of Regulation (EC) No 1069/2009 — Shipments of animal by-products)

1. In the context of a dispute concerning the lawfulness of a shipment of animal by-products from the Netherlands to Germany, the questions referred for a preliminary ruling by the Verwaltungsgericht Oldenburg (Administrative Court of Oldenburg, Germany) provide the Court with the opportunity, for the first time, to interpret Article 1(3)(d) of Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste,² which excludes from its scope ‘shipments which are subject to the approval requirements of Regulation (EC) No 1774/2002 [³], and thereby to define the scope of Regulation No 1013/2006.⁴

2. Whilst this reference for a preliminary ruling raises difficult questions about the relationship between pieces of secondary legislation, it also calls upon the Court, notwithstanding a degree of technicality, to make important clarifications about shipments of wastes and, in particular, about shipments of animal by-products.

3. Thus, the Court’s response will have very practical consequences for the formalities to be observed for shipments of Category 3 animal by-products within the European Union. This is a crucial issue in terms of the environmental and public health concerns associated with policy on the management of waste and by-products, particularly animal by-products.⁵

¹ Original language: French.

² OJ 2006 L 190, p. 1, and corrigendum in German (OJ 2013 L 334, p. 46).

³ Regulation of the European Parliament and of the Council of 3 October 2002 laying down health rules concerning animal by-products not intended for human consumption (OJ 2002 L 273, p. 1).

⁴ This is not the first time that the question of the relationship between the legislation on shipments of waste and that concerning animal by-products has been raised. That said, in its judgment of 1 March 2007, *KVZ retec* (C-176/05, EU:C:2007:123), the Court did not take a view specifically on the relationship between Regulation No 1013/2006 and Regulation No 1774/2002, since Regulation No 1013/2006 was not applicable *ratione temporis* to the dispute in the main proceedings.

⁵ As the EU legislature has made clear in recital 6 of 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), ‘the first objective of any waste policy should be to minimise the negative effects of the generation and management of waste on human health and the environment’.

4. In this Opinion, I will set out the reasons why Article 1(3)(d) of Regulation No 1013/2006 should, in my opinion, be interpreted as meaning that the shipment of the Category 3 animal by-products at issue falls, save as otherwise provided, within the scope of Regulation (EC) No 1069/2009⁶ and not within the scope of Regulation No 1013/2006.

I. Legal framework

A. Regulation No 1013/2006

5. Recitals 11 and 12 of Regulation No 1013/2006 state:

‘(11) It is necessary to avoid duplication with Regulation [No 1774/2002], which already contains provisions covering the overall consignment, channelling and movement (collection, transport, handling, processing, use, recovery or disposal, record keeping, accompanying documents and traceability) of animal by-products within, into and out of the Community.

(12) The Commission should report by the date of entry into force of this Regulation on the relationship between the existing sectoral legislation on animal and public health and the provisions of this Regulation, and should submit by that date any proposals needed to bring such legislation into line with this Regulation in order to achieve an equivalent level of control.’

6. According to Article 1(3) of that Regulation:

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

...

(d) shipments which are subject to the approval requirements of Regulation [No 1774/2002];

...’

7. Under Article 3(1) of that Regulation, shipments of waste destined for disposal operations and shipments of waste destined for recovery operations must comply with those procedures, where they comprise, inter alia, waste on the amber list⁷, and are subject to the procedure of prior written notification and consent laid down by Regulation No 1013/2006. Under Article 3(2) of that Regulation, the general information requirements set out in Article 18 of that Regulation apply to shipments of mixtures of certain waste or of certain contaminated waste, if the amount of waste shipped exceeds 20 kg.

⁶ Regulation of the European Parliament and of the Council of 21 October 2009 laying down health rules as regards animal by-products and derived products not intended for human consumption and repealing Regulation (EC) No 1774/2002 (OJ 2009 L 300, p. 1). For the avoidance of doubt, I would point out that, Regulation No 1774/2002 having been repealed by Regulation No 1069/2009, the EU legislature provided in Article 54 of Regulation No 1069/2009 that references to Regulation No 1774/2002 are to be construed as references to Regulation No 1069/2009.

⁷ The outcome of regulation by the Organisation for Economic Cooperation and Development (OECD) and of the Basel Convention on the Transboundary Movements of Hazardous Wastes and their disposal, signed on 22 March 1989 and approved, on behalf of the Community, by Council Decision 93/98/EEC of 1 February 1993 (OJ 1993 L 39, p. 1), (‘the Basel Convention’). The classification of wastes into two lists, green and amber, depends on the hazardousness of the wastes and on the procedures for their shipment. On classification and the consequences thereof, see de Sadeleer, N., *Droit des déchets de l’UE De l’élimination à l’économie circulaire*, Bruylant, Brussels, 2016, pp. 360, 364, and 378 to 382.

B. Directive 2008/98

8. Recitals 12 and 13 of Directive 2008/98 state:

- (12) Regulation [No 1774/2002] provides, inter alia, for proportionate controls as regards the collection, transport, processing, use and disposal of all animal by-products including waste of animal origin, preventing it from presenting a risk to animal and public health. It is therefore necessary to clarify the link with that Regulation, avoiding duplication of rules by excluding from the scope of this Directive animal by-products where they are intended for uses that are not considered waste operations.
- (13) In the light of the experience gained in applying Regulation [No 1774/2002], it is appropriate to clarify the scope of waste legislation and of its provisions on hazardous waste as regards animal by-products regulated by Regulation [No 1774/2002]. Where animal by-products pose potential health risks, the appropriate legal instrument to address these risks is Regulation [No 1774/2002] and unnecessary overlaps with waste legislation should be avoided.'

9. According to Article 2(2) of that Directive:

'The following shall be excluded from the scope of this Directive to the extent that they are covered by other Community legislation:

...

- (b) animal by-products including processed products covered by Regulation [No 1774/2002], except those which are destined for incineration, landfilling or use in a biogas or composting plant;

...'

C. Regulation No 1069/2009

10. Recitals 5, 6, 57 and 58 of Regulation No 1069/2009 state:

- (5) Community health rules for collection, transport, handling, treatment, transformation, processing, storage, placing on the market, distribution, use or disposal of animal by-products should be laid down in a coherent and comprehensive framework.
- (6) Those general rules should be proportionate to the risk to public and animal health which animal by-products pose when they are dealt with by operators at different stages of the chain from collection to their use or disposal. The rules should also take into account the risks for the environment posed during those operations. The Community framework should include health rules on the placing on the market, including intra-Community trade and import, of animal by-products, where appropriate.

...

- (57) For the sake of coherence of Community legislation, it is necessary to clarify the relationship between the rules laid down in this Regulation and Community legislation on waste. In particular, consistency should be ensured with the prohibitions on waste exports laid down in Regulation [No 1013/2006]. In order to prevent potentially detrimental effects for the environment, the export of animal by-products and derived products destined for disposal by incineration and by landfill should be prohibited. The export of animal by-products and derived products should also be prevented where the objective is to use them in a biogas or composting

plant to third countries which are not members of the [OECD], in order to prevent potentially adverse environmental impacts and risks to public and animal health. When applying the provisions to derogate from the export ban, the Commission is obliged to fully respect in its decisions the [Basel Convention], and the amendment to this Convention laid down in Decision III/1 of the Conference of the Parties, as approved, on behalf of the Community, by Council Decision 97/640/EC [⁸], and implemented by Regulation [No 1013/2006].

(58) In addition, it should be ensured that animal by-products mixed or contaminated with hazardous waste, as listed in Commission ... Decision 2000/532/EC of 3 May 2000 ... replacing Decision 94/3/EC establishing a list of wastes pursuant to Article 1(a) of Council Directive 75/442/EEC on waste and Council Decision 94/904/EC establishing a list of hazardous waste pursuant to Article 1(4) of Council Directive 91/689/EEC on hazardous waste [⁹], are only imported, exported or dispatched between Member States in accordance with Regulation [No 1013/2006]. It is also necessary to lay down rules concerning the dispatch of such material within a Member State.'

11. Article 2(2) of that Regulation provides:

'This Regulation shall not apply to the following animal by-products:

...

(g) catering waste, except:

...

(iii) if it is destined for processing by pressure sterilisation or for processing by methods referred to in point (b) of the first subparagraph of Article 15(1) or for transformation into biogas or for composting;

...'

12. According to Article 8 of that regulation:

'Category 1 material shall comprise the following animal by-products:

...

(f) catering waste from means of transport operating internationally;

...'

13. According to Article 10 of Regulation No 1069/2009:

'Category 3 material shall comprise the following animal by-products:

...

(p) catering waste other than as referred to in Article 8(f).'

⁸ Council Decision of 22 September 1997 on the approval, on behalf of the Community, of the amendment to the Convention on the control of transboundary movements of hazardous wastes and their disposal (Basel Convention), as laid down in Decision III/1 of the Conference of the Parties (OJ 1997 L 272, p. 45).

⁹ OJ 2000 L 226, p. 3.

14. Article 48(1) to (6) of that Regulation provides:

‘1. Where an operator intends to dispatch Category 1 material, Category 2 material and meat-and-bone meal or animal fat derived from Category 1 and Category 2 materials to another Member State, it shall inform the competent authority of the Member State of origin and the competent authority of the Member State of destination.

The competent authority of the Member State of destination shall decide upon application by the operator, within a specified period:

- (a) to refuse receipt of the consignment;
- (b) to accept the consignment unconditionally; or
- (c) to make receipt of the consignment subject to the following conditions:
 - (i) if the derived products have not undergone pressure sterilisation, it must undergo such treatment; or
 - (ii) the animal by-products or derived products must comply with any conditions for the dispatch of the consignment which are justified for the protection of public and animal health in order to ensure that animal by-products and derived products are handled in accordance with this Regulation.

2. Formats for applications by operators referred to in paragraph 1 may be adopted in accordance with the regulatory procedure referred to in Article 52(3).

3. The competent authority of the Member State of origin shall inform the competent authority of the Member State of destination, by means of the Traces system in accordance with [Commission] Decision 2004/292/EC [of 30 March 2004 concerning the implementation of the Traces system and amending Decision 92/486/EEC¹⁰], of the dispatch of each consignment sent to the Member State of destination, of:

- (a) animal by-products or derived products referred to in paragraph 1;
- (b) processed animal protein derived from Category 3 material.

When informed of the dispatch, the competent authority of the Member State of destination shall inform the competent authority of the Member State of origin of the arrival of each consignment by means of the Traces system.

4. Category 1 and Category 2 materials, meat-and-bone meal and animal fat referred to in paragraph 1 shall be transposed directly to the establishment or plant of destination, which must have been registered or approved in accordance with Articles 23, 24 and 44 or, in the case of manure, to the farm of destination.

5. When animal by-products or derived products are sent to other Member States via the territory of a third country, they shall be sent in consignments which have been sealed in the Member State of origin and shall be accompanied by a health certificate.

¹⁰ OJ 2004 L 94, p. 63.

The sealed consignments shall re-enter the Community only via a border inspection post, in accordance with Article 6 of [Council] Directive 89/662/EEC [of 11 December 1989, concerning veterinary checks in intra-Community trade with a view to the completion of the internal market¹¹].

6. By way of derogation from paragraphs 1 to 5, animal by-products or derived products referred to therein which have been mixed or contaminated with any waste listed as hazardous in Decision [2000/532] shall be sent to other Member States only subject to the requirements of Regulation [No 1013/2006].’

15. Article 54 of that Regulation provides:

‘Regulation [No 1774/2002] shall be repealed with effect from 4 March 2011.

References to Regulation [No 1774/2002] shall be construed as references to this Regulation and shall be read in accordance with the correlation table laid down in the Annex.’

II. Facts of the main proceedings and the questions referred for a preliminary ruling

16. On 7 April 2014, a lorry, driven by a member of staff of ReFood GmbH & Co. KG, the applicant in the main proceedings, and carrying Category 3 animal by-products within the meaning of Regulation No 1069/2009, which had been collected in the Netherlands, was stopped by German police while the products were being transported to ReFood’s establishment in Germany for further processing before being used in a biogas plant, also in Germany.

17. Following that inspection, the Landwirtschaftskammer Niedersachsen (the Chamber of Agriculture of Lower Saxony, Germany), defendant in the main proceedings, instructed ReFood to return the waste to the Netherlands on the ground that a notification procedure pursuant to Article 3(1)(b) of Regulation No 1013/2006, was necessary for that waste.

18. On 16 July 2014, ReFood brought an action before the referring court, challenging the lawfulness of the instruction issued by the Chamber of Agriculture of Lower Saxony.

19. That court points out that, in the event of an illegal shipment of waste for which no notification has been submitted, the competent national authority may, pursuant to the Gesetz zur Ausführung der Verordnung (EG) Nr. 1013/2006 des Europäischen Parlaments und des Rates vom 14. Juni 2006 über die Verbringung von Abfällen und des Basler Übereinkommens vom 22. März 1989 über die Kontrolle der grenzüberschreitenden Verbringung gefährlicher Abfälle und ihrer Entsorgung (law implementing Regulation No 1013/2006 and the Basel Convention),¹² of 19 July 2007, issue the necessary instructions in order to ensure that the waste in question is taken back by the person obliged to submit the notification under Article 2(15) of Regulation No 1013/2006.

20. It adds, however, that, if the shipment in question was excluded from the scope of that regulation, pursuant to Article 1(3)(d) thereof, no such instruction could be given.

21. While the legality of the instruction issued to ReFood depends on whether the shipment in question falls within the scope of Regulation No 1013/2006 and was subject to the notification procedure contained therein, the referring court points out that neither the case-law of the Court nor the preparatory materials for that regulation enables it to decide on the correct interpretation to be given to Article 1(3)(d) thereof.

¹¹ OJ 1989 L 395, p. 13.

¹² BGBl. I, p. 1462.

22. In those circumstances, the Verwaltungsgericht Oldenburg (the Administrative Court of Oldenburg) has decided to stay proceedings and refer the following questions to the Court of Justice for a preliminary ruling:

(1) Is [Article 1(3)(d) of Regulation No 1013/2006] to be [interpreted] as an exemption which applies to all shipments which, pursuant to Article 2 of Regulation No 1069/2009, come within the scope of that latter Regulation?

If the first question should be answered in the negative:

(2) Is the provision to be interpreted as an exemption which applies to shipments which are subject to rules regarding collection, transport, identification and traceability pursuant to Regulation No 1069/2009, read in conjunction with Commission Regulation (EU) No 142/2011 of 25 February 2011 implementing Regulation (EC) No 1069/2009 of the European Parliament and of the Council laying down health rules as regards animal by-products and derived products not intended for human consumption and implementing Council Directive 97/78/EC as regards certain samples and items exempt from veterinary checks at the border under that Directive (OJ 2011 L 54, p. 1)?

If the second question should be answered in the negative:

(3) Is the provision to be interpreted as an exemption which applies only to those shipments which are consignments requiring consent pursuant to Article 48(1) of Regulation No 1069/2009?

III. Analysis

23. At the outset, I believe it is important to make two points.

24. First, it is common ground that the products in question are catering leftovers which must, in so far as they do not originate from means of transport operating internationally, be regarded as Category 3 animal by-products within the meaning of Article 10(p) of Regulation 1069/2009. It is also common ground that, under Article 2(2)(g)(iii) of Regulation 1069/2009, catering waste comprising animal by-products which are destined for transformation into biogas or for processing by sterilisation or for composting, falls within the scope of that regulation.

25. Second, the three questions referred do not lend themselves to a consecutive examination; rather, they require joint analysis.

26. In essence, the referring court seeks to ascertain whether the wording ‘shipments [of waste] which are subject to the approval requirements of Regulation [No 1774/2002]’, used by the EU legislature in Article 1(3)(d) of Regulation No 1013/2006, must be interpreted so as to exclude from its scope all shipments covered by Regulation No 1069/2009 or only those shipments which satisfy the specific conditions laid down by that latter regulation.

27. In the context of the dispute in the main proceedings, the interpretation provided by the Court will determine the applicability of Regulation No 1013/2006 and thus the applicability of the notification procedure provided for in Article 3(1)(b) thereof, to wastes such as those at issue in the main proceedings.

28. With reference to these factors, I will examine whether or not the shipment of waste such as that at issue in the main proceedings, namely Category 3 animal by-products, from the Netherlands to Germany, is subject to that notification procedure.

29. As regards the answer to be given to that question, it is necessary ultimately to determine whether that shipment falls within the scope of Regulation No 1069/2009 which governs only animal by-products and the shipment of those products or within the scope of Regulation No 1013/2006 which sets out the conditions for the lawful shipment of animal by-products except ‘shipments ... subject to the approval requirements of Regulation [No 1774/2002]’.

30. In that regard, I would note at the outset that, as pointed out by the Commission, since Regulation No 1013/2006 does not define that expression, the wording of Article 1(3)(d) of that Regulation does not offer a definitive answer to the issue faced by the Court.¹³

31. Furthermore, that expression does not feature in either Regulation No 1774/2002 or Regulation No 1069/2009.

32. First, it is clear that Regulation No 1774/2002 does not subject the transport or shipment of animal by-products to any approval.¹⁴ In particular, Article 8 of Regulation No 1774/2002 does not require ‘approval’ for the transport of animal by-products.¹⁵

33. Secondly, the requirements laid down by Regulation No 1069/2009 are not unequivocal.

34. In particular, the different language versions of that Regulation do not provide definitive clarification on its meaning. Moreover, the fact that the present reference for a preliminary ruling derives from the German language version of Regulation No 1069/2009 provides even more evidence of the ambiguity of its terms.

35. Thus, the position of the Chamber of Agriculture of Lower Saxony that the shipment of waste in question falls within the scope of Regulation No 1013/2016 and must be notified, is based, as is clear from the file submitted to the Court, on the premiss that, since Article 48(2) of Regulation 1069/2009 refers to ‘applications for approval’ for the dispatch of certain Category 1 or Category 2 animal by-products, excluding Category 3 animal by-products, the latter do not fall within the scope of the exclusion set out in Article 1(3)(d) of Regulation 1013/2006.

36. However, the German language version of Article 48(2) of Regulation No 1069/2009 refers to ‘Formate für Anträge auf Zulassung’, literally, ‘formats for applications for approval’, whereas, for example, the Spanish, Danish, English and French language versions use the respective terms ‘formatos para las solicitudes’, ‘formater for ansøgninger’, ‘formats for applications’ and ‘modèles pour les demandes’, referring to formats for ‘applications’ rather than to applications ‘for approval’.

37. Apart from the fact that, according to well-established 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,¹⁶ I am not persuaded by the position of the Chamber of Agriculture of Lower Saxony that the transfer of the waste at issue in the main proceedings falls within the scope of Regulation No 1013/2006.

¹³ The exception in Article 1(3)(d) of Regulation No 1013/2006 was not provided for by the EU legislature 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 (OJ 1993 L 30, p. 1), with the result that the earlier legislation cannot assist with the interpretation of this provision.

¹⁴ In accordance with Articles 10 to 15 of that Regulation, the approvals relate to intermediate plants, storage plants, incineration and co-incineration plants, processing plants, oleochemical plants and biogas and composting plants.

¹⁵ Regardless of the language version of the provision, it subjects to authorisation by the Member State of destination, the transport to it of Category 1 and Category 2 animal by-products, excluding Category 3 animal by-products.

¹⁶ See judgment of 29 April 2015, *Léger* (C-528/13, EU:C:2015:288, paragraph 35). In this regard, the Court also noted that ‘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 an EU legislative text, the provision in question must be interpreted by reference to the purpose and general scheme of the rules of which it is part’.

38. In my view, such an interpretation runs counter to several key arguments based on the preparatory materials, the spirit, purpose and general scheme of Regulation No 1013/2006 and Regulation No 1069/2009.

39. First, and more generally, it seems logical to me to consider that the EU legislature, by adopting sectoral legislation, decided to subject particular categories of products or wastes to specific regimes.

40. In that regard, Regulation No 1069/2009 is a piece of sectoral legislation which, like Regulation No 1774/2002, lays down rules for the shipment and transport of animal by-products and which, by its very nature, takes account of the specific characteristics thereof, with regard, for example, to the particular risks they pose.¹⁷ Thus, such legislation is, in principle, intended to entirely and exclusively govern such by-products.¹⁸

41. Similarly, the Court has made it clear, in relation to the relationship between earlier pieces of legislation on waste that, 'Directive 94/62[/*EC*¹⁹] must be considered to be special legislation (*a lex specialis*) vis-à-vis Directive 75/442[/*EEC*²⁰], so that its provisions prevail over those of Directive 75/442 in situations which it specifically seeks to regulate'.²¹

42. It follows from the above that the Court takes the view that sectoral legislation displaces the general legislation on waste.

43. In my view, that position is supported by the exclusions which the EU legislature included in Directive 2008/98, the waste framework directive, and by the relationship between that directive and the specific pieces of sectoral legislation.

44. Thus, under Article 2(2)(b) of Directive 2008/98, animal by-products, including processed products covered by Regulation No 1774/2002, are excluded from the scope of that directive. Such an exclusion demonstrates the intention of the EU legislature to exclude a specific category of waste, namely, animal by-products, from the scope of the general legislation in this area.²²

45. Secondly, the interpretation that animal by-products and their shipment are, in principle, governed exclusively by sectoral legislation, in this case, by Regulation No 1069/2009, is clear from the positions adopted by the institutions in the preparatory materials for Regulation No 1013/2006.

46. In that regard, I note that the first paragraph of Article 1(6) of the Proposal by the Commission which led to the adoption of that Regulation²³ provided for the exclusion from the scope of the Regulation on shipments of waste, of shipments of waste covered by Regulation No 1774/2002 'which are subject to similar or stricter procedural provisions in that Regulation and in other linked Community legislation on animal by-products and public health'.

17 On this point, I note that legislation on animal by-products was adopted following a number of crises regarding livestock, such as bovine spongiform encephalopathy (BSE), foot-and-mouth disease and swine fever, and thus it seeks to respond to the particular problems raised by these products (see de Sadeleer, N., *op. cit.*, pp. 271 and 272).

18 The very broad scope of Regulation No 1774/2002 and Regulation No 1069/2009 confirm this analysis. Thus, in accordance with Article 3(1) of Regulation No 1774/2002 and Article 4(2) of Regulation No 1069/2009, those regulations apply to the collection, transport, use, transformation, placing on the market, distribution and disposal of animal by-products.

19 European Parliament and Council Directive of 20 December 1994 on packaging and packaging waste. (OJ 1994 L 365, p. 10).

20 Council Directive of 15 July 1975 on waste (OJ 1975 L 194, p. 39).

21 Judgment of 19 June 2003, *Mayer Parry Recycling* (C-444/00, EU:C:2003:356, paragraph 57).

22 See de Sadeleer, N., *op. cit.*, pp. 152 and 154.

23 Proposal for a Regulation of the European Parliament and of the Council on Shipments of Waste [COM(2003) 379 final].

47. The changes to that proposal by the Council which resulted in the wording of Article 1(3)(d) of Regulation No 1013/2006²⁴ were understood by the Commission as a total exclusion of animal by-products from the scope of the Regulation on shipments of waste.²⁵ That is very clear from the Communication from the Commission to the European Council pursuant to the second paragraph of Article 251(2) of the EC Treaty concerning the Common Position of the Council on the adoption of a Regulation of the European Parliament and of the Council on Shipments of Waste, in which it stated that ‘the Council has made a number of additional changes to the proposal. The most important of these is that Article 1(3)(d) totally excludes animal by-products from the scope of the Regulation.’²⁶

48. Thus, as the Netherlands Government has correctly pointed out, the preparatory materials for Regulation No 1013/2006 show that the Council wanted animal by-products to be totally excluded from the scope of Regulation No 1013/2006, irrespective of whether there were equivalent procedures for transfer provided for in Regulation No 1774/2002.

49. Thirdly, the interpretation proposed by the Chamber of Agriculture of Lower Saxony is undermined by the development of legislation on animal by-products and by the increasing coherence between that legislation and Regulation No 1013/2006.

50. Indeed, Article 1(3)(d) of Regulation No 1013/2006 does not specify the approval provided for by Regulation No 1774/2002 to which reference is being made, while, as made clear in point 32 of this Opinion, Regulation No 1774/2002 does not subject the shipment of animal by-products to any form of approval.

51. It follows that, when Regulation No 1013/2006 was adopted, the coherence between the legislation on animal by-products and that regulation was questionable.

52. Nevertheless, legislative developments in respect of animal by-products have led to an increasing coherence between these respective areas of legislation.

53. In particular, as the EU legislature would necessarily have had the provisions of Regulation No 1013/2006 in mind during the process leading to the adoption of Regulation No 1069/2009, both the provisions and the recitals of Regulation No 1069/2009 demonstrate the EU legislature’s intention to ensure, if not to establish, coherence between that regulation and Regulation No 1013/2006.

54. Recitals 5 and 6 of Regulation No 1069/2009 state that the rules on animal by-products must take into account the risks for the environment arising from those products and must provide a coherent and comprehensive framework regarding, in particular, the transport of such products. The EU legislature also stated unambiguously in recitals 57 and 58 of that Regulation that ‘for the sake of coherence of Community legislation, it [was] necessary to clarify the relationship between the provisions of [that] Regulation and Community legislation on waste’, and, in particular, that animal by-products mixed or contaminated with hazardous waste should only be imported, exported or dispatched between Member States in accordance with Regulation No 1013/2006.

55. Formalised in Article 48 of Regulation No 1069/2009, those details show the intention of the EU legislature to subject animal by-products, in principle, only to the requirements of that Regulation.

24 Whereas the Parliament had proposed the removal of that Article and whereas the Commission had rejected the Parliament’s proposal, it followed from the Common Position (EC) No 28/2005 adopted by the Council on 24 June 2005, with a view to the adoption of a Regulation of the European Parliament and of the Council on Shipments of Waste (OJ 2005 C 206 E, p. 1), that the first paragraph of Article 6(1) of the proposal by the Commission was removed and replaced by Article 1(3)(e), the wording of which corresponds to the wording of Article 1(3)(d) of Regulation No 1013/2006.

25 COM(2005) 303 final (pp. 10 and 11).

26 Paragraph 3.2.5 of that Communication.

56. It follows from a contrary interpretation of Article 48(6) of Regulation No 1069/2009, of which there was no equivalent in Regulation 1774/2002, that the shipment of category 3 animal by-products is governed exclusively by that regulation. In fact, since that provision provides that animal by-products which have been mixed or contaminated with hazardous waste are to be sent to other Member States only subject to the requirements of Regulation No 1013/2006, it must be inferred, as argued by ReFood, that other shipments of animal by-products do not fall within the scope of that latter Regulation.

57. It follows that, as acknowledged by the Commission at the hearing, the scope of the texts is clearly defined and, unless expressly excepted, the transfer of animal by-products is governed exclusively by Regulation No 1069/2009.

58. Fourthly, that approach is, in my view, confirmed by the interpretation of Article 1(3)(d) of Regulation No 1013/2006 read in the light of recital 11 of that regulation.²⁷

59. According to that recital, first, it is necessary to avoid duplication with Regulation No 1774/2002 and, secondly, that Regulation was intended by the EU legislature as a comprehensive piece of legislation in respect of animal by-products.²⁸

60. Thus, Article 1(3)(d) of Regulation No 1013/2006, read in the light of the need, as expressed in recital 11 of that regulation, to avoid duplication between that text and the legislation on animal by-products, leads me to believe that the EU legislature intended to completely exclude shipments of animal by-products from the scope of Regulation No 1013/2006 on the basis, in particular, that Regulation No 1774/2002 comprised a comprehensive and autonomous set of rules in this field.²⁹

61. The interpretation proposed by the Austrian Government that, since category 3 animal by-products are not covered in Article 48(1) of Regulation No 1069/2009, they fall within the scope of Regulation 1013/2006, ignores recital 11 of Regulation No 1013/2006.

62. Indeed, far from avoiding duplication between Regulation No 1013/2006 and Regulation No 1069/2009, that interpretation implies that certain animal by-products are subject to the provisions of both regulations.

63. In this regard, the fact that Regulation No 1013/2006 and Regulation 1069/2009 have different objectives, namely, the protection of the environment³⁰ and the protection of public and animal health,³¹ does not seem to me to be decisive.

64. It is true that the Court considered that the shipment of meat-and-bone meal, which was excluded from the scope of Regulation No 259/93, had to take place in compliance with the requirements of Regulation 1774/2002, regard being had to the risk to the environment and the health risks posed by such a shipment.³²

27 It is true that, according to settled case-law 'the preamble to a European Union act has no binding legal force and cannot be relied on either as a ground for derogating from the actual provisions of the act in question or for interpreting them in a manner clearly contrary to their wording' (judgment of 11 April 2013, *Della Rocca* (C-290/12, EU:C:2013:235, paragraph 38)). Nevertheless, the Court has indicated that 'the preamble to a European Union measure may explain the measure's content' (judgment of 11 June 2015, *Zh. and O.* (C-554/13, EU:C:2015:377, paragraph 42); see also Opinion of Advocate-General Léger in the *Meta Fackler* case (C-444/03, EU:C:2005:64)).

28 I would point out, in this regard, that, for the purposes of specifying the criteria against which the relationship between Directive 2008/98 and Regulation No 1774/2002 should be assessed, recitals 12 and 13 of that Directive are broadly based on recital 11 of Regulation No 1013/2006.

29 In the sense that, in accordance with Article 1(1)(a) of Regulation No 1774/2002 and Article 4(2) of Regulation No 1069/2009, those pieces of legislation apply to the collection, transport, storage, handling, processing and use or disposal of animal by-products.

30 See recital 1 of Regulation No 1013/2006 and paragraph 32 of the judgment of 9 June 2016, *Nutrivet* (C-69/15, EU:C:2016:425).

31 See recitals 1 and 66 and Article 1 of Regulation No 1069/2009. Nonetheless, the legislation on animal by-products is 'straddled between the law on products and the law on the environment' (de Sadeleer, N., *op. cit.*, p. 271).

32 Judgment of 1 March 2007, *KVZ retec* (C-176/05, EU:C:2007:123).

65. That reasoning does not, in my opinion, justify a different interpretation of Article 1(3)(d) of Regulation No 1013/2006 than that described thus far, since Regulation No 1069/2009 subjects to the more stringent provisions of Regulation No 1013/2006,³³ shipments of animal by-products which could harm the environment.³⁴

66. Fifthly, as the Netherlands Government has rightly pointed out, the interpretation proposed by the Chamber of Agriculture of Lower Saxony produces a paradoxical result.

67. Indeed, to regard category 3 animal by-products as falling within the scope of Regulation No 1013/2006 would lead to the application of stricter rules to less hazardous products, given that category 3 products are, pursuant to Regulation No 1069/2009,³⁵ by definition, less harmful to public and animal health than Category 1 and 2 products.³⁶

68. Similarly, the Commission's interpretation, based mainly on Articles 23 and 24 of Regulation No 1069/2009, should not, in my opinion, be followed since, as ReFood pointed out at the hearing, that interpretation cannot be inferred either from the wording or from the scheme of the Regulations at issue in this case.

69. The Commission argues, in essence, that Article 1(3)(d) of Regulation No 1013/2006 should be interpreted as not applying to shipments of animal by-products which are made by operators, plants or establishments registered or approved in accordance with Article 23 or Article 24 of Regulation No 1069/2009 or which are intended for operators, plants or establishments registered or approved in accordance with those provisions, if the rules of Regulation No 1069/2009 are respected.

70. As regards recital 11 of Regulation No 1013/2006 and recitals 5 and 6 of Regulation No 1069/2009, it takes the view that Regulation No 1013/2006 was not intended to apply to the shipment of animal by-products where the need for protection of the environment has already been duly taken into account, as long as the provisions of Regulation No 1069/2009 are respected. In so far as Regulation No 1069/2009 provided for rules which apply to operators, establishments and plants falling within Article 23 and Article 24 of that Regulation, it was not necessary for Regulation No 1013/2006 to apply to shipments by operators, establishments and plants approved or registered under those provisions, provided that the other requirements of Regulation No 1069/2009 were met.

71. First of all, that interpretation ignores the will of the EU legislature, clearly expressed during the legislative process, to exclude animal by-products from the scope of Regulation No 1013/2006.

72. Secondly, it seems to me that, in arguing for such an interpretation, the Commission is seeking to impose the position it had defended during the procedure for the adoption of Regulation No 1013/2016,³⁷ even though that position was not followed by the Parliament and the Council.

33 It is the case that, as regards shipments of waste, the obligations under Regulation No 1013/2006 are more stringent than those under Regulation No 1069/2009. As regards, for example, the dispatch to other Member States of Category 1 and Category 2 animal by-products, Article 48 of Regulation No 1069/2009 provides that competent authority of the Member State of origin and the competent authority of the Member State of destination must be informed of the shipment and the latter can refuse the consignment, accept it unconditionally or accept it subject to conditions. As for Regulation No 1013/2016, it provides for general minimum requirements for shipments within the EU whereby wastes must be accompanied by the documentation provided for therein. However, shipments of certain waste destined for disposal and shipments of certain waste destined for recovery must comply with the prior written notification and consent procedure described in Articles 4 to 17 of Regulation No 1013/2006. In addition to the signing of a contract and the establishment of a financial guarantee or equivalent assurance, that regulation provides that the competent authorities of destination, dispatch and transit shall consent, subject to any conditions, to the shipment of waste, as well as provide reasons for refusal.

34 See, for example, Article 41(2)(b), Article 43(5)(b) and Article 48(6) of Regulation No 1069/2009.

35 As is clear from recitals 8 and 29 of that Regulation. See also Articles 7 to 10 of Regulation No 1069/2009. On the different categories of animal by-products and the relative requirements for each of these categories, see de Sadeleer N., *op. cit.*, p. 272.

36 In this connection, it is also important to note that, in Regulation No 1069/2009 and in Chapter V of Regulation No 142/2011, the EU legislature laid down rules regarding the collection, transport, identification and traceability of animal by-products.

37 That position was reflected in the Communication from the Commission, the terms of which were noted in point 46 of this Opinion.

73. Finally, in my view, such an interpretation gives rise to legal uncertainty.

74. First, it assumes that operators will assess, for each shipment of animal by-products, whether the provisions of Regulation No 1069/2009 provide sufficient environmental protection and therefore makes it impossible to know in advance which regulation applies to a particular shipment.

75. Secondly, the Commission stated at the hearing that, if the provisions of Article 23 and Article 24 of Regulation No 1069/2009 are not respected, it is necessary to apply Regulation No 1013/2006 but that could, paradoxically, result in a requirement to comply with the more stringent provisions of Regulation No 1013/2006, in the event of non-compliance with the less burdensome requirements of Article 23 and Article 24 of Regulation No 1016/2009.

IV. Conclusion

76. In the light of the foregoing considerations, I propose that the Court reply as follows to the questions referred for a preliminary ruling by the Verwaltungsgericht Oldenburg (Administrative Court of Oldenburg, Germany) as follows:

Article 1(3)(d) 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 shipments of animal by-products falling within the scope of Regulation (EC) No 1069/2009 of the European Parliament and of the Council of 21 October 2009 laying down health rules as regards animal by-products and derived products not intended for human consumption and repealing Regulation (EC) No 1774/2002, are excluded from the scope of Regulation No 1013/2006, save as otherwise expressly provided in Regulation No 1069/2009.