



## Reports of Cases

### JUDGMENT OF THE COURT (Fourth Chamber)

9 June 2016\*

(References for a preliminary ruling — Environment — Waste — Transfers — Regulation (EC) No 1013/2006 — Article 2(35)(g)(iii) — Illegal shipment — Incorrect or inconsistent information entered in the document listed in Annex VII to that regulation — Article 50(1) — Penalties applicable in the event of infringement of the provisions of that regulation — Proportionality)

In Case C-69/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Fővárosi Közigazgatási és Munkügyi Bíróság (Budapest Court of Public Administration and Labour, Hungary), made by decision of 2 February 2015, and received at the Court on 16 February 2015, in the proceedings

**Nutrivet D.O.O.E.L.**

v

**Országos Környezetvédelmi és Természetvédelmi Főfelügyelőség,**

THE COURT (Fourth Chamber),

composed of T. von Danwitz, President of the Chamber, C. Lycourgos (Rapporteur), E. Juhász, C. Vajda and K. Jürimäe, Judges,

Advocate General: Y. Bot,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Hungarian Government, by M. Z. Fehér and G. Koós and by M. Tátrai, acting as Agents,
- the Luxembourg Government, by D. Holderer, acting as Agent,
- the Netherlands Government, by B. Koopman, M. Bulterman and H. Stergiou, acting as Agents,
- the European Commission, by L. Havas, A. Sipos and D. Loma-Orsorio 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: Swedish.

## Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 2(35)(g)(iii), Article 18(1)(a) and Article 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 (EU) No 255/2013 of 20 March 2013 (OJ 2013 L 79, p. 19) ('Regulation No 1013/2006'), and point 15 of Annex IC to that regulation.
- 2 The request has been made in proceedings between Nutrivet D.O.O.E.L. and the Országos Környezetvédelmi és Természetvédelmi Főfelügyelőség (National Inspectorate of Environment and Nature, 'the national inspection authority'), concerning administrative fines imposed by the latter for infringements of the rules on shipments of waste.

### Legal context

#### *EU law*

- 3 Recitals 1, 7, 15, 21 and 33 of Regulation No 1013/2006 state:
  - '(1) The main and predominant objective and component of this Regulation is the protection of the environment, its effects on international trade being only incidental.
  - ...
  - (7) It is important to organise and regulate the supervision and control of shipments of waste in a way which takes account of the need to preserve, protect and improve the quality of the environment and human health and which promotes a more uniform application of the Regulation throughout the Community.
  - ...
  - (15) In the case of shipments of waste listed in Annex III, IIIA or IIIB destined for recovery operations, it is appropriate to ensure a minimum level of supervision and control by requiring such shipments to be accompanied by certain information.
  - ...
  - (21) In the case of shipments of waste destined for recovery, Member States should be able to ensure that the waste management facilities covered by [Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control (OJ 1996 L 257, p. 26), as amended by Regulation (EC) No 166/2006 of the European Parliament and of the Council of 18 January 2006 (OJ 2006 L 33, p. 1)] apply best available techniques as defined in that Directive in compliance with the permit of the facility. Member States should also be able to ensure that waste is treated in accordance with legally binding environmental protection standards in relation to recovery operations established in Community legislation and that, taking account of Article 7(4) of Directive 2006/12/EC [of the European Parliament and of the Council of 5 April 2006 on waste (OJ 2006 L 114, p. 9)], waste is treated in accordance with waste management plans established pursuant to that Directive with the purpose of ensuring the implementation of legally binding recovery or recycling obligations established in Community legislation.
  - ...

- (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 1(1) of Regulation No 1013/2006 provides that that regulation establishes procedures and control regimes for the shipment of waste, depending on the origin, destination and route of the shipment, the type of waste shipped and the type of treatment to be applied to the waste at its destination.
- 5 Article 2 of that regulation, headed 'Definitions', provides:
- 'For the purposes of this Regulation:
- ...
- (12) "dealer" is anyone who acts in the role of principal to purchase and subsequently sell waste, including such dealers who do not take physical possession of the waste, and as referred to in Article 12 of Directive 2006/12/EC;
- (13) "broker" is anyone arranging the recovery or disposal of waste on behalf of others, including such brokers who do not take physical possession of the waste, as referred to in Article 12 of Directive 2006/12/EC;
- (14) "consignee" means the person or undertaking under the jurisdiction of the country of destination to whom or to which the waste is shipped for recovery or disposal;
- (15) "notifier" means:
- (a) in the case of a shipment originating from a Member State, any natural or legal person under the jurisdiction of that Member State who intends to carry out a shipment of waste or intends to have a shipment of waste carried out and to whom the duty to notify is assigned. The notifier is one of the persons or bodies listed below, selected in accordance with the ranking established in this listing:
- ...
- (iv) a registered dealer who has been authorised in writing by the original producer, new producer or licensed collector specified in (i), (ii) and (iii) to act on his/her behalf as notifier;
- (v) a registered broker who has been authorised in writing by the original producer, new producer or licensed collector specified in (i), (ii) and (iii) to act on his/her behalf as notifier;
- ...
- (22) "country of dispatch" means any country from which a shipment of waste is planned to be initiated or is initiated;
- (23) "country of destination" means any country to which a shipment of waste is planned or takes place for recovery or disposal therein, or for the purpose of loading prior to recovery or disposal in an area not under the national jurisdiction of any country;
- ...

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

- ...
- (c) with consent obtained from the competent authorities concerned through falsification, misrepresentation or fraud; or
- ...
- (g) which, in relation to shipments of waste as referred to in Article 3(2) and (4), has resulted from:
- ...
- (iii) the shipment being effected in a way which is not specified materially in the document set out in Annex VII.’

6 Article 3 of Regulation No 1013/2006, headed ‘Overall procedural framework’, provides as follows in (2):

‘Shipments of the following wastes destined for recovery shall be subject to the general information requirements laid down in Article 18, if the amount of waste shipped exceeds 20 kg:

(a) waste listed in Annex III or III B;

...’

7 Article 18 of Regulation No 1013/2006, entitled ‘Waste to be accompanied by certain information’, provides:

‘1. Waste as referred to in Article 3(2) and (4) that is intended to be shipped shall be subject to the following procedural requirements:

- (a) In order to assist the tracking of shipments of such waste, the person under the jurisdiction of the country of dispatch who arranges the shipment shall ensure that the waste is accompanied by the document contained in Annex VII.
- (b) The document contained in Annex VII shall be signed by the person who arranges the shipment before the shipment takes place and shall be signed by the recovery facility or the laboratory and the consignee when the waste in question is received.

...

3. For inspection, enforcement, planning and statistical purposes, Member States may in accordance with national legislation require information as referred to in paragraph 1 on shipments covered by this Article.

...’

8 Article 24 of that regulation, headed ‘Take-back when a shipment is illegal’, provides:

‘1. Where a competent authority discovers a shipment that it considers to be an illegal shipment, it shall immediately inform the other competent authorities concerned.

2. If an illegal shipment is the responsibility of the notifier, the competent authority of dispatch shall ensure that the waste in question is:

- (a) taken back by the notifier de facto; or, if no notification has been submitted;
- (b) taken back by the notifier de jure; or, if impracticable;
- (c) taken back by the competent authority of dispatch itself or by a natural or legal person on its behalf; or, if impracticable;
- (d) alternatively recovered or disposed of in the country of destination or dispatch by the competent authority of dispatch itself or by a natural or legal person on its behalf; or, if impracticable;
- (e) alternatively recovered or disposed of in another country by the competent authority of dispatch itself or by a natural or legal person on its behalf if all the competent authorities concerned agree.

...

3. If an illegal shipment is the responsibility of the consignee the competent authority of destination shall ensure that the waste in question is recovered or disposed of in an environmentally sound manner:

- (a) by the consignee; or, if impracticable;
- (b) by the competent authority itself or by a natural or legal person on its behalf.

...

9. In the case of an illegal shipment as defined in point 35(g) of Article 2, the person who arranges the shipment shall be subject to the same obligations established in this Article as the notifier.

...'

- 9 Under Article 42 of that same regulation, headed 'Procedural requirements for imports from a country Party to the Basel Convention [on the control of transboundary movements of hazardous wastes and their disposal, approved on behalf of the European Economic Community by Council Decision 93/98/EEC of 1 February 1993 (OJ 1993 L 39, p. 1)] or from other areas during situations of crisis or war':

'1. Where waste is imported into the Community and destined for disposal from countries Parties to the Basel Convention, the provisions of Title II shall apply mutatis mutandis, with the adaptations and additions listed in paragraphs 2 and 3.

...

4. The shipment may take place only if:

- (a) the notifier has received written consent from the competent authorities of dispatch, destination and, where appropriate, transit and if the conditions laid down are met;
- (b) a contract between the notifier and consignee has been concluded and is effective, as required in the second subparagraph, point 4 of Article 4 and in Article 5;

(c) a financial guarantee or equivalent insurance has been established and is effective, as required in the second subparagraph, point 5 of Article 4 and in Article 6; and

(d) environmentally sound management, as referred to in Article 49, is ensured.

...'

- 10 Under Article 45 of Regulation No 1013/2006, headed 'Procedural requirements for imports from a non-OECD Decision country Party to the Basel Convention [Decision of the OECD Council C(2001)107/Final revising Decision C(92)39/Final concerning the Control of Transboundary Movements of Wastes destined for Recovery Operations] or from other areas during situations of crisis or war':

'Where waste destined for recovery is imported into the Community:

(a) from a country to which the [Organisation for Economic Cooperation and Development] Decision does not apply; ...

...

Article 42 shall apply *mutatis mutandis*.'

- 11 Article 49 of that regulation, headed 'Protection of the environment', provides in paragraph 1:

'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.'

- 12 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. ...

...

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

...'

- 13 Point 15 of Annex IC to that regulation, headed 'Specific instructions for completing the notification and movement documents', is worded as follows:

'Normally, the consignee would be the disposal or recovery facility given in block 10. In some cases, however, the consignee may be another person, for example a dealer, a broker, or a corporate body, such as the headquarters or mailing address of the receiving disposal or recovery facility in block 10. In order to act as a consignee, a dealer, broker or corporate body must be under the jurisdiction of the country of destination and possess or have some other form of legal control over the waste at the moment the shipment arrives in the country of destination. In such cases, information relating to the dealer, broker or corporate body should be completed in block 2.'



- 14 Annex III to Regulation No 1013/2006 contains the ‘List of wastes subject to the general information requirements laid down in Article 18’ (‘green listed’ waste)’ (‘the green list’).
- 15 Annex VII to Regulation No 1013/2006, headed ‘Information accompanying shipments of waste as referred to in Article 3(2) and (4)’, contains the document referred to in Article 18(1) of that regulation (‘the accompanying document’). Annex VII is set out as follows:

**Consignment information <sup>(1)</sup>**

<b>1. Person who arranges the shipment</b> Name: Address: Contact person: Tel. Fax E-mail:		<b>2. Importer/consignee</b> Name: Address: Contact person: Tel. Fax E-mail:	
<b>3. Actual quantity:</b> Tonnes (Mg): m <sup>3</sup> :		<b>4. Actual date of shipment:</b>	
<b>5.(a) First carrier <sup>(2)</sup></b> Name: Address: Contact person: Tel. Fax E-mail: Means of transport: Date of transfer: Signature:	<b>5.(b) Second carrier</b> Name: Address: Contact person: Tel. Fax E-mail: Means of transport: Date of transfer: Signature:	<b>5.(c) Third carrier</b> Name: Address: Contact person: Tel. Fax E-mail: Means of transport: Date of transfer: Signature:	
<b>6. Waste generator <sup>(3)</sup></b> <b>Original producer(s), new producer(s) or collector:</b> Name: Address: Contact person: Tel. Fax E-mail:		<b>8. Recovery operation (or if appropriate disposal operation in the case of waste referred to in Article 3(4)):</b> R-code/D-code:	
<b>7. Recovery facility <input type="checkbox"/> Laboratory <input type="checkbox"/></b> Name: Address: Contact person: Tel. Fax E-mail:		<b>9. Usual description of the waste:</b>	
<b>10. Waste identification (fill in relevant codes):</b> (i) Basel Annex IX; (ii) OECD (if different from (i)); (iii) Annex IIIA <sup>(4)</sup> ; (iv) Annex IIIB <sup>(5)</sup> ; (v) EC list of wastes; (vi) National code:			
<b>11. Countries/states concerned:</b>			
Export/dispatch		Transit	
<b>12. Declaration of the person who arranges the shipment:</b> I certify that the above information is complete and correct to my best knowledge. I also certify that effective written contractual obligations have been entered into with the consignee (not required in the case of waste referred to in Article 3(4)). Name: Date: Signature:			
<b>13. Signature upon receipt of the waste by the consignee:</b> Name: Date: Signature:			
<b>TO BE COMPLETED BY THE RECOVERY FACILITY OR BY THE LABORATORY:</b>			
<b>14. Shipment received at recovery facility <input type="checkbox"/> or laboratory <input type="checkbox"/></b>		Quantity received: Tonnes(Mg): m <sup>3</sup> :	
Name: Date: Signature:			

(1) Information accompanying shipments of green listed waste and destined for recovery or waste destined for laboratory analysis pursuant to Regulation (EC) No 1013/2006. For completing this document, see also the corresponding specific instructions as contained in Annex IC of Regulation (EC) No 1013/2006.

(2) If more than three carriers, attach information as required in blocks 5 (a), (b), (c).

(3) When the person who arranges the shipment is not the producer or collector, information about the producer or collector shall be provided.

(4) The relevant code(s) as indicated in Annex IIIA to Regulation (EC) No 1013/2006 are to be used, as appropriate in sequence. Certain Basel entries such as B1100, B3010 and B3020 are restricted to particular waste streams only, as indicated in Annex IIIA.

(5) The BEU codes listed in Annex IIIB to Regulation (EC) No 1013/2006 are to be used.

### Hungarian law

- 16 Article 19(1) of Law No CLXXXV of 2012 on waste (a hulladékról szóló 2012. évi CLXXXV. törvény, *Magyar Közlöny* 2012/160) (‘the Law on waste’), provides:

‘Waste may be imported into Hungarian territory in accordance with the provisions of Regulation [No 1013/2006] and of the Government Decree on crossborder carriage of waste.’

17 Paragraph 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 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.’

18 Paragraph 1 of a hulladékgazdálkodási bírság mértékéről, valamint kiszabásának és megállapításának módjáról szóló 271/2001. Kormányrendelet (Government Decree No 271/2001 concerning the amount and the manner of determination and imposition of the waste management fine) of 21 December 2001 (*Magyar Közlöny* 2001/150) (‘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”):

...

(f) in the case of illegal carriage of non-hazardous waste across the national border: HUF [Hungarian forints] 200 000.

...

5. The amount of the basic fine shall be set at between 25% and 100% of the amounts determined in Paragraph 1(3) and (4) and in Paragraph 2(3) — with the exception of the cases set out in Paragraph 1(3)(e) — where the infringer becomes aware of the consequences and puts an end to the unlawful situation before the decision to impose a fine is adopted.’

19 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)-(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**

- 20 The order for reference indicates that inspections carried out on 15 and 18 October 2013 by the Hungarian authorities on two heavy good vehicles registered in the former Yugoslav Republic of Macedonia upon entry into Hungary showed that they were transporting 23.2 and 21.8 tonnes respectively of 'green' listed paper waste. Each of the shipments was accompanied by the accompanying document and by an international consignment note.
- 21 Regarding the first shipment, the accompanying document stated, in block 1, that Nutrivet was arranging the shipment and, in blocks 2 and 7, that Hamburger Recycling Group GmbH, situated at Wiener Neudorf (Austria), was both the consignee and the recovery facility, whilst the international consignment note that referred to the place of delivery of the shipment as being Hamburger Hungária Kft., a company governed by Hungarian law established at Dunaujváros (Hungary).
- 22 For the second shipment, the accompanying document stated in block 1 that Nutrivet was arranging the shipment, in block 2 that the consignee was Hamburger Recycling Group and, in block 7, that Hamburger Hungária was the recovery facility, whilst the international consignment note and other documents presented to the Hungarian authorities stated that delivery was also to be made to that company.
- 23 Block 11, 'Countries/States concerned', on both accompanying documents referred to the former Yugoslav Republic of Macedonia, Serbia and Hungary.
- 24 The national inspection authority found that, for both waste shipments, the accompanying document did not comply with the provisions of Regulation No 1013/2006, inasmuch as the content of blocks 2 and 7 did not match the information given in block 11, and the ultimate destination of those shipments could not be determined with certainty. In the proceedings opened against it, Nutrivet cooperated with the national inspection authority by providing it with inter alia, on 18 and 25 October 2013, a new, rectified accompanying document for each shipment as well as other documents substantiating the information in that rectified document. Those documents stated clearly that Hamburger Hungária was the consignee and ultimate destination of the shipment in both cases.
- 25 By decisions of 30 October 2013, the national inspection authority, acting pursuant to the Law on waste, ordered Nutrivet to pay waste management fines and procedural costs. As regards the first shipment, the amount of the fine and procedural costs were set at HUF 1 160 000 (approx. EUR 3 738) and HUF 124 942 (approx. EUR 402) respectively. Regarding the second shipment, the amount of the fine and procedural costs were set at HUF 1 090 000 (approx. EUR 3 513 euros) and HUF 182 250 (approx. EUR 587 euros) respectively. In stating its reasons for the decision the national inspection authority observed that, in the light of the findings made during the administrative procedure, the shipments at issue were illegal within the meaning of Article 2(35)(g)(iii) of Regulation No 1013/2006. In determining the amount of the fines under the Government Decree, it took as a basis for the type of waste at issue the basic amount (HUF 200 000, or approximately EUR 3 205), which it reduced by the maximum rate of 75% to take account of Nutrivet's cooperation. It then multiplied the amount thus obtained (HUF 50 000) by the quantity of waste shipped.

- 26 In its action before the Fővárosi Közigazgatási és Munkaügyi Bíróság (Administrative and Labour Court, Budapest), Nutrivet seeks inter alia the annulment of those decisions. It argues that the words ‘in a way which is not specified materially in the document set out in Annex VII’, set out in Article 2(35)(g)(iii) of Regulation No 1013/2006, refer to the situation where important information for environmental protection is hidden or not mentioned, and not where the accompanying document contains incorrect information but where correct information is clearly evident from other available documents. It adds that that provision must not be interpreted broadly, unless all shipments for which the accompanying document has been completed incorrectly are to be considered illegal. Accordingly a distinction should be drawn between the case where the error was made intentionally to mislead the inspection authorities and a case where the error is the result of a mere oversight in fulfilling an administrative obligation.
- 27 The national inspection authority contends that the action should be dismissed. It submits that each of the waste shipments at issue in the main proceedings had to be accompanied by the accompanying document duly completed in accordance with the requirements of Article 18 of and Annex VII to Regulation No 1013/2006. It acknowledges that the ‘importer/consignee’ whose name must be given in block 2 of that document, may be different from the ‘recovery facility’ given in block 7, but submits that, in that case, point 15 of Annex IC to that regulation requires the dealer or the broker to be under the jurisdiction of the country of destination.
- 28 At the request of the referring court, the national inspection authority expressly acknowledged that it did know the itinerary of the waste, even though the accompanying documents had been completed incorrectly. It also acknowledged that it had not implemented the procedure referred to in Article 24 of Regulation No 1013/2006, had not involved the competent authorities concerned and had not ordered the return of the waste shipments considered to be illegal.
- 29 In those circumstances, the Fővárosi Közigazgatási és Munkaügyi Bíróság (Administrative and Labour Court, Budapest) decided to stay proceedings and refer the following questions to the Court for a preliminary ruling:
1. Must a shipment of waste be considered to be effected “in a way which is not specified materially in the document set out in Annex VII”, within the meaning of Article 2(35)(g)(iii) of Regulation No 1013/2006, when the person who arranges the shipment completes the boxes corresponding to the importer/consignee, the recovery facility and the countries/States concerned — in entries 2, 7 and 11 respectively of the document set out in Annex VII to that regulation — in a manner whereby those entries conflict with one another, even though the information relating to those entries is clearly apparent from the international consignment note and other documents available?
  2. If the first question is answered in the affirmative, can a fine imposed on that ground, equal in amount to that imposed on a person infringing the obligation to complete the document set out in Annex VII to Regulation No 1013/2006, be considered proportionate?
  3. In order for a shipment of waste to be declared illegal, within the meaning of Article 2(35)(g)(iii) of Regulation No 1013/2006, must the person completing the document set out in Annex VII to that regulation deliberately mislead the authorities?
  4. Is the fact that the information or data not actually specified is significant as regards environmental protection a relevant factor in order to declare that a shipment of waste, effected “in a way which is not specified materially in the document set out in Annex VII”, within the meaning of Article 2(35)(g)(iii) of Regulation No 1013/2006, is illegal? If the answer is in the affirmative, what information or data of the document set out in Annex VII to that regulation must be considered significant as regards environmental protection?

5. Can a transfer of waste be found to be effected “in a way which is not specified materially in the document set out in Annex VII”, within the meaning of Article 2(35)(g)(iii) of Regulation No 1013/2006, where the authority does not carry out the procedure laid down in Article 24 of that regulation, does not inform the authorities concerned and does not order the illegally shipped waste to be taken back?
6. How must jurisdiction within the meaning of Article 18(1)(a) of Regulation No 1013/2006 be understood and examined?
7. How must the expression in paragraph 15 of Part IV of Annex IC to Regulation No 1013/2006, which states that in order for dealers or brokers to be consignees they must be under the jurisdiction of the country of destination, be interpreted?

### **Preliminary observations**

- 30 It should be noted, as a preliminary point, that, as evidenced by the order for reference, the waste at issue in the main proceedings being imported seems to have originated in a third country, namely the former Yugoslav Republic of Macedonia. The questions referred by the referring court presuppose that Articles 42 and 45 of Regulation No 1013/2006 are not applicable to the present case.

### **The questions referred**

#### *The first and third to fifth questions*

- 31 By its first and third to fifth questions, which should be considered together, the referring court asks, in essence, whether Article 2(35)(g)(iii) of Regulation No 1013/2006 must be interpreted as meaning that shipments of waste, such as those referred to in Annex III of that regulation, intended for recovery, must be classified as illegal, within the meaning of that provision, when the accompanying document relating to a shipment includes incorrect or inconsistent information regarding the importer/consignee, the recovery facility and the countries/States concerned, and whether that classification is affected by the information being correct in other documents made available to the competent authorities, an intention to mislead those authorities, the relevance of that information to environmental protection and the implementation of the procedures provided for in Article 24 of that regulation by those authorities.
- 32 It should be noted at the outset in that regard that recital 1 of Regulation No 1013/2006 states that the objective of that regulation is the protection of the environment. Moreover, according to recital 7 of 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.
- 33 As regards the waste shipments on the green list and intended for recovery, such as those at issue in the main proceedings, recital 15 of that same regulation states that it is appropriate to ensure a minimum level of supervision and control by requiring such shipments to be accompanied by certain information.
- 34 Thus, in order to facilitate the tracking of shipments of such waste, Article 18 of Regulation No 1013/2006 obliges the person be under the jurisdiction of the country of dispatch who arranges the shipment to ensure that the waste is accompanied by the accompanying document, which may be required by the competent national authorities for the purposes of inspection, enforcement of the regulation, planning or statistics (see, to that effect, judgment of 12 December 2013 in *Ragn-Sells*, C-292/12, EU:C:2013:820, paragraph 65). As that document is the sole source of detailed information

on waste shipment provided for by that regulation in order to enable the competent authorities of the countries concerned to carry out their mission of supervision and control under that regulation, it must be duly completed by the party arranging such a shipment.

- 35 It should be noted in that regard that the information that must be given in the accompanying document on inter alia the importer/consignee, the recovery facility and the countries/States concerned enable a proper tracking of shipments to be ensured. Not only is that information relevant in terms of environmental protection, it is also necessary for the proper performance of the missions of supervision and control in order to preserve, protect and improve the quality of the environment and human health.
- 36 It follows that, in a case where the accompanying document contains this kind of incorrect or inconsistent information, those missions of supervision and control cannot be performed in accordance with Regulation No 1013/2006, as the competent authorities, if not duly informed of the detailed rules for the shipment concerned, cannot ensure a proper tracking of the shipment in order to avoid environmental damage and activities that are harmful to human health.
- 37 In the present case, the order for reference indicates, first, that the accompanying documents at issue in the main proceedings listed, in block 2, not the company to which the waste shipments at issue in the main proceedings were actually supposed to be sent, namely Hamburger Hungária, established at Dunaújváros, but another company established in another Member State, namely Hamburger Recycling Group, situated at Wiener Neudorf. Second, in block 7 of one of those documents, the latter company was referred to as the recovery facility, even though it is not situated in the country of destination given in block 11 of that document, namely Hungary.
- 38 Given those errors and inconsistencies, the accompanying documents at issue in the main proceedings did not by themselves allow for tracking of the waste shipments at issue in the main proceedings. Therefore, those waste shipments must be held to be illegal shipments within the meaning of Article 2(35)(g)(iii) of Regulation No 1013/2006.
- 39 Consequently, the conclusion is that a waste shipment, such as those referred to in Annex III to that regulation, intended for recovery, must be classified as illegal within the meaning of Article 2(35)(g)(iii) of that regulation when the accompanying document contains incorrect or inconsistent information such as that contained in the accompanying documents at issue in the main proceedings regarding the importer/consignee, the recovery facility and the countries/States concerned.
- 40 This conclusion not called into question by the fact that the information required to be stated in the accompanying document is reproduced correctly in other documents made available to the competent authorities. Similarly, nor do a lack of intentional element and a failure to implement the procedures provided for in Article 24 of that regulation have any bearing on the matter.
- 41 Article 2(35)(g)(iii) of Regulation No 1013/2006 makes no mention of those three factors.
- 42 More specifically, regarding, firstly, the fact that correct information required to be stated in the accompanying document has been provided in other documents, it should be observed that the accompanying document must show the detailed information on the waste shipment, so that the objectives of supervision and control of shipments pursued by the regulation are achieved. That type of document has been drawn up through specific rules and is aimed at attaining objectives specific to the legislation on waste shipments, whilst other documents, such as the international consignment note or a commercial invoice, do not have that purpose.



- 43 Article 2(35)(g)(iii) of Regulation No 1013/2006 states that the manner in which the waste shipment concerned is carried out must be specified in the accompanying document and not elsewhere. This obligation is liable to facilitate tracking of waste shipments in accordance with Article 18(1)(a) of that regulation, and to ensure effective control so that a determination can be made immediately as to whether a physical inspection needs to be made of the waste concerned. The effectiveness of controls of waste during shipment or upon arrival at their place of destination is reinforced by the fact that, by consulting the accompanying document, the authorities of the State of transit or the State of destination are able to gain knowledge immediately of the required information, without being required to conduct subsequent checks which will unavoidably be time-consuming and costly, as they will necessarily hold up the shipment concerned.
- 44 As regards, secondly, the question whether the intention to mislead the competent authorities must be taken into consideration in determining whether a waste shipment is illegal within the meaning of Article 2(35)(g)(iii) of Regulation No 1013/2006, it should be noted that the wording of that provision does not provide that errors or inconsistencies in the information having to be specified in the accompanying document referred to in Annex VII of that regulation must be the result of a fraudulent act.
- 45 Moreover, irrespective of whether an error has been made intentionally, the fact remains that, when it gives rise to an inconsistency, it obliges the inspection authorities of the Member States concerned to conduct subsequent checks, thereby making it impossible to conduct an immediate inspection of the shipment solely on the basis of Annex VII to Regulation No 1013/2006, so that both types of errors must, at the very least at the stage of classification of the offence, be treated in the same manner.
- 46 As regards, thirdly, the failure to implement the procedures provided for in Article 24 of Regulation No 1013/2006, it should be observed that neither that article nor any other provision of that regulation establishes a link between those procedures and the definition of an illegal shipment. On the contrary, as that article, as is clear from its wording, covers only waste being shipped illegally, a failure to implement those procedures does not affect the classification of the shipment concerned as an illegal shipment within the meaning of Article 2(35) of that regulation.
- 47 In the light of the foregoing considerations, the answer to the first and third to fifth questions is that Article 2(35)(g)(iii) of Regulation No 1013/2006 must be interpreted as meaning that shipments of waste, such as those referred to in Annex III to that regulation, intended for recovery, must be considered illegal within the meaning of that provision when the accompanying document relating to a shipment contains incorrect or inconsistent information, such as that contained in the accompanying documents at issue in the main proceedings, regarding the importer/consignee, the recovery facility and the countries/States concerned, irrespective of whether that information is given correctly in other documents made available to the competent authorities, the intention to mislead the authorities and the implementation of the procedures provided for in Article 24 of that same regulation by the authorities.

### *The second question*

- 48 By its second question, the referring court asks, in essence, whether Article 50(1) of Regulation No 1013/2006, under which penalties levied by the Member States in the event of offences under the provisions of that regulation must, inter alia, be proportionate, must be interpreted as precluding national legislation, such as that at issue in the main proceedings, providing, where the accompanying document contains incorrect or inconsistent information, for the imposition of a fine the basic amount of which corresponds to that of the fine levied in the event of infringement of the obligation to complete that document.

- 49 It should be observed in that regard 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]’, adding that ‘[t]he 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.
- 50 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 (judgment of 9 February 2012 in *Urbán*, C-210/10, EU:C:2012:64, paragraph 23 and the case-law cited).
- 51 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 of 9 February 2012 in *Urbán*, C-210/10, EU:C:2012:64, paragraph 54).
- 52 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, to that effect, judgment of 29 July 2010 in *Profaktor Kulesza, Frankowski, Jóźwiak, Orłowski*, C-188/09, EU:C:2010:454, paragraph 30 and the case-law cited).
- 53 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 Court held, in its judgment of 26 November 2015 in *Total Waste Recycling* (C-487/14, EU:C:2015:780, paragraph 55), that 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.
- 54 In the present case, as evidenced by paragraph 38 of this judgment, the incorrect and inconsistent information contained in the accompanying documents at issue in the main proceedings constituted an infringement of the provisions of Regulation No 1013/2006. Such an infringement may, in principle, be subject to an equivalent penalty to that provided for in respect of infringement of the obligation to complete that document.
- 55 However, according to the Court’s settled case-law, the imposition of a fine penalising a shipment of waste for which the accompanying document contains incorrect or inconsistent information, the basic amount of which is the same as the fine imposed for infringement of the obligation to complete that document, is considered proportionate if the circumstances of the infringement make it possible to find that they involve equally serious infringements in the light of the risks they entail for protection of the environment and human health, which it is for the national court to ascertain (see, to that effect, judgment of 26 November 2015 in *Total Waste Recycling*, C-487/14, EU:C:2015:780, paragraphs 54 and 56).



56 In the light of the foregoing considerations, the answer to the second question is that Article 50(1) of Regulation No 1013/2006, under which the penalties imposed by the Member States in the event of infringement of the provisions of that regulation must be proportionate, must be interpreted as meaning that a waste shipment for which the accompanying document referred to in Annex VII thereto contains incorrect or inconsistent information may, in principle, be penalised by a fine the amount of which is the same as the fine imposed for infringement of the obligation to complete that document. In the review of proportionality of such a penalty, the referring court must take particular account of the risks which may be caused by that infringement in the field of protection of the environment and human health.

*The sixth and seventh questions*

57 By its sixth and seventh questions, the referring court asks, in essence, how the words ‘the person under the jurisdiction of the country of dispatch’ in Article 18(1)(a) of Regulation No 1013/2006 and the words ‘under the jurisdiction of the country of destination’ in point 15 of Annex IC thereto should be interpreted.

58 In that regard, according to settled case-law, the procedure provided for by Article 267 TFEU is an instrument of cooperation between the Court of Justice and national courts by means of which the former provides the latter with interpretation of such Community law as is necessary for them to give judgment in cases upon which they are called to adjudicate (judgments of 13 March 2014 in *FIRIN*, C-107/13, EU:C:2014:151, paragraph 29, and of 6 October 2015 in *Capoda Import-Export*, C-354/14, EU:C:2015:658, paragraph 23).

59 In the context of that cooperation, questions concerning EU law enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgments of 13 March 2014 in *FIRIN*, C-107/13, EU:C:2014:151, paragraph 30; and of 5 March 2015 in *Banco Privado Português and Massa Insolvente do Banco Privado Português*, C-667/13, EU:C:2015:151, paragraph 36).

60 In the present case it is clear that, in its request for a preliminary ruling, the referring court does not state how the sixth and seventh questions are necessary for resolving the dispute in the main proceedings; nor does it provide the material necessary for the Court to be able to give a useful answer.

61 Consequently, the sixth and seventh questions are inadmissible.

**Costs**

62 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 (Fourth Chamber) hereby rules:

1. **Article 2(35)(g)(iii) 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 (EU) No 255/2013 of 20 March 2013, must be interpreted as meaning that shipments of waste, such as those referred to in Annex III to that regulation, intended for recovery, must be**

considered illegal within the meaning of that provision when the document referred to in Annex VII to that same regulation relating to a shipment contains incorrect or inconsistent information, such as that contained in the accompanying documents at issue in the main proceedings, regarding the importer/consignee, the recovery facility and the countries/States concerned, irrespective of whether that information is given correctly in other documents made available to the competent authorities, the intention to mislead the authorities and the implementation of the procedures provided for in Article 24 of that same regulation by the authorities.

2. Article 50(1) of Regulation No 1013/2006, as amended by Regulation No 255/2013, under which the penalties imposed by the Member States in the event of infringement of the provisions of that regulation must be proportionate, must be interpreted as meaning that a waste shipment for which the accompanying document referred to in Annex VII thereto contains incorrect or inconsistent information may, in principle, be penalised by a fine the amount of which is the same as the fine imposed for infringement of the obligation to complete that document. In the review of proportionality of such a penalty, the referring court must take particular account of the risks which may be caused by that infringement in the field of protection of the environment and human health.

[Signatures]