JUDGMENT OF THE COURT (Fifth Chamber)

19 June 2003 (1)

(Directive 75/442/EEC, as amended by Directive 91/156/EEC and Decision 96/350/EC - Directive 94/62/EC - Concept of waste - Concept of recycling - Processing of metal packaging waste)

In Case C-444/00,

REFERENCE to the Court under Article 234 EC by the High Court of Justice of England and Wales, Queen's Bench Division (Administrative Court), for a preliminary ruling in the proceedings pending before that court between

The Queen on the application of **Mayer Parry Recycling Ltd**

and

Environment Agency,

Secretary of State for the Environment, Transport and the Regions,

interveners:

Corus (UK) Ltd

and

Allied Steel and Wire Ltd (ASW),

on the interpretation of Council Directive 75/442/EEC of 15 July 1975 on waste (OJ 1975 L 194, p. 39), as amended by Council Directive 91/156/EEC of 18 March 1991 (OJ 1991 L 78, p. 32) and Commission Decision 96/350/EC of 24 May 1996 (OJ 1996 L 135, p. 32), and of European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste (OJ 1994 L 365, p. 10),

THE COURT (Fifth Chamber),

composed of: M. Wathelet, President of the Chamber, C.W.A. Timmermans (Rapporteur), P. Jann, S. von Bahr and A. Rosas, Judges,

Advocate General: S. Alber,

Registrar: M.-F. Contet, Principal Administrator,

after considering the written observations submitted on behalf of:

- Mayer Parry Recycling Ltd, by M. Fordham and T. de la Mare, Barristers, instructed by Denton Wilde Sapte, Solicitors,

- the Environment Agency, by R. Navarro, acting as Agent, and J. Howell QC,

- Corus (UK) Ltd, by R. Singh and J. Simor, Barristers, instructed by J. Maton, Solicitor,

- the United Kingdom Government, by G. Amodeo, acting as Agent, and P. Sales and M. Hoskins, Barristers,

- the Danish Government, by J. Molde, acting as Agent,

- the Netherlands Government, by H.G. Sevenster, acting as Agent,

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

- the Commission of the European Communities, by R.B. Wainwright and H. Støvlbaek, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Mayer Parry Recycling Ltd, represented by M. Fordham; the Environment Agency, represented by J. Howell; Corus (UK) Ltd, represented by R. Singh; the United Kingdom Government, represented by G. Amodeo and P. Sales; the Netherlands Government, represented by J. van der Oosterkamp, acting as Agent; and the Commission, represented by R.B. Wainwright, at the hearing on 18 April 2002,

after hearing the Opinion of the Advocate General at the sitting on 4 July 2002,

gives the following

Judgment

1. By order of 9 November 2000, received at the Court on 30 November 2000, the High Court of Justice of England and Wales, Queen's Bench Division (Administrative Court), referred to the Court for a preliminary ruling under Article 234 EC two questions on the interpretation of Council Directive 75/442/EEC of 15 July 1975 on waste (OJ 1975 L 194, p. 39), as amended by Council Directive 91/156/EEC of 18 March 1991 (OJ 1991 L 78, p. 32) and Commission Decision 96/350/EC of 24 May 1996 (OJ 1996 L 135, p. 32) (Directive 75/442), and of European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste (OJ 1994 L 365, p. 10).

2. Those questions were raised in proceedings between Mayer Parry Recycling Ltd (Mayer Parry) and the Environment Agency concerning the latter's refusal to grant Mayer Parry's application for accreditation as a reprocessor, which is defined as a person who carries out the activities of waste recovery or recycling.

Legal context

Community legislation

3. Article 1 of Directive 75/442 states:

For the purposes of this Directive:

(a) waste shall mean any substance or object in the categories set out in Annex I which the holder discards or intends or is required to discard.

The Commission, acting in accordance with the procedure laid down in Article 18, will draw up, not later than 1 April 1993, a list of wastes belonging to the categories listed in Annex I. This list will be periodically reviewed and, if necessary, revised by the same procedure;

(b) producer shall mean anyone whose activities produce waste (original producer) and/or anyone who carries out pre-processing, mixing or other operations resulting in a change in the nature or composition of this waste;

...

(e) disposal shall mean any of the operations provided for in Annex IIA;

(f) recovery shall mean any of the operations provided for in Annex IIB;

...

4. The recovery operations specified in Annex IIB include, at point R 4, recycling/reclamation of metals and metal compounds. The introductory note to Annex IIB explains that that annex is intended to list recovery operations as they occur in practice.

5. Article 3(1) of Directive 75/442 provides:

Member States shall take appropriate measures to encourage:

(a) firstly, the prevention or reduction of waste production and its harmfulness, in particular by:

...

(b) secondly:

(i) the recovery of waste by means of recycling, re-use or reclamation or any other process with a view to extracting secondary raw materials, or

(ii) the use of waste as a source of energy.

6. Article 4 of Directive 75/442 provides:

Member States shall take the necessary measures to ensure that waste is recovered or disposed of without endangering human health and without using processes or methods which could harm the environment ...

Member States shall also take the necessary measures to prohibit the abandonment, dumping or uncontrolled disposal of waste.

7. Article 8 of Directive 75/442 states:

Member States shall take the necessary measures to ensure that any holder of waste:

- has it handled by a private or public waste collector or by an undertaking which carries out the operations listed in Annex IIA or B, or

- recovers or disposes of it himself in accordance with the provisions of this Directive.

8. The first subparagraph of Article 9(1) of Directive 75/442 is worded as follows:

For the purposes of implementing Articles 4, 5 and 7, any establishment or undertaking which carries out the operations specified in Annex IIA must obtain a permit from the competent authority referred to in Article 6.

9. Article 10 of Directive 75/442 states:

For the purposes of implementing Article 4, any establishment or undertaking which carries out the operations referred to in Annex IIB must obtain a permit.

10.

Article 12 of Directive 75/442 provides:

Establishments or undertakings which collect or transport waste on a professional basis or which arrange for the disposal or recovery of waste on behalf of others (dealers or brokers), where not subject to authorisation, shall be registered with the competent authorities.

11.

Article 13 of Directive 75/442 provides:

Establishments or undertakings which carry out the operations referred to in Articles 9 to 12 shall be subject to appropriate periodic inspections by the competent authorities.

12.

Article 15 of Directive 75/442 states:

In accordance with the polluter pays principle, the cost of disposing of waste must be borne by:

- the holder who has waste handled by a waste collector or by an undertaking as referred to in Article 9,

and/or

- the previous holders or the producer of the product from which the waste came.

13.

Article 1 of Directive 94/62 states:

1. This Directive aims to harmonise national measures concerning the management of packaging and packaging waste in order, on the one hand, to prevent any impact thereof on the environment of all Member States as well as of third countries or to reduce such impact, thus providing a high level of environmental protection, and, on the other hand, to ensure the functioning of the internal market and to avoid obstacles to trade and distortion and restriction of competition within the Community.

2. To this end this Directive lays down measures aimed, as a first priority, at preventing the production of packaging waste and, as additional fundamental principles, at reusing packaging, at recycling and other forms of recovering packaging waste and, hence, at reducing the final disposal of such waste.

14.

Article 3 of Directive 94/62 provides:

For the purposes of this Directive:

1. packaging shall mean all products made of any materials of any nature to be used for the containment, protection, handling, delivery and presentation of goods, from raw materials to processed goods, from the producer to the user or the consumer. Non-returnable items used for the same purposes shall also be considered to constitute packaging.

...

2. packaging waste shall mean any packaging or packaging material covered by the definition of waste in Directive 75/442/EEC, excluding production residues;

...

6. recovery shall mean any of the applicable operations provided for in Annex IIB to Directive 75/442/EEC;

7. recycling shall mean the reprocessing in a production process of the waste materials for the original purpose or for other purposes including organic recycling but excluding energy recovery;

...

15. Article 6(1) of Directive 94/62 states:

In order to comply with the objectives of this Directive, Member States shall take the necessary measures to attain the following targets covering the whole of their territory:

(a) no later than five years from the date by which this Directive must be implemented in national law, between 50% as a minimum and 65% as a maximum by weight of the packaging waste will be recovered;

(b) within this general target, and with the same time-limit, between 25% as a minimum and 45% as a maximum by weight of the totality of packaging materials contained in packaging waste will be recycled with a minimum of 15% by weight for each packaging material;

(c) no later than 10 years from the date by which this Directive must be implemented in national law, a percentage of packaging waste will be recovered and recycled, which will have to be determined by the Council in accordance with paragraph 3(b) with a view to substantially increasing the targets mentioned in paragraphs (a) and (b).

16. The first subparagraph of Article 7(1) of Directive 94/62 provides:

Member States shall take the necessary measures to ensure that systems are set up to provide for:

(a) the return and/or collection of used packaging and/or packaging waste from the consumer, other final user, or from the waste stream in order to channel it to the most appropriate waste management alternatives;

(b) the reuse or recovery including recycling of the packaging and/or packaging waste collected,

in order to meet the objectives laid down in this Directive.

National legislation

17. Section 93 of the Environment Act 1995 empowers the Secretary of State for the Environment, Transport and the Regions to make regulations imposing producer responsibility obligations on such persons, and in respect of such products or materials, as may be prescribed. That section was enacted to ensure implementation of Article 6(1) of Directive 94/62.

18. The Producer Responsibility Obligations (Packaging Waste) Regulations 1997 (the 1997 Regulations) were adopted pursuant to sections 93, 94 and 95 of the Environment Act 1995.

19.

The 1997 Regulations use the definitions of recovery and recycling contained in Article 3 of Directive 94/62 and define reprocessor as a person who, in the ordinary course of conduct of a trade, occupation or profession, carries out the activities of recovery or recycling.

20. Under the 1997 Regulations, a waste producer must furnish to the Environment Agency a certificate of compliance stating that he has complied with his recovery and recycling obligations for the relevant year. It is a criminal offence to contravene this provision. In addition, under regulation 22 a producer must provide the Environment Agency with information from his records, including the amount in tonnes of packaging waste provided to a reprocessor.

21. The 1997 Regulations allow a producer to fulfil the foregoing obligations by being a member of a registered scheme throughout a relevant year. There is no requirement for the operator of the scheme to furnish the Environment Agency with a certificate of compliance, but he is required, under regulation 24 of the 1997 Regulations, to maintain records of, and supply the Environment Agency with, certain information, including the amount in tonnes of packaging waste provided to a reprocessor.

22. The Environment Agency and the Scottish Environment Protection Agency have issued a document called the Orange Book, which establishes a voluntary accreditation system. The system allows accredited reprocessors to issue Packaging Waste Recovery Notes (PRNs) as evidence of delivery of packaging waste to them by producers or registered schemes.

23. The accreditation system is intended to enable a producer to confirm to the Environment Agency or the Scottish Environment Protection Agency that the packaging waste which he has delivered to a reprocessor has been recovered or recycled, thereby permitting satisfactory monitoring of producers and registered schemes with regard to their obligations under the 1997 Regulations. It is also intended to provide a means of establishing consistency with regard to the provision of documentary evidence of recovery and recycling.

24. Under the system established by the Orange Book, the Environment Agency accepts that PRNs issued by accredited reprocessors contain all the information which producers are normally obliged to supply to it pursuant to regulation 22 of the 1997 Regulations. Only accredited reprocessors are entitled to issue PRNs. PRNs are transferable and have an economic value. They are sold by accredited reprocessors to producers of packaging waste.

25. The Environment Agency's policy is to accredit those businesses specified in paragraph 3 of Annex D to the Orange Book, which states that for metals (aluminium and steel), the reprocessor will be the business producing the ingots, sheets or coils of aluminium or steel from packaging waste.

26. The point in the cycle in respect of which accreditation is granted generally corresponds to the point at which a new product is made that is indistinguishable from one made from materials which have never been waste. The scheme was set up so as to ensure that PRNs would not be issued twice in the course of the processing of the same materials and to reduce the possibility of fraud.

27. The integrated pollution control regime laid down by the Environmental Protection Act 1990 regulates pollution of the environment from certain prescribed processes, including those relating to the production of steel. Such processes may be carried out only if authorised by the Environment Agency. Activities which form part of a process subject to integrated pollution control are excluded from the national waste management licensing regime as established by the Waste Management Licensing Regulations 1994, which implement Directive 75/442.

The main proceedings and the questions referred for a preliminary ruling

28. Mayer Parry is a company which specialises in the treatment of scrap metal so as to render it suitable for use by steelmakers for the purpose of producing steel.

29. Mayer Parry obtains scrap metal, which includes packaging waste, from industrial and other sources. The scrap metal has commercial value and Mayer Parry generally has to pay to obtain it. Mayer Parry collects, inspects, tests for radiation, sorts, cleans, cuts, separates and shreds (fragmentises) the scrap metal. Through this process, Mayer Parry transforms ferrous scrap metal into material which meets the

specifications of Grade 3B (Grade 3B material). It sells the Grade 3B material to steelmakers, which use it to produce ingots, sheets or coils of steel.

30. In November 1998, Mayer Parry applied to the Environment Agency for accreditation as a reprocessor entitled to issue PRNs under the voluntary scheme established by the Environment Agency and the Scottish Environment Protection Agency, as set out in the Orange Book.

31. The Agency refused the application by decision of 15 November 1999. Mayer Parry brought judicial review proceedings before the High Court of Justice of England and Wales, Queen's Bench Division (Administrative Court), seeking, *inter alia*, the annulment of that decision and a declaration that it carries out recovery and recycling within the meaning of Directive 94/62. Corus (UK) Ltd (Corus) and Allied Steel and Wire Ltd (ASW) have intervened in the High Court proceedings.

32. The High Court states that, during the course of the proceedings before it, it has become apparent that it is necessary to establish whether the activities carried out by Mayer Parry do or do not constitute recycling within the meaning of Directive 94/62. In the light of the arguments of the parties, it is also necessary to consider certain issues arising with regard both to Directive 75/442 and to the relationship between that directive and Directive 94/62.

33. The High Court also points out that there were earlier proceedings between Mayer Parry and the Environment Agency concerning the definition of waste, which gave rise to a first judgment of the High Court, dated 9 November 1998. Following that judgment, the scrap metal treated by Mayer Parry so as to constitute Grade 3B material was not considered to be waste.

34. Since the High Court of Justice of England and Wales, Queen's Bench Division (Administrative Court), considered that the case before it necessitated interpretation of the Community rules, it decided to stay proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

Where an undertaking deals with packaging materials including ferrous metals, which (when received by that undertaking) constitute waste within the meaning of Article 1(a) of Council Directive 75/442/EEC on waste, as amended by Council Directive 91/156/EEC and Commission Decision 96/350/EC, by means of sorting, cleaning, cutting, crushing, separating and/or baling so as to render those materials suitable for use as a feedstock in a furnace in order to produce ingots, sheets or coils of steel:

(1) Have those materials been recycled, and do they cease to be waste, for the purposes of Council Directive 75/442, when they have been:

(a) rendered suitable for use as a feedstock, or

(b) used by a steelmaker so as to produce ingots, sheets or coils of steel?

(2) Have those materials been recycled for the purposes of European Parliament and Council Directive 94/62/EC on packaging and packaging waste when they have been:

(a) rendered suitable for use as a feedstock, or

(b) used by a steelmaker so as to produce ingots, sheets or coils of steel?

Observations submitted to the Court

35. Mayer Parry contends that Directives 75/442 and 94/62 display four features of importance for the main proceedings. First, Directive 75/442 provides common terminology. Second, it is apparent from those directives that the discard rule affects whether material is classified as waste in that Grade 3B material could be classified as waste only if Mayer Parry were to discard it. Third, the objective of seeking to conserve natural resources is achieved when secondary raw materials, such as the Grade 3B material, are obtained. Fourth, a distinction is drawn in the two directives between physical recovery and energy recovery.

36. Mayer Parry further contends that, under the Court of Justice's case-law, there are four guiding principles for determining when waste has been recycled. First, the question whether a substance is waste is one for the national court and must be determined in the light of all the circumstances of the case, regard being had to the aim of Directive 75/442 and the need to ensure that its effectiveness is not undermined. Second, any substance is waste if its holder has discarded it or seeks to do so. Third, there is a distinction between waste recovery and normal industrial treatment. Fourth, recovery has been completed where the process has produced a secondary raw material for use in an industrial process. Once a secondary raw material has been produced for use of this kind, such as, in the main proceedings, the Grade 3B material produced by Mayer Parry, recovery and therefore recycling are considered to have been completed and the material is no longer waste.

37. The Environment Agency argues that the concept of recycling must be given the same meaning in Directive 75/442 and Directive 94/62 because they have the same objectives. Furthermore, since the concept of waste is the same in Directive 75/442 and Directive 94/62, the directives fall to be considered together. The Environment Agency also submits that the question submitted by the High Court concerns the interpretation of Community law and that the answer to such a question cannot be left to the national court.

38. With regard to determining when waste has been recycled, the Environment Agency argues, first, that a substance does not cease to be waste merely because it is in the possession of someone other than the original producer and that person does not himself intend, and is not required, to discard it. Second, although waste does not necessarily cease to be waste merely because it may be said to have undergone a recovery operation, the description of some of those operations may none the less enable the point at which material ceases to be waste to be determined. Thus, there is no reason to retain waste management controls over materials once they have been used to generate energy (point R 1 of Annex IIB to Directive 75/442) or have been reclaimed, regenerated, recycled, reused or applied to land resulting in benefit to agriculture or ecological improvement (points R 2 to R 10 of that annex), or once any wastes obtained from such operations have been used (point R 11 of the annex).

39. The Environment Agency contends that the activities of an undertaking such as Mayer Parry do not result in recycling because, as a producer, it carries out only pre-processing or other operations resulting in a change in the nature or composition of the scrap metal which it handles.

40. The United Kingdom Government contends that, in order to decide the main proceedings, it is sufficient to establish whether Mayer Parry's activities constitute recycling within the meaning of Directive 94/62 and, accordingly, there is no need to consider Directive 75/442. In this connection it states, first, that under Directive 94/62 waste can be recycled only once. Second, Mayer Parry's activities do not satisfy the conditions of the definition of recycling in Article 3(7) of Directive 94/62, because they do not constitute a production process and Mayer Parry does not carry out reprocessing in the sense of either a reconstitution of waste materials into some new item or use in a process similar to that in which the raw material is used. Third, Article 6(2) of Directive 94/62 shows that recycling occurs only at the stage at which a steelmaker produces ingots, sheets or coils of steel.

41. The United Kingdom Government also submits that, if it is necessary to examine the relationship between Directive 94/62 and Directive 75/442, the operation of the latter allows the Member States a margin of appreciation in defining for themselves what constitutes a recovery operation, whereas Directive 94/62 does not. So far as concerns determination of the point at which material ceases to be waste, a different approach is required for each of the directives since they pursue different objectives.

42. Corus is a steelmaker which uses Grade 3B material produced by Mayer Parry in the manufacture of ingots, coils and sheets of steel. It is accredited as a reprocessor by the Environment Agency and is one of the interveners in the main proceedings. Corus concurs with the observations of the United Kingdom Government, stressing, first, that it is sufficient in the present case for the Court to rule on Directive 94/62. Second, it submits that its activities constitute recycling for the purposes of Directive 94/62 because they enable the Grade 3B material to be used for production purposes. Third, the mode of proof of recycling is a matter falling within Member State competence.

43. The Danish Government endorses the arguments of the Environment Agency, emphasising that the concept of waste must be interpreted broadly in order to protect the environment. In interpreting that

concept, weight must be attached to the question whether the waste has undergone such an alteration in its composition that it is possible to speak of a new product which need not be made subject to control by the Member States on environmental grounds. It concludes that treatment such as that carried out by Mayer Parry does not constitute recycling within the meaning of Directives 75/442 and 94/62, so that the Grade 3B material produced by it remains waste.

44. The Netherlands Government submits that, for the purposes of Directive 75/442, the concept of recycling covers not only the use of waste in a production process, but also its processing in a recovery operation designed to obtain a secondary raw material. In order to determine whether such an operation has been completed and whether the material is consequently no longer waste, it is necessary to examine whether its holder is liable to discard it within the meaning of Article 1(a) of Directive 75/442. In this connection, it should be established whether the recovery operation has yielded material which has the same characteristics and properties as a raw material.

45. The Netherlands Government argues that recycling within the meaning of Article 3(7) of Directive 94/62 must, on the other hand, be interpreted differently. It follows from that article that the recycling of packaging waste cannot be completed before the waste - *qua* secondary raw material - has been reused in a production process. In other words, recycling within the meaning of Directive 94/62 has not yet been completed at the moment when a secondary raw material is obtained, even if the material has, at that moment, ceased to be waste within the meaning of Directive 75/442. Only if the packaging waste is in fact used, as a secondary raw material, in a production process can there be a guarantee that the consumption of primary raw materials will be reduced. Consequently, the Grade 3B material produced by Mayer Parry has been recycled within the meaning of Directive 94/62 only once it has been used by a steelmaker for the production of ingots, sheets or coils of steel.

46. The Austrian Government contends, first, that the definitions set out in Directive 94/62 cannot deviate from those in Directive 75/442. Second, in order to determine whether waste which has undergone a recovery operation is no longer waste, it is necessary to balance the interests of environmental protection and protection of human health against the promotion of recycling. Third, the recovery of waste need not necessarily be effected in one step. At every individual step it is necessary to examine whether recovery occurs. Mayer Parry accordingly does not carry out recycling, but simply recovery of waste in order to have it undergo recycling within the meaning of Directive 94/62.

47. The Commission contends that the definitions of recovery and of recycling, as a mode of recovery, in the context of Directive 75/442 must be interpreted in the same way as the definitions in Directive 94/62. Any divergent interpretation would mean that there is a danger of double-counting an operation for the purpose of achievement of the directives' goals. The Commission further submits that waste can be regarded as having been recycled only when the reprocessing has been completed and a new product created. The material produced by Mayer Parry cannot be regarded as having undergone recycling, that is to say as no longer being waste. The fact that the Grade 3B material produced by Mayer Parry has an economic value and is sold to steel producers does not detract from this conclusion.

48. In addition, the Commission stresses that the designation of waste is crucial to the proper operation of waste management control mechanisms. It points out that Article 2(a) of 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) incorporates by reference the definition of the term waste contained in Article 1(a) of Directive 75/442. Within that framework, substances which are potentially environmentally hazardous may not circulate within the Community and cross its borders without any supervisory or monitoring controls. Thus, scrap metal which has not yet been completely recycled or recovered cannot circulate uncontrolled within the Community.

The Court's answer

Preliminary remarks

49. It is necessary, as a preliminary point, to define the link between Directive 75/442 and Directive 94/62, given that the observations submitted to the Court differ on this point and the questions relate to both directives.

50.

Directive 75/442, in its initial version, was the first directive containing measures designed to harmonise national legislation of the Member States with regard to preventing the generation of waste and to its disposal.

51. That directive was substantially amended by Directive 91/156, although its amendment did not fundamentally alter the concept of waste which still covers substances or objects which the holder discards or intends or is required to discard. The new provisions introduced by Directive 91/156 include Article 2(2), according to which specific rules for particular instances, or supplementary rules, on the management of particular categories of waste may be laid down by means of individual directives, thus making Directive 75/442 framework legislation.

52. Directive 94/62 contains specific rules or rules supplementing Directive 75/442, within the meaning of Article 2(2), for the management of a particular category of waste, namely packaging waste.

53. Nevertheless, Directive 75/442 remains very important for the interpretation and application of Directive 94/62.

54. First, as stated in the seventh recital in its preamble, Directive 94/62 forms part of the Community strategy for waste management set out, *inter alia*, in Directive 75/442.

55. Second, taking account of the objective, set down in the third recital in the preamble to Directive 91/156, of having common waste terminology, Directive 94/62 contains provisions which expressly refer to Directive 75/442, such as Article 3(2) defining packaging waste.

56. Third, since packaging waste is waste within the meaning of Directive 75/442, the latter remains applicable to such waste in so far as Directive 94/62 does not otherwise provide. That is so, for example, in the case of the requirements set out in Articles 4 and 5 of Directive 75/442 as regards waste disposal.

57. Accordingly, Directive 94/62 must be considered to be special legislation (a *lex specialis*) *vis-à-vis* Directive 75/442, so that its provisions prevail over those of Directive 75/442 in situations which it specifically seeks to regulate.

Consideration of the questions referred for a preliminary ruling

58. The main proceedings are concerned with the question whether Mayer Parry, in producing Grade 3B material, carries out a recycling operation enabling it to be accredited as a reprocessor and, therefore, to issue PRNs.

59. It is common ground between the parties to the main proceedings that the Grade 3B material is produced by Mayer Parry from metal packaging waste. Those proceedings thus relate, in the first place, to the concept of recycling with regard to packaging waste.

60. The second question, which relates to the recycling of packaging waste within the meaning of Directive 94/62, should therefore be answered first.

Question 2

61. By its second question, the national court essentially seeks to ascertain whether recycling within the meaning of Article 3(7) of Directive 94/62 is to be interpreted as including the reprocessing of metal packaging waste when it has been transformed into a secondary raw material, such as Grade 3B material, or only when it has been used to produce ingots, sheets or coils of steel.

62. In order to answer this question, it is necessary, first of all, to interpret the term recycling, as defined in Article 3(7) of Directive 94/62, and secondly, to consider whether it is the production of Grade 3B material or the manufacture of ingots, sheets or coils of steel from metal packaging waste which must be classified as recycling.

63. It is apparent both from the preambles and from the provisions of Directives 75/442 and 94/62 that recycling is a form of recovery. It follows from Article 3(1)(b) of Directive 75/442 and the fourth recital

in its preamble that the essential characteristic of a waste recovery operation is constituted by its principal objective that the waste serve a useful purpose in replacing other materials which would have had to be used for that purpose, thereby enabling natural resources to be conserved (Case C-6/00 *ASA* [2002] ECR I-1961, paragraph 69). Recycling as a form of recovery must accordingly pursue the same objective.

64. The definition of recycling in Article 3(7) of Directive 94/62 sets out the elements which make up such an operation, namely the reprocessing of waste materials, in a production process, and for the original purpose or for other purposes excluding energy recovery.

65. In accordance with that definition, the recycling process has at its base waste material which must be reprocessed. Although the definition does not specify that the waste must be packaging waste, it is clear from the context of Directive 94/62, which relates only to packaging and packaging waste, that only such waste is referred to. By virtue of Article 3(2) of Directive 94/62 and Article 1(a) of Directive 75/442, to which Article 3(2) refers, packaging waste is defined as any packaging or packaging material, excluding production residues, which the holder discards or intends or is required to discard. Packaging waste thus derives from packaging within the meaning of Article 3(1) of Directive 94/62.

66. According to the definition of recycling, the packaging waste must undergo reprocessing in a production process. Such a process requires the packaging waste to be worked in order to produce new material or to make a new product. In this sense, recycling can be clearly distinguished from other recovery or waste-processing operations referred to by the Community legislation, such as reclamation of raw materials and compounds of raw materials (points R 3, R 4 and R 5 of Annex IIB to Directive 75/442), pre-processing, mixing or other operations, which result only in a change in the nature or composition of the waste (see Article 1(b) of Directive 75/442).

67. Also, the waste may be regarded as recycled only if it has been reprocessed so as to obtain new material or a new product for the original purpose. This means that the waste must be transformed into its original state in order to be useable, where appropriate, for a purpose identical to the original purpose of the material from which it was derived. In other words, metal packaging waste must be regarded as recycled where it has undergone reprocessing in the course of a process designed to produce new material or make a new product possessing characteristics comparable to those of the material of which the waste was composed, in order to be able to be used again for the production of metal packaging.

68. The definition of recycling states in addition that the waste may be reprocessed in a production process for the original purpose or for other purposes. It follows that the concept of recycling is not limited to the situation where the new material or new product, possessing characteristics comparable to those of the original material, is used for the same purpose of metal packaging. Use for other purposes also features in the concept.

69. Those other purposes may be of any kind so long as the reprocessing of the packaging waste does not take the form of energy recovery, since that is expressly excluded by Article 3(7) of Directive 94/62, and is not effected by means of disposal, a method which would run counter to the very concept of recycling as a form of waste recovery.

70. The definition of recycling, as interpreted in paragraphs 63 to 69 of this judgment, is consonant with the objectives of Directive 94/62.

71. As is apparent from the first recital in its preamble and Article 1(1), Directive 94/62 is intended, first, to prevent and reduce the impact of packaging waste on the environment so as to provide a high level of environmental protection and, second, to ensure the proper functioning of the internal market.

72. Preserving the environment and achieving a high level of environmental protection constitute an objective reflecting the requirements of Article 174(1) and (2) EC. In order to attain that objective, the Community legislature has laid down minimum targets in Article 6(1)(a) of Directive 94/62 in order to ensure that at least one half by weight of packaging waste will be recovered. Recycling is to be regarded as constituting an important part of recovery in its various forms and, along with reuse, is a form to be given preference, as the 11th and 8th recitals in the preamble to Directive 94/62 respectively state.

73.

By interpreting the definition of recycling in Article 3(7) of Directive 94/62 as meaning that the reprocessing of packaging waste must enable new material or a new product possessing characteristics comparable to those of the material from which the waste was derived to be obtained, a high level of environmental protection is ensured.

74. It is only at that stage that the ecological advantages which led the Community legislature to accord a degree of preference to this form of waste recovery are fully achieved, namely a reduction in the consumption of energy and of primary raw materials (see the 11th recital in the preamble to Directive 94/62).

75. Furthermore, it is also only at that stage that the materials at issue cease to be packaging waste and the various waste controls laid down by the Community legislature accordingly lose their rationale. Since the recycling involves the transformation of the packaging waste into new material or a new product possessing characteristics comparable to those of the material from which the waste was derived, the result of that transformation can no longer be classified as packaging waste.

76. Finally, the interpretation of the concept of recycling which results from paragraphs 63 to 69 of this judgment removes any ambiguity as to the point at which packaging waste must be regarded as recycled and thereby makes it possible to discount the risk of a number of processing operations in respect of the same waste each being taken into account as a recycling operation for the purpose of application of the percentages laid down in Article 6(1) of Directive 94/62.

77. Such an interpretation is also consonant with the requirements of clarity and uniformity which flow from the purpose of Directive 94/62 regarding the proper functioning of the internal market, consisting, more specifically, in the avoidance of obstacles to trade and distortion of competition.

78. First, obstacles to trade could arise if different concepts of recycling were applied in the Member States, so that the same material or product could be regarded as recycled in one Member State - and would accordingly have ceased to be classified as packaging waste and been freed from all waste-specific controls - while that would not be the case in another Member State.

79. Second, given that all businesses involved in the production, use, import and distribution of packaging and packaged products must take on the responsibility incumbent upon them under the polluter-pays principle (see the 29th recital in the preamble to Directive 94/62), the concept of recycling must be applied uniformly in order that those businesses are in an equal position in the internal market with regard to competition.

80. The concept of waste having thus been clarified, it is necessary, secondly, to consider whether Grade 3B material, such as that produced by Mayer Parry in the main proceedings, may be regarded as falling within that concept.

81. It is common ground between the parties to the main proceedings that the materials or objects forming the starting point for Mayer Parry's production of Grade 3B material are packaging waste.

82. Mayer Parry collects, inspects, tests for radiation, sorts, cleans, cuts, separates and shreds (fragmentises) metal packaging waste by means of a process as described by the national court in paragraphs 34 and 35 of the order for reference. The national court has established that Mayer Parry, in producing Grade 3B material, reprocesses packaging waste in order to create a secondary raw material suitable for use in substitution for a primary raw material, such as iron ore. It therefore cannot be ruled out from the outset that Mayer Parry reprocesses ferrous metal packaging waste in a production process within the meaning of Article 3(7) of Directive 94/62, namely in a process designed to produce new material or to manufacture a new product.

83. However, the production of Grade 3B material does not constitute reprocessing of metal packaging waste with the objective of returning that material to its original state, namely steel, and of reusing it in accordance with its original purpose, namely the manufacture of metal packaging, or for other purposes. In other words, the metal packaging waste reprocessed by Mayer Parry does not undergo reprocessing in a production process conferring on the Grade 3B material characteristics comparable to those of the material of which the metal packaging was composed.

84.

Grade 3B material is a mixture which, apart from ferrous elements, contains impurities (ranging from 3% to 7% according to the various parties), such as paint and oil, non-metallic materials and undesirable chemical elements, which remain to be removed when the material is used to produce steel. Grade 3B material cannot therefore be used directly for the manufacture of new metal packaging.

85. It follows that Grade 3B material such as that produced by Mayer Parry cannot be regarded as recycled packaging waste.

86. It accordingly remains to consider whether the use of Grade 3B material in the production of ingots, sheets or coils of steel, in circumstances such as those of the main proceedings, may be regarded as a packaging-waste recycling operation.

87. That is in fact the case, since the production process in question results in the manufacture of new products, namely ingots, sheets or coils of steel, which possess characteristics comparable to those of the material of which the metal packaging waste incorporated in the Grade 3B material was initially composed and which may be used for a purpose identical to the original purpose of the material from which that waste was derived, namely the metal packaging, or for other purposes.

88. It follows from all the foregoing considerations that the answer to the second question must be that recycling within the meaning of Article 3(7) of Directive 94/62 is to be interpreted as not including the reprocessing of metal packaging waste when it is transformed into a secondary raw material such as Grade 3B material, but as covering the reprocessing of such waste when it is used to produce ingots, sheets or coils of steel.

Question 1

89. By its first question, the national court essentially seeks to ascertain whether the answer to the second question would be different if the concepts of recycling and waste referred to by Directive 75/442 were taken into account.

90. Packaging waste is defined in Article 3(2) of Directive 94/62 as any packaging or packaging material covered by the definition of the term waste in Directive 75/442. Packaging waste within the meaning of Directive 94/62 must therefore be regarded as waste within the meaning of Directive 75/442.

91. First, it is apparent from paragraphs 86 and 87 of this judgment that a manufacturer of ingots, sheets or coils of steel from Grade 3B material that derives from metal packaging waste carries out recycling within the meaning of Directive 94/62. Second, it also follows from paragraph 75 of this judgment that, once packaging waste has been recycled within the meaning of Directive 94/62, it is no longer to be regarded as packaging waste for the purposes of that directive or, therefore, of Directive 75/442. Accordingly, ingots, sheets or coils of steel manufactured from Grade 3B material which derives from metal packaging waste that has been recycled is no longer packaging waste for the purposes of Directives 94/62 and 75/442.

92. Furthermore, recycling is not defined in Directive 75/442. Should that term, as envisaged by Directive 75/442, not have the same meaning as the term appearing in Directive 94/62, only the latter term would be applicable to packaging waste. As is clear from paragraphs 53 and 57 of this judgment, even though Directive 75/442 is the framework legislation and is relevant when interpreting and applying Directive 94/62, that does not prevent the provisions of the latter, as special legislation, from prevailing over those of Directive 75/442.

93. The answer to the first question must therefore be that the answer to the second question would be no different if the concepts of recycling and waste referred to by Directive 75/442 were taken into account.

Costs

94. The costs incurred by the United Kingdom, Danish, Netherlands and Austrian Governments and the Commission, which have submitted observations to the Court, are not recoverable. 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.

On those grounds,

THE COURT (Fifth Chamber),

in answer to the questions referred to it by the High Court of Justice of England and Wales, Queen's Bench Division (Administrative Court), by order of 9 November 2000, hereby rules:

1. Recycling within the meaning of Article 3(7) of European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste is to be interpreted as not including the reprocessing of metal packaging waste when it is transformed into a secondary raw material such as material meeting the specifications of Grade 3B, but as covering the reprocessing of such waste when it is used to produce ingots, sheets or coils of steel.

2. That interpretation would be no different if the concepts of recycling and waste referred to by Council Directive 75/442/EEC of 15 July 1975 on waste were taken into account.

Wathelet
Timmermans
Jann

von Bahr

Rosas

Delivered in open court in Luxembourg on 19 June 2003.

R. Grass

M. Wathelet

Registrar

President of the Fifth Chamber

1: Language of the case: English.