



Reports of Cases

OPINION OF ADVOCATE GENERAL
ČAPETA
delivered on 22 May 2025¹

Joined Cases C-221/24 and C-222/24

Naturvårdsverket

v

UQ (C-221/24)

IC (C-222/24)

(Request for a preliminary ruling from the Svea hovrätt, Mark- och miljööverdomstolen (Svea Court of Appeal, Land and Environment Court of Appeal, Stockholm, Sweden))

(Reference for a preliminary ruling – Environment – Waste – Regulation (EC) No 1013/2006 – Article 24(2) – Illegal shipments of waste – Take-back obligation – Take-back by a competent authority of the country of dispatch – Recovery and disposal of said waste against the wishes of the persons effecting the shipment – Validity – Right to property)

I. Introduction

1. ‘One man’s trash is another man’s treasure.’

2. However, when taken literally, this old saying might serve as an excuse for ‘garbage imperialism’.² Your old mobile phone? Poisoning ‘burner boys’ in impoverished communities in Ghana.³ Your old car? Polluting the air in Nigeria.⁴

¹ Original language: English.

² To use the term attributed to former Kenyan President Daniel arap Moi; see Clapp, A., ‘The story you’ve been told about recycling is a lie’, *The New York Times*, 14 February 2025, available at: <https://www.nytimes.com/2025/02/14/opinion/trash-recycling-global-waste-trade.html>.

³ ‘Burner boy’ was the name given to the young boys and men who used to trawl through piles of electronic waste in Agbogboshie, a vast dump near the centre of Ghana’s capital, Accra, looking for circuit boards and wires to burn. See Kwan, J., ‘Your old electronics are poisoning people at this toxic dump in Ghana’, *Wired*, 26 November 2020, available at: <https://www.wired.com/story/ghana-ewaste-dump-electronics/>. See also United Nations University and the Basel Convention Coordination Centre for the African Region, ‘Person in the port project – Assessing import of used electrical and electronic equipment into Nigeria’, 2017, available at: https://collections.unu.edu/eserv/UNU:6349/PiP_Report.pdf.

⁴ See Netherlands Human Environment and Transport Inspectorate, ‘Used vehicles exported to Africa – A study on the quality of used export vehicles’, October 2020, available at: <https://www.ilent.nl/binaries/ilt/documenten/leefomgeving-en-wonen/stoffen-en-producten/chemische-stoffen-en-mengsels/rapporten/used-vehicles-exported-to-africa/Used+vehicles+exported+to+Africa.pdf> (explaining that ‘vehicles currently exported to Africa resemble vehicles dismantled in the Netherlands. They are old and usually have an invalid periodic roadworthiness certificate. Often there are problems with the emission system ... and vehicles are below the Euro 4/IV emission standard. This leads to high emissions of particulate matter ... and risks to health and the environment due to uncontrolled treatment of vehicles after disposal’). See also United Nations Environment Programme, ‘Used vehicles and the environment – A global overview of used light duty vehicles: Flow, scale and regulation’, 2020, available at: <https://www.unep.org/resources/report/global-trade-used-vehicles-report> (highlighting that most used vehicle exports from the European Union are shipped to or end up in Nigeria).

3. Precisely to prevent this new type of colonialism, Regulation (EC) No 1013/2006⁵ ('the Waste Shipment Regulation') prohibits the export of waste and hazardous waste to, inter alia, the African continent. And yet, as the present references for a preliminary ruling show, the problem of the illegal waste trade persists.

4. At issue in the present case are shipments of containers from Sweden to Cameroon (via Belgium) and the Democratic Republic of the Congo (via Germany). Inspections carried out by the competent authorities in Antwerp (Belgium) and Hamburg (Germany) revealed that the containers in question were loaded with, among other things, vehicles, electronic products, tyres, furniture, clothing and white goods. Most of those items were classified as 'waste' or 'hazardous waste' by the competent authorities, their export from the European Union therefore being prohibited.⁶

5. The competent authority of the country of export, the Naturvårdsverket (Swedish Environmental Protection Agency), took back the containers in question. Against the wishes of the applicants at first instance, that authority also disposed of and recovered the contents of those containers. On appeal, the Court is now being asked to interpret the scope of the 'take-back obligation', as arising from the Waste Shipment Regulation, and to assess its compatibility with the right to property.

II. Background of the case and the questions referred

6. The European Union and its Member States are parties to the Basel Convention.⁷ That convention aims to establish a global framework to control the movement of hazardous wastes or other wastes, starting with the minimisation of the generation of such waste and encouraging the environmentally sound management thereof, especially if said waste is transported across borders.

7. In 1995, the Conference of the Parties to the Basel Convention adopted the 'Ban Amendment'.⁸ Instigated by a coalition of developing countries,⁹ the Ban Amendment prohibits all transboundary movements of hazardous wastes 'from industrialised countries to developing countries'.¹⁰

8. The Basel Convention and its Ban Amendment form part of EU law through the Waste Shipment Regulation.¹¹

⁵ 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).

⁶ See Article 36 of the Waste Shipment Regulation.

⁷ See Council Decision 93/98/EEC of 1 February 1993 on the conclusion, on behalf of the Community, of the Convention on the control of transboundary movements of hazardous wastes and their disposal (Basel Convention) (OJ 1993 L 39, p. 1). See also judgment of 21 January 2025, *Conti 11. Container Schifffahrt II* (C-188/23, EU:C:2025:26, paragraph 45 and the case-law cited).

⁸ See United Nations Environment Programme, Decision adopted by the Third Meeting of the Conference of the Parties to the Basel Convention, Decision III/1 – Amendment to the Basel Convention (UNEP/CHW.3/35, 28 November 1995) ('the Ban Amendment').

⁹ See Decision II/12, in Report of the Second Meeting of the Conference of the Parties to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (UNEP/CHW.2/30, 25 March 1994), p. 1 ('recalling the request of the Group of 77 countries at the First Meeting of the Conference of the Parties to the Basel Convention ... for the total ban on all exports of hazardous wastes from OECD countries to non-OECD countries').

¹⁰ See the Ban Amendment, p. 1.

¹¹ See recitals 3 and 4 of the Waste Shipment Regulation. See also judgment of 21 January 2025, *Conti 11. Container Schifffahrt II* (C-188/23, EU:C:2025:26, paragraph 46) (explaining that, through the Waste Shipment Regulation, the EU legislature sought to ensure that EU law complies with the Basel Convention).

9. That regulation seeks to establish procedures and control regimes applicable to shipments of waste.¹² It organises and regulates the supervision and control of shipments of waste in a strict manner, taking into account the need to preserve, protect and improve the quality of the environment,¹³ the objective of reducing shipments of waste to a minimum and the environmentally sound and efficient management of such waste,¹⁴ in line, *inter alia*, with the proximity principle of waste management.¹⁵

10. Articles 34 and 36 of the Waste Shipment Regulation prohibit the export of waste for disposal or recovery from the European Union to certain third countries.¹⁶

11. Cameroon and the Democratic Republic of the Congo form part of the group of countries to which the aforementioned export is prohibited.¹⁷

12. Shipments of waste in infringement of that prohibition are deemed to be ‘illegal’ shipments.¹⁸

13. Pursuant to Article 24(2) of the Waste Shipment Regulation, it is principally the notifier (*de facto* or *de jure*), and, in the alternative, the competent authority of the country of dispatch that must take back waste that was illegally shipped.

14. It is that take-back obligation and its consequences that are at issue in the present references for a preliminary ruling.

15. The applicants at first instance are UQ (in Case C-221/24) and IC (in Case C-222/24), who sought to ship containers from Sweden to Cameroon (via Belgium) and the Democratic Republic of the Congo (via Germany).

¹² See Article 1 of the Waste Shipment Regulation.

¹³ See recital 7 of the Waste Shipment Regulation.

¹⁴ See recital 8 of the Waste Shipment Regulation.

¹⁵ See recital 20 of the Waste Shipment Regulation.

¹⁶ Article 34 of the Waste Shipment Regulation provides that ‘all exports of waste from the [European Union] destined for disposal shall be prohibited’, whereas Article 36 of that regulation prohibits the export of certain wastes ‘destined for recovery in countries to which the OECD Decision does not apply’.

¹⁷ As per recital 5 of the Waste Shipment Regulation, the relevant OECD decision is Decision C(2001)107/Final of the OECD Council concerning the revision of Decision C(92)39/Final on the control of transboundary movements of wastes destined for recovery operations. It is common ground that Cameroon and the Democratic Republic of the Congo are among the countries to which that decision applies.

¹⁸ See letter (f) of point 35 of Article 2 of the Waste Shipment Regulation, which, *inter alia*, classifies as an ‘illegal shipment’ any shipment of waste effected ‘contrary to’ Articles 34 and 36 of that regulation. In the present case, it is clear to me that there are also other reasons why the shipments in question should be considered illegal, within the meaning of letter (f) of point 35 of Article 2 of the Waste Shipment Regulation. Thus, letters (a) and (b) of point 35 of Article 2 consider any shipment of ‘waste’ that is effected without ‘notification’ to all competent authorities concerned (letter (a)) or that is without the ‘consent’ of the competent authorities (letter (b)) to be an illegal shipment. It appears from the case file that neither of those elements was satisfied by the applicants at first instance in the present case.

16. The competent Belgian and German authorities declared the items in those containers to be waste and hazardous waste.¹⁹

17. On the basis of that information, and opining that there was insufficient evidence to the contrary, the Naturvårdsverket decided that UQ and IC had engaged in the illegal outward shipment of waste to third countries. This triggered the take-back obligation.

18. The Naturvårdsverket asked UQ and IC whether they intended to return the containers themselves or whether that authority should take them back itself and handle the waste at their expense. UQ and IC requested that the Naturvårdsverket take charge of the return process to Sweden but requested that the contents of the containers be returned to them. The Naturvårdsverket refused the latter request, being of the view that UQ and IC had not provided sufficient evidence that they would be capable of recovering or disposing of the waste in an environmentally acceptable manner.

19. Accordingly, that authority decided to dispose of the waste and hazardous waste (in Case C-221/24) or recover it (in Case C-222/24) itself. For that purpose, it drew up a notification of a shipment of waste, indicating the Naturvårdsverket as the notifier and the person responsible for the shipment. The Belgian and German authorities gave their respective approval for that notification.

20. The containers in question were transferred back to Sweden, stored at a reception facility and inspected by the competent supervisory authority, the Länsstyrelsen i Norrbottens län (County administrative board of Norrbotten, Sweden). That authority considered that the contents of the containers were mixed waste, some of which constituted hazardous waste. It also agreed with the respective assessments of the Belgian and German authorities that the two cases concerned the illegal shipment of waste and that the waste should be disposed of in an environmentally acceptable manner (in Case C-221/24) or recovered (in Case C-222/24).

21. UQ and IC initiated proceedings against the Naturvårdsverket's decisions with the Nacka tingsrätt, Mark- och miljödomstolen (District Court, Nacka, Land and Environment Court, Sweden) ('the Land and Environment Court'). In both cases, that court upheld the Naturvårdsverket's decisions in so far as they concern that authority's power to take back the contents of the containers to Sweden. However, that court annulled the decisions in so far as they relate to that authority's power to dispose of or recover the contents of the containers in question. According to the Land and Environment Court, such actions restrict the right to property without legal basis.

¹⁹ While UQ and IC dispute the claim that the contents of the containers constitute 'waste' for the purposes of the Waste Shipment Regulation, that question is not at issue before the Court of Justice and is, in any event, for the national court to determine. I should highlight, however, that the question of how to distinguish 'waste' or 'hazardous waste' and 'non-waste' products also arose during the drafting of the Basel Convention, given that some countries had no definition at all of what constituted 'waste' for the purposes of the material scope of that convention (see United Nations Environment Programme, Ad hoc Working Group of legal and technical experts with a mandate to prepare a global convention on the control of the transboundary movements of hazardous waste, organisational meeting (1987), First draft Convention on the Control of the Transboundary Movements of Hazardous Wastes, UNEP/WG.180/2, p. 4). Precisely with a view to setting a minimum standard, without, however, restricting other signatories from going beyond that standard, the final text of that convention lays down a framework that classifies 'waste' or 'hazardous' by reference to either their specific characteristics or national law (see Article 1(1)(a) and (b) and Article 2 of the Basel Convention). Accordingly, whether or not the items at issue in the main proceedings hold value for some but not others and so may be reused, functionally repaired or otherwise be traded in Cameroon and the Democratic Republic of the Congo is irrelevant to the classification, under EU law, of the items at issue as 'waste' or 'hazardous waste' for the purposes of the Waste Shipment Regulation.

22. The Naturvårdsverket appealed against that decision to the Svea hovrätt, Mark- och miljööverdomstolen (Svea Court of Appeal, Land and Environment Court of Appeal, Stockholm) ('the Svea Court of Appeal'). It considers that it is unclear how the system of transboundary movements of waste, and the recovery of illegal transboundary shipments of waste, can work if the competent authority taking back that waste – here, the Naturvårdsverket – does not have the right to ensure its recovery and disposal.

23. Relying on their right to property, UQ and IC argue that they only requested that the Naturvårdsverket return the containers to Sweden on their behalf, but that they gave no permission to that agency to dispose of or recover the contents thereof. According to them, there is no legal basis for the Naturvårdsverket to assume ownership of the contents of the containers without their permission. Those parties also challenge the claim that the items in question were waste, given that they would continue to be used in Africa.

24. The referring court takes the position that it is not clear how the take-back obligation under the Waste Shipment Regulation should be interpreted. It observes that the shipments in question fall within the scope of that regulation and that a notification of their being taken back to Sweden would, accordingly, be necessary. However, that court voices uncertainty over the extent to which it can be considered that the triggering of the take-back obligation under Article 24(2) of the Waste Shipment Regulation renders the competent authority the holder of the waste, such that that authority may – or must – also recover or dispose of the waste, in spite of the opposition of the original sender. Moreover, if that is a correct interpretation of the Waste Shipment Regulation, the referring court also raises the question of the compatibility of that effect with the right to property.

25. Against the above factual and legal background, the Svea Court of Appeal decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

- '(1) Does a take-back under Article 24(2)(c) of the Waste Shipment Regulation include a requirement or possibility for the authority of dispatch to recover or dispose of the waste after take-back, where a notification and a movement document stating how the waste is to be treated in the country of destination have been drawn up for the return shipment?
- (2) Under what circumstances may Article 24(2)(d) be applied by the authority of dispatch to recover or dispose of the waste in an illegal shipment of waste in the country of dispatch? How does point (d) relate to point (c), for example may take-back and recovery/disposal be effected pursuant to points (c) and (d) together or does the application of one point require that the procedure under the immediately preceding point has not been possible?
- (3) If Article 24(2) of the Waste Shipment Regulation may be interpreted as meaning that, following take-back, the authority of dispatch has the ultimate power of disposal over the waste, even where the original sender wishes to regain the waste, is such an interpretation compatible with the protection of property under Article 17 of the Charter of Fundamental Rights of the European Union ["the Charter"] and Article 1 of the Additional Protocol to the European Convention [on Human Rights]?'

26. Written observations were submitted by the European Parliament, the Council of the European Union and the European Commission. With the addition of the Naturvårdsverket, those parties presented oral arguments at the hearing that took place on 27 February 2025.

III. Analysis

A. *The questions of interpretation*

27. By its first and second questions, which I propose to examine together, the referring court, in essence, enquires about the conditions and consequences for applying Article 24(2)(c) of the Waste Shipment Regulation, and how that provision relates to letters (d) and (e) of the same provision.

28. The first subparagraph of Article 24(2) of the Waste Shipment Regulation provides as follows:

‘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.’

29. The Commission, as the only party to have submitted written observations on those questions, considers that the above parts of Article 24(2) follow a precise order, such that it is only if the measures provided for in one letter cannot be implemented that recourse to another letter may be had. The Commission observes that, while it is true that Article 24(2)(c) of the Waste Shipment Regulation does not expressly grant the competent authority of ‘take-back’ the right to recover or dispose of the property in question, that power could be derived from a teleological interpretation of the objective of the Waste Shipment Regulation. The same would also arise from an interpretation in conformity with the Basel Convention.

30. Requested by the Court to take a position on the first and second questions, at the hearing the Parliament and the Council subscribed to the Commission’s explanation. Those institutions consider that a literal reading alone of Article 24(2), and specifically letter (c) thereof, would fail to give due regard to the objective that the take-back obligation seeks to ensure. Accordingly, those parties explained that, if read against the objective of environmentally sound waste management, a take-back of illegally shipped waste by a competent authority under Article 24(2)(c) of the Waste Shipment Regulation also implies the obligation and right on the part of that authority to recover and dispose of that waste.

31. I agree.

32. In line with the European Union’s international obligations under the Basel Convention, the EU legislature has taken the position that there is a risk that the environmentally sound management of waste cannot be ensured if such waste is exported to certain third countries.²⁰

33. The take-back obligation, contained in Article 24(2) of the Waste Shipment Regulation, is the direct consequence of that default position.

34. According to recital 25 of that regulation, that obligation makes it ‘compulsory for the person whose action is the cause of an illegal shipment to take back the waste involved or make alternative arrangements for its recovery or disposal. Failing that, the competent authorities of dispatch or destination, as appropriate, should intervene themselves.’

35. As the Naturvårdsverket, the Parliament, the Council and the Commission, in essence, explained at the hearing, that idea is reflected in the structure of Article 24(2) as follows.

36. On the one hand, letters (a), (b) and (c) concern the return of the waste *back to the country of dispatch*. That part of Article 24(2) accordingly governs those situations in which the waste at issue *has left* the territorial jurisdiction of the competent authority of dispatch.²¹ Those letters stipulate the precise hierarchical order in which that obligation is exercised – with the competent authority of dispatch acting as a ‘stop-gap’ to ensure the return of said waste to the country of dispatch.²²

37. On the other hand, letters (d) and (e) of Article 24(2) govern those situations in which the waste at issue *never left the country of dispatch, has already arrived at the country of destination, or is located in a third country*. To prevent, inter alia, any further unnecessary movements of those shipments, and thus, arguably, to underline the objective of reducing to a minimum any shipments of waste, the waste at issue must be recovered or disposed of in the country of dispatch, the country of destination or a third country.²³

38. In a situation such as that at issue in the present case, where a shipment of waste has left the country of dispatch and is held in transit in a Member State, it is thus solely letters (a), (b) and (c) of Article 24(2) that apply.

39. Letters (d) and (e) consequently do not apply to the factual circumstances of the present case.

40. In principle, it is thus the (de facto or *de jure*) notifier that is in charge of taking back the waste at issue, in line with Article 24(2)(a) and (b).

²⁰ See, to that effect, the annex to Council Decision 97/640/EC 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), which quotes preambular paragraph 7*bis* of the Basel Convention as ‘recognising that transboundary movements of hazardous wastes, especially to developing countries, have a high risk of not constituting an environmentally sound management of hazardous wastes as required by this Convention’.

²¹ Letters (a), (b) and (c) of Article 24(2) of the Waste Shipment Regulation accordingly reflect, within EU law, the obligation contained in Article 9(2)(a) of the Basel Convention, which requires the State of export to ensure that such wastes be ‘taken back by the exporter or the generator or, if necessary, by itself into the State of export’.

²² Accordingly, it is clear, to my mind, that the procedural question of whether it is ‘impracticable’, within the meaning of Article 24(2) of the Waste Shipment Regulation, for a particular person or authority to return waste falling within the scope of that obligation is entirely secondary to the substantive obligation imposed by that regulation of ensuring, one way or another, the return of that waste to the country of dispatch.

²³ Which is also why the third subparagraph of Article 24(2) of the Waste Shipment Regulation only requires a new notification to be issued in the cases falling within letters (a) to (c) thereof.

41. Had UQ and IC decided to take back their illegal shipments, Article 24(2)(b) would have applied.

42. However, as arises from the explanation of the referring court and the national file, UQ and IC expressly requested that the Naturvårdsverket return the waste to Sweden, given their lack of knowledge and/or resources to do so themselves.

43. In so doing, UQ and IC declined to act as notifiers under Article 24(2)(b).²⁴

44. In such a situation, and as all the parties that have participated in the proceedings have observed, it is the Naturvårdsverket, as the competent authority, that is placed, by virtue of Article 24(2)(c) of the Waste Shipment Regulation, under the obligation to return that waste.²⁵

45. After deciding to take over the take-back obligation, and in line with the requirements arising from the third subparagraph of Article 24(2) of the Waste Shipment Regulation, the Naturvårdsverket therefore filed a notification of a transboundary shipment of waste or hazardous waste falling within the scope of the Waste Shipment Regulation with the Belgian and German authorities.

46. What is the consequence of that authority assuming the take-back obligation?

47. In the proceedings at first instance, the Land and Environment Court considered that the take-back obligation under Article 24(2)(c) did not entail a possibility for or obligation on the competent authority to recover or dispose of waste arising from an illegal shipment, given the lack of an express reference to such a possibility or obligation.

48. It is certainly true that letters (a), (b), and (c) of Article 24(2) of the Waste Shipment Regulation are silent as to the consequence arising from the take-back obligation. Only letters (d) and (e) expressly refer to illegal shipments of waste being ‘alternatively recovered or disposed of’.

49. However, in the English-language version, at least, that wording may be read in two ways. On the one hand, the reference to ‘alternatively recovered or disposed of’ may indicate that recovery and disposal reflects an alternative to the taking back of such waste. On the other hand, that wording may be understood to mean that recovery and disposal must always take place after take-back, but may ‘alternatively’ take place without take-back of those types of shipments for which a take-back is not necessary or otherwise impracticable.

50. In the light of the explanations provided at the hearing, I consider that the Court should adopt the second reading.

51. First, I observe that, as explained by the Parliament, the Council and the Commission, Article 24(2) of the Waste Shipment Regulation seeks to reflect, within EU law, Article 9(2) of the Basel Convention. The latter provision lays down that waste that forms part of ‘illegal traffic’ that cannot be taken back by the exporter, generator or State of export must be ‘otherwise disposed of’.

²⁴ For completeness, I should add that Article 24(2)(a) of the Waste Shipment Regulation does not apply in this case because UQ and IC never provided notification of the illegal shipments at issue.

²⁵ In line with Article 25(1) of the Waste Shipment Regulation, that authority may charge the costs associated with that take-back to the notifier. However, as the Naturvårdsverket explained at the hearing, given the costs involved in effecting such a take-back and the inability of natural persons to cover them, in most cases that cost is ultimately borne solely by the competent authority of dispatch.

in accordance with the provisions of [that] Convention'.²⁶ The use of the words 'otherwise disposed of', particularly if read in the light of the Spanish-language (*'eliminados de otro modo'*) and French-language (*'éliminés d'une autre manière'*) versions of that provision, indicates that the take-back obligation *already* entails the obligation to recover or dispose of the waste in question, and that it is only where that initial take-back cannot be effected that the waste may 'otherwise' be disposed of by a different person or authority.

52. Second, it results from Article 3 of the Waste Shipment Regulation, which falls within the same title as Article 24 thereof, that waste is to be shipped *only* for the purposes of disposal or recovery.²⁷ In other words, where an illegal shipment is taken back by the notifier, that person is presumed to ensure its recovery and disposal.²⁸ No other purposes are provided for in that title.²⁹ Accordingly, the aim of the take-back obligation is to correct the illegal nature of that shipment by drawing it back into the EU law framework designed to ensure its recovery and disposal.³⁰

53. It follows that the lack of an express reference in letters (a), (b), and (c) of Article 24(2) of the Waste Shipment Regulation to the need to ensure that the waste thus taken back is recovered or disposed of accordingly does not imply the lack of an obligation on the part of the notifier or the competent authority to do so.

54. Quite the opposite: the obligation of recovery and disposal arises for *all* the scenarios envisaged by letters (a), (b) and (c) of Article 24(2) and is implied within the framework established by the Waste Shipment Regulation as a whole.³¹

55. For the purposes of the present case, that means that, in tasking the Naturvårdsverket with taking back the shipments at issue,³² UQ and IC forfeited the possibility to recover and dispose of that waste in a waste treatment facility of their choice.

56. As the Parliament explained, the converse would unduly incentivise economic operators to attempt illegal waste shipments, await their return by a competent authority, reclaim the waste and re-attempt its export, in direct conflict with the purpose of the Basel Convention and the Waste Shipment Regulation.³³

²⁶ See Article 9(2)(b) of the Basel Convention.

²⁷ See Article 3(1) and (2) of the Waste Shipment Regulation.

²⁸ Article 24(3)(b) of the Waste Shipment Regulation stipulates that the obligation to recover or dispose of an illegal shipment falls, in the case of a shipment which is the responsibility of a consignee, on that person, first and foremost, and only in the alternative on the competent authority itself or on a natural or legal person acting on its behalf.

²⁹ That is why, pursuant to Article 24(2) of the Waste Shipment Regulation, any take-back notification must stipulate, in the form reproduced in Annex IA to the Waste Shipment Regulation, what treatment the waste at issue will undergo and at which facility the recovery or disposal operation will take place.

³⁰ See also Article 22(8) of the Waste Shipment Regulation, which deals with the question of when the obligation to take back or arrange for recovery and disposal ends and which provides that 'the obligation of the notifier and the subsidiary obligation of the country of dispatch to take the waste back or arrange for alternative recovery or disposal shall end when the facility issues the certificate of non-interim recovery or disposal'.

³¹ As the Parliament, the Council and the Commission explain, that is also the reason why Article 25(2) of Regulation (EU) 2024/1157 of the European Parliament and of the Council of 11 April 2024 on shipments of waste, amending Regulations (EU) No 1257/2013 and (EU) 2020/1056 and repealing Regulation (EC) No 1013/2006 (OJ L 2024/1157), now sets out clearly that a take-back of an illegal shipment occurs solely 'in order to arrange for its disposal or recovery'.

³² To be clear, even if UQ and IC had not tasked the Naturvårdsverket with taking back the waste at issue, and subject to confirmation that those persons did not hold the required permits to ensure the recovery and disposal of the waste in an environmentally sound manner, the Naturvårdsverket would have been obliged, in any event, to take back, recover and dispose of the waste at issue.

³³ Likewise, such a reading would, in practice, also oblige a competent authority to store taken-back illegal shipments, at the risk of significant damage to the environment. See, by analogy, judgment of 5 October 1999, *Lirussi and Bizzaro* (C-175/98 and C-177/98, EU:C:1999:486, paragraph 53).

57. For the above reasons, I propose that the Court reply to the first and second questions of the referring court to the effect that Article 24(2)(c) of Regulation No 1013/2006 must be interpreted as laying down the obligation, on the competent authority of the country of dispatch, to take back an illegal shipment and to recover and dispose of its waste contents.

B. The validity question

58. By its third question, the referring court asks, in essence – if the first question is answered in the affirmative – whether the power granted to the competent authority to recover or dispose of waste resulting from an illegal shipment after the take-back, as reflected in Article 24(2)(c) of the Waste Shipment Regulation, is compatible with the protection of the right to property under Article 17 of the Charter.³⁴

59. The Parliament, the Council and the Commission all consider that the right to property, which may be restricted in the public interest, does not preclude limitations which seek to meet the objective of protecting the environment when what is at issue is an illegal shipment of waste. Those institutions, furthermore, consider that the Waste Shipment Regulation strikes an appropriate balance between the right to property, on the one hand, and the protection of the environment, on the other. That balance would be reflected in Article 24(2) of that regulation by attributing the first right and responsibility of recovering and disposing of that waste to its holder, and only subsequently to the competent authorities of the Member States.

60. At the hearing, the Naturvårdsverket aligned itself with that position.

61. First, I do not consider that the obligation on the competent authority to take back illegal shipments and recover or dispose of waste that was taken back entails a transfer of a property right from the owner of the waste to the competent authority.

62. Article 24(2)(a) and (b) of the Waste Shipment Regulation first and foremost tasks the notifier of the illegal shipment in question with taking back that waste and recovering and disposing of its contents. The organiser of the illegal shipment might, but also might not, be the owner of the waste.

63. Where that person does not carry out that obligation of take back or is not considered capable of doing so, Article 24(2)(c) re-assigns that recovery and disposal obligation to the competent authority of dispatch.

64. The re-assignment of the recovery and disposal obligation to the competent authority of dispatch does not lead to a transfer of property rights.

65. Any property rights to the waste at issue accordingly remain with its proprietor, which is not necessarily the organiser of the illegal shipment.

³⁴ While the referring court's question is also posed with reference to Article 1 of the First Additional Protocol to the European Convention on Human Rights, as the institutions correctly note, that instrument does not constitute, as long as the European Union has not acceded to it, a legal instrument which has been formally incorporated into EU law. In those circumstances, the Court has held that the interpretation of EU law and examination of the legality of EU legislation must be undertaken in the light of the fundamental rights guaranteed by the Charter (see, to that effect, judgment of 16 July 2020, *Facebook Ireland and Schrems* (C-311/18, EU:C:2020:559, paragraphs 98 and 99 and the case-law cited)).

66. Second, Article 24(2)(c) of the Waste Shipment Regulation does not impose any obligations beyond those already placed on the notifier under Article 24(2)(a) and (b) thereof.

67. Therefore, the re-assignment does not have the effect of placing any *additional* limitations on the right to property beyond those which, in any event, flow from the framework established by the Waste Shipment Regulation.

68. For the purposes of the present case, the foregoing conclusions mean that UQ and IC's property rights to the content of the shipment, if they existed, were not affected by the re-assignment of the recovery and disposal obligation from those persons to the Naturvårdsverket.³⁵

69. However, even assuming that it were possible to claim that the property rights of the owner of waste were limited because that person cannot freely decide what to do with that waste – and can instead only dispose of it or recover it – that limitation does not follow from the re-assignment of the take-back obligation to the competent authority under Article 24(2)(c) of the Waste Shipment Regulation: it results from the more general legislative treatment of waste in the European Union.³⁶

70. That limitation on the right to property is therefore based in law, and is proportionate to the aim of the protection of the environment. However, that question goes beyond what the present case requires from the Court.

71. It follows from the foregoing that I propose that the Court answer the third question referred for a preliminary ruling to the effect that an examination of the third question has disclosed no factor of such a kind as to affect the validity of Article 24(2)(c) of Regulation No 1013/2006 in the light of Article 17 of the Charter.

IV. Conclusion

72. In the light of all the foregoing considerations, I suggest that the Court of Justice reply to the Svea hovrätt, Mark- och miljööverdomstolen (Svea Court of Appeal, Land and Environment Court of Appeal, Stockholm, Sweden) as follows:

- (1) Article 24(2)(c) 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 laying down the obligation, on the competent authority of the country of dispatch, to take back an illegal shipment and to recover and dispose of its waste contents.

- (2) An examination of the third question has disclosed no factor of such a kind as to affect the validity of Article 24(2)(c) of Regulation No 1013/2006 in the light of Article 17 of the Charter of Fundamental Rights of the European Union.

³⁵ In any event, given the fact that Article 24(2) of the Waste Shipment Regulation is entirely silent as to whether the owner of the waste shipment in question may claim whatever positive value may remain after its recovery and disposal, and so does not preclude that possibility, UQ and IC retained the right to reclaim any 'de-wasted' parts of the illegal shipments in question, and thus what remained of their property after recovery and disposal.

³⁶ See Article 4(1) 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), pursuant to which waste is ultimately destined for either recovery or disposal. As recital 31 of that directive explains, 'the waste hierarchy generally lays down a priority order of what constitutes the best overall environmental option in waste legislation and policy'.