Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

12 December 2013*

(Request for a preliminary ruling — Directive 2008/98/EC — Waste management — Article 16(3) — Principle of proximity — Regulation (EC) No 1013/2006 — Shipment of waste — Mixed municipal waste — Industrial waste and construction waste — Procedure for awarding a service concession for the collection and transport of waste produced on the territory of a municipality — Obligation for the future concessionaire to transport waste collected in the treatment facilities designated by the concession-granting authority — Nearest appropriate treatment facilities)

In Case C-292/12,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tartu ringkonnakohus (Estonia), made by decision of 5 June 2012, received at the Court on 11 June 2012, in the proceedings

Ragn-Sells AS

v

Sillamäe Linnavalitsus,

THE COURT (Fifth Chamber),

composed of T. von Danwitz, President of the Chamber, E. Juhász, A. Rosas, D. Šváby (Rapporteur) and C. Vajda, Judges,

Advocate General: P. Mengozzi,

Registrar: K. Malacek, Administrator,

having regard to the written procedure and further to the hearing on 25 April 2013,

after considering the observations submitted on behalf of:

— Ragn-Sells AS, by E. Tamm, vandeadvokaat,

— the Estonian Government, by M. Linntam, acting as Agent,

— the Greek Government, by F. Dedousi, acting as Agent,

— the Austrian Government, by C. Pesendorfer, acting as Agent,

— the Polish Government, by B. Majczyna and M. Szpunar, acting as Agents,

* Language of the case: Estonian.

— the Portuguese Government, by L. Inez Fernandes, acting as Agent,

— the European Commission, by A. Antoniadis and A. Alcover San Pedro and by D. Düsterhaus, acting as Agents, assisted by C. Ginter, vandeadvokaat,

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

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 35 TFEU, 49 TFEU, 56 TFEU, the competition rules of the FEU Treaty and Article 16(3) 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).

2 The request has been made in proceedings between Ragn-Sells AS ('Ragn-Sells') and Sillamäe Linnavalitsus (Municipality of Sillamäe) concerning certain contract documents drawn up by that municipality in the course of a procedure for awarding a service concession for the collection and transport of waste produced on its territory.

Legal context

EU law

Directive 2008/98

3 Under Article 41 thereof, Directive 2008/98 repealed and replaced, with effect from 12 December 2010, Directive 2006/12/EC of the European Parliament and of the Council of 5 April 2006 on waste (OJ 2006 L 114, p. 9). Thus, references to the latter directive must be construed as being to the former.

4 Recitals 6, 8, 31 and 32 in the preamble to Directive 2008/98 state:

'(6) 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. Waste policy should also aim at reducing the use of resources, and favour the practical application of the waste hierarchy.

...

(8) … the recovery of waste and the use of recovered materials should be encouraged in order to conserve natural resources. ...

...

(31) The waste hierarchy generally lays down a priority order of what constitutes the best overall environmental option in waste legislation and policy, while departing from such hierarchy may be necessary for specific waste streams when justified for reasons of, inter alia, technical feasibility, economic viability and environmental protection.

(32) It is necessary, in order to enable the Community as a whole to become self-sufficient in waste disposal and in the recovery of mixed municipal waste collected from private households and to enable the Member States to move towards that aim individually, to make provision for a network of cooperation as regards disposal installations and installations for the recovery of mixed municipal waste collected from private households, taking into account geographical circumstances and the need for specialised installations for certain types of waste.'

5 Under Article 1 of Directive 2008/98, it 'lays down measures to protect the environment and human health by preventing or reducing the adverse impacts of the generation and management of waste and by reducing overall impacts of resource use and improving the efficiency of such use'.

6 Article 3 of that directive sets out the following definitions:

'(9) "waste management" means the collection, transport, recovery and disposal of waste, ...

(10) "collection" means the gathering of waste, including the preliminary sorting and preliminary storage of waste for the purposes of transport to a waste treatment facility;

(11) "separate collection" means the collection where a waste stream is kept separately by type and nature so as to facilitate a specific treatment;

...

(14) "treatment" means recovery or disposal operations, including preparation prior to recovery or disposal;

(15) "recovery" means any operation the principal result of which is waste serving a useful purpose by replacing other materials which would otherwise have been used to fulfil a particular function, or waste being prepared to fulfil that function, in the plant or in the wider economy. Annex II sets out a non-exhaustive list of recovery operations. ...

...

(17) "recycling" means any recovery operation by which waste materials are reprocessed into products, materials or substances whether for the original or other purposes. It includes the reprocessing of organic material but does not include energy recovery and the reprocessing into materials that are to be used as fuels or for backfilling operations;

...

(19) "disposal" means any operation which is not recovery even where the operation has as a secondary consequence the reclamation of substances or energy. Annex I sets out a non-exhaustive list of disposal operations. ...

(20) "best available techniques" means best available techniques as defined in Article 2(11) of [Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control (OJ 1996 L 257, p. 26].'

7 As regards the definition of 'best available techniques', under the second paragraph of Article 22 of Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control (OJ 2008 L 24, p. 8), reference must henceforth be made to that directive, which repealed and replaced Directive 96/61. Article 2(12) of Directive 2008/1 gives the following definition:

'"best available techniques" means the most effective and advanced stage in the development of activities and their methods of operation which indicate the practical suitability of particular techniques for providing in principle the basis for emission limit values designed to prevent and, where that is not practicable, generally to reduce emissions and the impact on the environment as a whole. …'

8 Article 4 of Directive 2008/98, entitled 'Waste hierarchy', provides in paragraph 1:

'The following waste hierarchy shall apply as a priority order in waste prevention and management legislation and policy:

(a) prevention;

(b) preparation for re-use;

(c) recycling;

(d) other recovery, e.g. energy recovery; and

(e) disposal.'

9 Chapter II of Directive 2008/98, which comprises Articles 8 to 14, is entitled 'General requirements'. Article 10, covering recovery, is worded as follows:

'1. Member States shall take the necessary measures to ensure that waste undergoes recovery operations, in accordance with Articles 4 and 13.

2. Where necessary to comply with paragraph 1 and to facilitate or improve recovery, waste shall be collected separately if technically, environmentally and economically practicable and shall not be mixed with other waste or other material with different properties.'

10 Article 13 of that directive, entitled 'Protection of human health and the environment', provides:

'Member States shall take the necessary measures to ensure that waste management is carried out without endangering human health, without harming the environment and, in particular:

(a) without risk to water, air, soil, plants or animals;

(b) without causing a nuisance through noise or odours; and

(c) without adversely affecting the countryside or places of special interest.'

11 Articles 15 to 22 of Directive 2008/98 make up Chapter III thereof, covering waste management. Article 15(4) provides:

'Member States shall take the necessary measures to ensure that, within their territory, the establishments or undertakings which collect or transport waste on a professional basis deliver the waste collected and transported to appropriate treatment installations respecting the provisions of Article 13.'

12 Article 16 of that directive, entitled 'Principles of self-sufficiency and proximity':

'1. Member States shall take appropriate measures, in cooperation with other Member States where this is necessary or advisable, to establish an integrated and adequate network of waste disposal installations and of installations for the recovery of mixed municipal waste collected from private households, including where such collection also covers such waste from other producers, taking into account best available techniques.

... Member States may also limit outgoing shipments of waste on environmental grounds as set out in [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)].

2. The network shall be designed to enable the Community as a whole to become self-sufficient in waste disposal as well as in the recovery of waste referred to in paragraph 1, and to enable Member States to move towards that aim individually, taking into account geographical circumstances or the need for specialised installations for certain types of waste.

3. The network shall enable waste to be disposed of or waste referred to in paragraph 1 to be recovered in one of the nearest appropriate installations, by means of the most appropriate methods and technologies, in order to ensure a high level of protection for the environment and public health.

4. The principles of proximity and self-sufficiency shall not mean that each Member State has to possess the full range of final recovery facilities within that Member State.'

13 The first subparagraph of Article 23(1) of Directive 2008/98 provides:

'Member States shall require any establishment or undertaking intending to carry out waste treatment to obtain a permit from the competent authority.'

14 Article 26 of Directive 2008/98 is worded as follows:

'Where the following are not subject to permit requirements, Member States shall ensure that the competent authority keeps a register of:

(a) establishments or undertakings which collect or transport waste on a professional basis;

...'

Regulation No 1013/2006

15 Under Article 61 of Regulation No 1013/2006, that regulation repealed and replaced 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), and references to the latter

regulation must be construed as being made to Regulation No 1013/2006. Regulation No 1013/2006 was adopted on the basis of Article 175(1) EC (now Article 192 TFEU). Regulation No 259/93 was adopted on the basis of Article 130s of the EC Treaty (now, after amendment, Article 175 EC).

16 Regulation No 1013/2006 contains the following recitals in the preamble thereto:

‘(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.

...

(14) In the case of shipments of waste destined for disposal operations and waste not listed in Annex III, IIIA or IIIB destined for recovery operations, it is appropriate to ensure optimum supervision and control by requiring prior written consent to such shipments. Such a procedure should in turn entail prior notification, which enables the competent authorities to be duly informed so that they can take all necessary measures for the protection of human health and the environment. It should also enable those authorities to raise reasoned objections to such a shipment.

(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.

...

(20 In the case of shipments of waste for disposal, Member States should take into account the principles of proximity, priority for recovery and self-sufficiency at Community and national levels, in accordance with Directive 2006/12 …, by taking measures in accordance with the [EC] Treaty to prohibit generally or partially or to object systematically to such shipments. Account should also be taken of the requirement laid down in Directive 2006/12 …, whereby Member States are to establish an integrated and adequate network of waste disposal installations, in order to enable the Community as a whole to become self-sufficient in waste disposal and the Member States to move towards that aim individually, taking into account geographical circumstances or the need for specialised installations for certain types of waste. ...

(21) In the case of shipments of waste destined for recovery, destined for recovery, Member States should be able to ensure that the waste management facilities covered by Directive 96/61 … 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 …, 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.

...’

17 Under Article 1 of Regulation No 1013/2006:

‘1. This 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.

2. This Regulation shall apply to shipments of waste:

(a) between Member States, within the Community or with transit through third countries;

...'

18 Article 2(4) and (6) of that regulation refers, in respect of the definitions of 'disposal and 'recovery', to the definitions in Directive 2006/12, or Directive 2008/98 for the present purposes. Article 2(34) defines 'shipment' as the transport of waste destined for recovery or disposal which is planned or takes place inter alia between two countries.

19 Title II of that regulation, covering shipments within the European Union, comprises Articles 3 to 32 thereof, Article 3 of which provides:

'1. Shipments of the following wastes shall be subject to the procedure of prior written notification and consent as laid down in the provisions of this Title:

(a) if destined for disposal operations:

all wastes;

(b) if destined for recovery operations:

(i) wastes listed in Annex IV, which include, inter alia, wastes listed in Annexes II and VIII to the Basel Convention [on the control of transboundary movements of hazardous wastes and their disposal, signed on 22 March 1989, approved on behalf of the European Economic Community by Council Decision 93/98/EEC of 1 February 1993 (OJ 1993 L 39, p. 1)];

(ii) wastes listed in Annex IVA,

(iii) wastes not classified under one single entry in either Annex III, IIIB, IV or IVA,

(iv) mixtures of wastes not classified under one single entry in either Annex III, IIIB, IV or IVA unless listed in Annex IIIA.

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 IIIB;

(b) mixtures, not classified under one single entry in Annex III, of two or more wastes listed in Annex III, provided that the composition of these mixtures does not impair their environmentally sound recovery and provided that such mixtures are listed in Annex IIIA, in accordance with Article 58.

...

5. Shipments of mixed municipal waste … collected from private households, including where such collection also covers such waste from other producers, to recovery or disposal facilities shall, in accordance with this Regulation, be subject to the same provisions as shipments of waste destined for disposal.'

20 The annexes to Regulation No 1013/2006, referred to in Article 3 thereof cover, in essence, the following waste:

— Annex III, the so-called '"green" listed waste', lists the non-hazardous waste destined for recovery;

— Annex IIIA contains a list of mixes of two or more wastes listed in Annex III and not classified under one single entry;

— Annex IIIB, covers other non-hazardous waste for recovery awaiting inclusion in the relevant annexes to the aforementioned Basel Convention of 22 March 1989 or Decision C(2001)107/Final of the Organisation for Economic Co-operation and Development (OECD) Council concerning the revision of Decision C(92)39/Final on the control of transboundary movements of wastes destined for recovery operations;

— Annex IV, the so-called '"orange" listed waste', lists the non-hazardous waste destined for recovery; and

— Annex IVA covers the list of waste in Annex III but nevertheless subject to the prior notification and consent procedure.

21 Articles 11, 12 and 18 of Regulation No 1013/2006 are worded as follows:

'*Article 11*

Objections to shipments of waste destined for disposal

1. Where a notification is submitted regarding a planned shipment of waste destined for disposal, the competent authorities of destination and dispatch may … raise reasoned objections based on one or more of the following grounds and in accordance with the Treaty:

(a) that the planned shipment or disposal would not be in accordance with measures taken to implement the principles of proximity, priority for recovery and self-sufficiency at Community and national levels in accordance with Directive 2006/12 …, to prohibit generally or partially or to object systematically to shipments of waste; or

...

Article 12

Objections to shipments of waste destined for recovery

1. Where a notification is submitted regarding a planned shipment of waste destined for recovery, the competent authorities of destination and dispatch may … raise reasoned objections based on one or more of the following grounds and in accordance with the Treaty:

...

Article 18

Waste to be accompanied by certain information

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.

2. The contract referred to in Annex VII between the person who arranges the shipment and the consignee for recovery of the waste shall be effective when the shipment starts and shall include an obligation, where the shipment of waste or its recovery cannot be completed as intended or where it has been effected as an illegal shipment, on the person who arranges the shipment or, where that person is not in a position to complete the shipment of waste or its recovery (for example, is insolvent), on the consignee, to:

(a) take the waste back or ensure its recovery in an alternative way; and

(b) provide, if necessary, for its storage in the meantime.

The person who arranges the shipment or the consignee shall provide a copy of the contract upon request by the competent authority concerned.

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.

...'

Estonian law

22 Paragraph 22[1] of the Law on waste (Jäätmeseadus) ('the JäätS') provides, in terms identical to those used in Article 4(1) of Directive 2008/98, that a hierarchy of waste is to serve inter alia as the basis for the establishment and application of waste prevention and management measures, although it allows for a departure from the waste hierarchy to be permissible if, having regard to the whole life cycle of the object, a better overall environmental outcome is guaranteed.

23 Paragraph 32 of the JäätS, entitled 'Principle of proximity in waste treatment', is worded as follows:

'The disposal of waste and the recovery of mixed municipal waste shall be undertaken in a technologically suitable waste treatment facility which is located as near as possible to the place of origin and at which it is ensured that no risks to human health or the environment arise.'

24 Under Paragraph 66 of the JäätS:

‘1. Organised waste transport is the collection and transport of municipal waste from a designated area to one or more designated waste treatment facilities by an undertaking selected by the appropriate local authority.

...

2. The local authority unit shall organise, in its area of responsibility, the collection and transport of municipal waste, particularly refuse or mixed municipal waste, sorting residues and types of waste occurring during collection differentiated by categories at the place of origin of municipal waste. Organised waste transport may also include other types of municipal waste or other waste if necessary to meet the requirements of the present law or to satisfy a fundamental public interest.’

25 Paragraph 67 of the JäätS provides:

‘1. To find a provider of the service of organised waste transport, the local authority unit shall, alone or in cooperation with other local authority units, award a service concession on the basis of the provisions of the Law on public procurement (riigihangete seadus).

...

3. … The contract documents concerning organised waste transport shall lay down inter alia the following conditions:

1. the area from which waste is to be transported;

2. the types of waste to be transported;

...

4. the waste treatment facility;

...

8. the number of detached houses and apartment blocks and apartments in the apartment blocks in the area from which waste is to be transported.’

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

26 Sillamäe is a coastal town with a population of approximately 15 000, situated in the far northeast of Estonia.

27 In 2007, the Sillamäe Linnavalitsus launched a public procurement procedure for the conclusion of a contract entitled ‘Management contract transferring the obligation to carry out the processing and recovery of municipal waste at the Sillamäe landfill site to a legal person governed by private law’. That service concession was granted to Ecocleaner Sillamäe OÜ for a 10-year period.

28 In 2011, the same municipality launched another public procurement procedure for the award of a concession for the collection and transport services of waste produced on its territory. The dispute in the main proceedings concerns the lawfulness of paragraph 3.5 of the contract documents relating to the second public procurement procedure (‘the contract documents’). That clause stipulated that the mixed municipal waste was to be transported to the Sillamäe landfill site (‘the Sillamäe facility’) —

that is to say, the facility which was the subject-matter of the first public procurement procedure — located 5 km from the town of Sillamäe, whilst industrial and building waste was to be taken to the Uikala landfill site ('the Uikala facility'), located 25 km away. The Sillamäe Linnavalitsus did not conclude a contract for the treatment of waste with the operator of the latter facility.

29 Ragn-Sells is an undertaking engaged in both the treatment of mixed municipal waste and waste transport. It submits inter alia that, in requiring that waste in certain categories which are collected on the territory of the Sillamäe Linnavalitsus be transported to the two facilities designated in the disputed paragraph of the contract documents, to the exclusion of all other facilities where the waste could also be treated in an equivalent manner, that paragraph confers on the operators of those two facilities an exclusive right which is contrary to the principle of free competition and the free movement of goods, freedom of establishment and freedom to provide services. It is a common practice of the Estonian authorities, based on a questionable interpretation of Paragraph 67(3)(4) of the JäätS, to the effect that those municipalities are required to designate the facility which is to receive the waste collected under the waste transport concessions granted by them.

30 Ragn-Sells submits that 11 competing facilities for the treatment of mixed municipal waste are established in a 260 km radius of Estonia, most of which, according to the referring court, use equivalent technologies.

31 Ragn-Sells adds that the main proceedings raise a question of principle the interest of which extends beyond the borders of Estonia since, in terms of the geographical situation of each municipality, Latvian undertakings could be interested in providing the services involved.

32 In the submission of the Sillamäe Linnavalitsus, it is for the contracting authority to determine the specific terms of the contract it intends to award, depending on the requirements to be met, inter alia as regards the treatment facility to which the waste to be collected is to be transported; an economic operator responsible for a service for the collection and transport of waste transport has no subjective rights to enforce in respect of the treatment of the waste transported.

33 The Tartu ringkonnakohus (Court of Appeal, Tartu) considers that the concession contract for the management of the Sillamäe facility concluded in 2007 by the Sillamäe Linnavalitsus entails the grant of an exclusive right for the purposes of Article 106 TFEU to the successful tenderer for the treatment of mixed municipal waste collected on the territory of that municipality. It also considers that paragraph 3.5 of the contract documents also has the effect of granting such an exclusive right to the operator of the Uikala facility for the treatment of industrial and building waste.

34 The referring court notes that European Union competition law must be observed in the organisation of public procurement procedures and that the granting of a special or exclusive right to an undertaking for the purposes of Article 106(1) TFEU is liable to constitute an abuse of a dominant position, which is prohibited under the first paragraph of Article 102 TFEU. For the determination of the relevant market, it considers that there is in Estonia a market for the treatment of mixed municipal waste, on which various undertakings are active which convert that waste into fuel or use the waste as fuel, using the same technologies as the Sillamäe facility. The referring court considers that, given the small size of the Estonian territory, all those undertakings are in competition for the management of mixed municipal waste collected on the territory of the Sillamäe Linnavalitsus. It notes that the competition between those undertakings is exacerbated by a shortage of that type of waste. Given the existence of that market, the exclusion of all treatment facilities other than the one designated by the contracting authority could constitute an abusive practice under the second paragraph of Article 102 TFEU, inter alia in so far as it gives rise to a market limitation liable to result in price increases for waste producers and electricity consumers.

35 The Tartu ringkonnakohus therefore questions the implications in terms of the grant of exclusive rights such as those it has found to exist in the main proceedings, the provisions of the FEU Treaty on competition, and also Articles 35 TFEU, 49 TFEU and 56 TFEU, in so far as such a practice could constitute an obstacle to the free movement of waste which might dissuade undertakings from other Member States from establishing themselves in Estonia or prevent such undertakings from providing services there.

36 Lastly, the referring court asks whether the principle of proximity laid down in Article 16(3) of Directive 2008/98 provides justification in the present case for the grant of an exclusive right to the nearest treatment facilities. In the case of Member States whose territory is relatively small, such as the Republic of Estonia, that principle could mean that waste must be treated in the Member State concerned, and the existence of a market for waste treatment in that State could mean that it is not necessary to designate a given facility.

37 In those circumstances, the Tartu ringkonnakohus decided to stay proceedings and refer the following questions to the Court for a preliminary ruling:

‘1. Are Article 106(1) [TFEU] in conjunction with Article 102 [TFEU], the free movement of goods, the freedom of establishment and the freedom to provide services to be interpreted as meaning that it is not contrary to any of them for a Member State to permit an undertaking which operates a specific waste treatment facility to be granted an exclusive right to process municipal waste in a specified area, in return for consideration, where a number of competing undertakings owning a number of different waste treatment facilities which satisfy the environmental requirements and use equivalent technologies are operating within a radius of 260 km?

2. Is Article 106(2) [TFEU] to be interpreted as meaning that it is not contrary thereto for a Member State to regard, first, the collection and transport of waste and, secondly, the processing of waste as services in the general economic interest, but to separate those services from each other, thereby restricting free competition in the waste treatment market?

3. In a procedure for the award of a concession for the service of collecting and transporting waste, a condition of which is that two undertakings are granted an exclusive right to treat waste in the area designated in the concession agreement, may the applicability of the provisions of competition law in the [FEU Treaty] be excluded?

4. Is Article 16(3) of [Directive 2008/98] to be interpreted as meaning that a Member State may, on the basis of the principle of proximity, restrict competition and permit the undertaking operating the waste treatment facility nearest to the area in which the waste occurs to be granted an exclusive right to process the waste, in return for consideration, where a number of competing undertakings owning a number of different waste treatment facilities which satisfy the environmental requirements and use equivalent technologies are operating within a radius of 260 km?’

The questions referred for a preliminary ruling

Admissibility

38 As regards the possible implications of the Treaty’s competition rules in a situation such as that at issue in the main proceedings, referred to in the first three questions, it should be noted that both Article 106(1) and (2) TFEU refer, for the situations it covers, to all the rules contained in the Treaty, including the competition rules.

39 In that regard it should be borne in mind that the need to provide an interpretation of EU law which will be of use to the national court makes it necessary for the national court to define the factual and legal context of the questions it is asking or, at the very least, to explain the factual circumstances on which those questions are based. Those requirements are of particular importance in the area of competition, where the factual and legal situations are often complex (see, inter alia, Case C-384/08 *Attanasio Group* [2010] ECR I-2055, paragraph 32 and the case-law cited).

40 In the present case, Article 106 TFEU, read in conjunction with Article 102 TFEU, as construed by the referring court, presupposes the existence of a dominant position in a substantial part of the internal market and abuse of that dominant position in a manner liable to affect trade between Member States.

41 The order for reference does not, however, contain information enabling the identification of the constituent elements of a dominant position for the purposes of Article 102 TFEU in the context of the main proceedings.

42 There is in fact nothing in the order for reference to that effect in relation to the undertaking operating the Uikala facility. As for the Sillamäe facility, the order for reference indicates that the relevant market is the Estonian market for the recovery of mixed municipal waste, on which 11 undertakings are present, including the undertaking operating the Sillamäe facility. There is nothing to indicate that it holds any particular position on that market. Nor does the order for reference contain any information to give the impression that the obligations at issue in the main proceedings, which relate to certain categories of waste collected on the territory of a small municipality for the size of the Member State concerned, are such as to confer a dominant position on a substantial part of the internal market on the undertakings which operate those facilities, or that the exercise of those rights necessarily leads to abuse of any dominant position, or that those rights are liable to create a situation in which the undertakings benefiting from the arrangement would be led to engage in such abuse.

43 Therefore, the Court finds that the order for reference does not contain any specific indication as to the applicability of the Treaty's competition rules as such to the case in the main proceedings. Consequently, in so far as they refer to those rules, the questions referred are inadmissible, as the Court does not have before it the factual and legal material necessary to give a useful answer (see, by analogy, Case C-295/05 *Asemfo* [2007] ECR I-2999, paragraphs 42, 43 and 45).

Substance

44 It should be observed as a preliminary point, that, by its first question, the referring court asks about the compatibility of the obligation imposed by a local authority of a Member State on a future concessionaire of a concession for the collection and transport of waste to deliver certain types of waste collected on the territory of that municipality, namely either mixed municipal waste or industrial and building waste, to an undertaking established in the same Member State in order for it to be treated, in circumstances such as those at issue in the main proceedings, with the relevant provisions of the Treaty guaranteeing the free movement of goods and also freedom of establishment and freedom to provide services, those provisions being Articles 35 TFEU and 36 TFEU, on the one hand, and Articles 49 TFEU and 56 TFEU, on the other.

45 By its fourth question, the referring court asks about the potential implications of the principle of proximity applicable to the treatment of certain types of waste, laid down in Article 16(3) of Directive 2008/98, for the imposition of such an obligation.

46 However, in so far as it relates to Articles 35 TFEU and 36 TFEU, the first question is also liable to concern the specific EU legislation on waste, in particular the rules on waste shipments laid down in Regulation No 1013/2006 and Directive 2008/98.

The first question, in so far as it relates to Articles 35 TFEU and 36 TFEU and the fourth question

47 First of all, it should be borne in mind that the Court may deem it necessary to consider provisions of EU law to which the national court has not referred in its questions in order to provide that court with elements of interpretation which may be of use to it (see, to that effect, Case C-506/06 *Mayr* [2008] ECR I-1017, paragraph 43 and the case-law cited).

48 The answer to the first question, as it concerns Articles 35 TFEU and 36 TFEU, entails an examination of the potential implications of Regulation No 1013/2006 for a situation such as that at issue in the main proceedings.

49 The Court has held that, like Regulation No 259/93 which preceded it, the aim of Regulation No 1013/2006 is to provide a harmonised set of procedures whereby movements of waste can be limited in order to secure protection of the environment (see, to that effect, Case C-411/06 *Commission* v *Parliament and Council* [2009] ECR I-7585, paragraph 72). It follows that it is not necessary to examine also whether a national measure on waste shipment complies with Articles 34 TFEU to 36 TFEU (see, to that effect, Case C-324/99 *DaimlerChrysler* [2001] ECR I-9897, paragraph 46).

50 Accordingly, in order to provide the referring court with an answer which may be of use to it, it must be considered that, by its first question in so far as it concerns Articles 35 TFEU and 36 TFEU, and by its fourth question, the referring court asks, in essence, whether the provisions of Regulation No 1013/2006, read in conjunction with Article 16 of Directive 2008/98, must be interpreted as allowing a local authority to require the undertaking holding the concession for the services for the collection and transport of waste produced on its territory to deliver certain types of waste collected to the operator of the nearest appropriate treatment facility, which is established in the same Member State as that municipality, thereby preventing the waste in question from being shipped to another Member State for treatment.

51 Under Article 1(2) of Regulation No 1013/2006, that regulation is applicable to shipments of waste taking place, inter alia, between Member States, with the exception of shipments of waste coming under the specific cases or rules referred to in Article 1(3), which have no bearing on the case at issue in the main proceedings.

52 Under Article 3 of Regulation No 1013/2006, shipments of waste between Member States are to be subject to the procedure of prior written notification and consent as laid down in Articles 4 to 17 thereof, which are applicable to waste destined for disposal operations and hazardous waste destined for recovery operations, or to general information requirements laid down in Article 18 thereof, which concerns, in principle, only non-hazardous waste destined for recovery operations.

53 It follows from Articles 11, 12 and 18 of Regulation No 1013/2006 that the Member States have different prerogatives or obligations as regards, on the one hand, shipments between Member States of waste destined for disposal operations and shipments of waste destined for recovery operations, on the other. Moreover, under Article 3(5) of that regulation, shipments of mixed municipal waste collected from private households and other producers to recovery or disposal facilities are subject to the same provisions as shipments of waste destined for disposal operations.

54 The order for reference indicates that, under paragraph 3.5 of the contract documents, mixed municipal waste collected on the territory of the Sillamäe Linnavalitsus must be transported to the Sillamäe facility. As just observed in the preceding paragraph, that waste in any event falls within the category of waste destined for disposal operations for the application of Regulation No 1013/2006.

55 As for industrial and building waste, which must be transported to the Uikala facility, given the hierarchy of waste as provided for in Article 4 of Directive 2008/98, such waste is potentially destined for either recovery operations or disposal operations. Consequently, it is appropriate to consider whether the provisions of Regulation No 1013/2006 applicable to shipments between Member States of waste destined for disposal operations and waste destined for recovery operations allow for the provision of an obligation such as that stipulated in paragraph 3.5 of the contract documents.

56 As regards, first of all, waste destined for disposal operations and mixed municipal waste, it follows from Article 11(1)(a) of Regulation No 1013/2006, read in the light of recital 20 in the preamble thereto, and Article 16 of Directive 2008/98, that the Member States may adopt measures of general application restricting shipments of that waste between Member States, in the form of general or partial prohibitions of shipments, by way of implementation of the principles of proximity, priority for recovery and self-sufficiency under Directive 2008/98.

57 It follows by analogy from paragraphs 37 to 42 of the judgment in Case C-209/98 *Sydhavnens Sten & Grus* [2000] ECR I-3743 that an obligation imposed by a local authority on the undertaking responsible for the collection of waste on its territory to deliver certain types of waste to a treatment facility situated in the same Member State amounts to a measure of general application laying down a prohibition on shipments of the waste in question to other facilities, as provided for in Article 11(1)(a) of Regulation No 1013/2006, where the producers of that waste are themselves required to deliver the waste either to that undertaking or to that facility.

58 Consequently, that measure complies with Regulation No 1013/2006 in so far as it is intended to implement, inter alia, the principles of self-sufficiency and proximity provided for in Article 16 of Directive 2008/98.

59 Under Article 16 of Directive 2008/98, Member States are required to establish an integrated and adequate network of waste disposal installations and of installations for the recovery of mixed municipal waste collected, taking into account best available techniques and designing that network in such a manner, inter alia, as to move individually towards self-sufficiency for the treatment of that waste and so that that treatment may take place in one of the appropriate facilities nearest to the place where it is produced.

60 For the establishment of such an integrated network, Member States have some discretion as to the choice of territorial basis they deem appropriate for achieving national self-sufficiency for the treatment of waste (see, by analogy in respect of Article 5 of Directive 2006/12, Case C-297/08 *Commission* v *Italy* [2010] ECR I-1749, paragraph 62).

61 The Court has nevertheless stated that, in that context, in particular as regards appropriate measures to encourage rationalisation of the collection, sorting and treatment of waste, one of the most important measures that Member States must adopt, inter alia through local authorities having the relevant powers in the matter, must seek to have the waste treated in the facility which is situated as close as possible to the place where the waste is produced, especially in the case of mixed municipal waste, in order to limit as far as possible the transportation of waste (see, by analogy, *Commission* v *Italy*, paragraphs 64, 66 and 67 and the case-law cited).

62 Thus, the authorities of the Member States are empowered to regulate or organise the waste referred to in Article 16 of Directive 2008/98 in such a way that the waste is treated in the nearest appropriate facility.

63 Accordingly, in the case of waste destined for disposal operations and mixed municipal waste collected from private households and, as applicable, other producers, a Member State may confer on local authorities, on the geographical scale it deems appropriate, powers to manage the waste produced on

their territory in order to ensure compliance with its obligations under Article 16 of Directive 2008/98. Those authorities may, as part of the powers conferred upon them, provide that those types of waste will be treated in the nearest appropriate facility.

64 As regards, secondly, shipments of waste destined for recovery operations, other than mixed municipal waste, they may come under two different sets of rules. The first set, under Article 12(1) of Regulation No 1013/2006, provides that the competent national authorities may object to shipments between Member States of waste coming under Article 3(1)(b) thereof, which are subject to the procedure of prior written notification and consent, only on a case-by-case basis, on specific grounds which must relate to a specific shipment, such as inadequacies or risks associated with the shipment per se, the planned recovery, the destination facility or the person who are to compete in various operations.

65 The second set, under Article 18 of Regulation No 1013/2006, which is applicable to shipments of waste as referred to in Article 3(2) thereof, merely requires that shipped waste must be accompanied by a standardised information document, drawn up on the basis of a contract which must comply with certain requirements and may be demanded by Member States for the purpose of inspection, enforcement of that regulation, planning or statistics.

66 It therefore follows from the examination of the provisions of Regulation No 1013/2006 applicable to shipments between Member States of waste destined for recovery operations other than mixed municipal waste that that regulation does not provide for the possibility for a national authority to adopt a measure of general application having the effect of prohibiting, totally or partially, shipments of such waste to other Member States for treatment.

67 Accordingly, as is apparent from paragraph 57 of this judgment, an obligation imposed by a local authority on the undertaking responsible for the collection of waste on its territory to deliver industrial and building waste to a treatment facility situated in the same Member State amounts to such a measure of general application which is not permitted under Regulation No 1013/2006 is so far as it relates to recoverable waste, where the producers of the waste in question were themselves required to deliver the waste either to that undertaking or to that facility.

68 In the light of all the foregoing considerations, the answer to the first question, in so far as it concerns Articles 35 TFEU and 36 TFEU, and the fourth question is that the provisions of Regulation No 1013/2006, read in conjunction with Article 16 of Directive 2008/98, must be interpreted as:

— permitting a local authority to require the undertaking responsible for the collection of waste on its territory to transport mixed municipal waste collected from private households and, as applicable, from other producers, to the nearest appropriate treatment facility established in the same Member State as that authority;

— not permitting a local authority to require the undertaking responsible for the collection of waste on its territory to transport industrial and building waste produced on its territory to the nearest appropriate treatment facility established in the same Member State as that authority, where that waste is intended for recovery, if the producers of that waste are themselves required to deliver the waste either to that undertaking or directly to that facility.

The first question, in so far as it concerns Articles 49 TFEU and 56 TFEU

69 By its first question, in so far as it concerns Articles 49 TFEU and 56 TFEU, and therefore irrespective of the implications of EU law for waste management as has just been set out in the preceding paragraphs, the referring court asks, in essence, whether those articles must be interpreted as precluding a local authority from granting an exclusive right to treat certain types of waste collected on its territory, that right being granted either directly through a service concession covering

specifically the management of a facility destined for the treatment of that waste or indirectly, by requiring the concessionaire of a service concession for the collection and transport of waste to deliver that waste to an economic operator designated by that authority.

70 It should be borne in mind in that regard that, according to the Court's settled case-law, the provisions of the FEU Treaty on freedom of establishment and the freedom to provide services do not apply to a situation, all the relevant elements of which are confined within one single Member State (see, to that effect, Case C-134/95 *USSL No 47 di Biella* [1997] ECR I-195, paragraph 19; Case C-245/09 *Omalet* [2010] ECR I-13771, paragraph 12; Case C-186/12 *Impacto Azul* [2013] ECR, paragraph 19).

71 Yet it is apparent from the order for reference that the dispute in the main proceedings between Ragn-Sells, established in Estonia, and the Sillamäe Linnavalitsus, an Estonian municipality, concerns a clause in the contract documents relating to the 'award of a concession for the organised removal of waste in the municipality of Sillamäe'. Under that clause, waste produced in the territory of that municipality must be transported to two centres situated in that same Member State.

72 There is, moreover, nothing in the file submitted to the Court indicating that undertakings established in other Member States have been interested in treating waste produced in the territory of Sillamäe Linnavalitsus.

73 It is therefore clear that such a situation is not in any way linked to any of the situations envisaged by EU law in the area of the freedom to provide services and freedom of establishment.

74 In those circumstances, the answer to the first question referred to the Court must be that, in so far as it concerns Articles 49 TFEU and 56 TFEU, they do not apply to a situation such as that in the main proceedings, which is confined in all respects within a single Member State.

Costs

75 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 (Fifth Chamber) hereby rules:

1. **The provisions of Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste, read in conjunction with Article 16 of Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives, must be interpreted as:**

   — **permitting a local authority to require the undertaking responsible for the collection of waste on its territory to transport mixed municipal waste collected from private households and, as applicable, from other producers, to the nearest appropriate treatment facility established in the same Member State as that authority;**

   — **not permitting a local authority to require the undertaking responsible for the collection of waste on its territory to transport industrial and building waste produced on its territory to the nearest appropriate treatment facility established in the same Member State as that authority, where that waste is intended for recovery, if the producers of that waste are themselves required to deliver the waste either to that undertaking or directly to that facility.**

2. Articles 49 TFEU and 56 TFEU do not apply to a situation such as that in the main proceedings, which is confined in all respects within a single Member State.

[Signatures]