

Case C-315/20**Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice****Date lodged:**

13 July 2020

Referring court:

Consiglio di Stato (Italy)

Date of the decision to refer:

10 October 2019

Appellant:

Regione Veneto

Respondent:

Plan Eco Srl

Subject matter of the main proceedings

The dispute concerns the question whether or not it is possible to ship to a Member State of the European Union mixed municipal waste which does not contain hazardous waste and which has been mechanically treated, where that treatment has not substantially altered the original properties of the waste.

Subject matter and legal basis of the reference

Article 267 TFEU.

Question referred

‘In a case where mixed municipal waste which does not contain hazardous waste has been mechanically treated at a facility for the purpose of energy recovery (operation R1/R12 under Annex C to the Codice dell’Ambiente (Italian Environment Code)) and, following the treatment operation, it appears, in theory, that the treatment has not substantially altered the original properties of the mixed

municipal waste, to which is assigned the code EWC 19.12.12., which the parties do not contest;

for the purpose of the judgment as to the legitimacy of the objections to the request for prior consent for shipment of the treated waste to a production facility in a Member State of the European Union for use in co-combustion or other means of generating energy, raised by the competent authority in the country of origin on the basis of the principles of Directive 2008/98/EC, and specifically objections such as those, in this case, based:

- on the principle of protection of human health and the environment (Article 13); — on the principle of self-sufficiency and proximity laid down in Article 16(1), according to which “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”; — on the principle, also laid down in the final sentence of the second subparagraph of Article 16(1), according to which “Member States may also limit outgoing shipments of waste on environmental grounds as set out in Regulation (EC) No 1013/2006”; — on recital 33 of Directive 2008/98/EC, according to which, “for the purposes of applying Regulation (EC) No 1013/2006 ... on shipments of waste, mixed municipal waste as referred to in Article 3(5) of that regulation remains mixed municipal waste even when it has been subject to a waste treatment operation that has not substantially altered its properties”:

does the European Waste Catalogue and its classifications (in the present case, EWC 19.12.12., designating waste produced by mechanical treatment facilities for recovery operations R1/R12), interfere — and, if so, in what terms and to what extent — with the rules [of EU law] on the shipment of waste which, prior to mechanical treatment, was mixed municipal waste;

and, in particular, with regard to shipments of waste resulting from the treatment of mixed municipal waste, do the provisions of Article 16 of Directive 2008/98/EC and recital 33 thereof, specifically concerning the shipment of waste, take precedence over the classification based on the European Waste Catalogue;

specifying, if the Court of Justice deems it appropriate and useful, whether that catalogue is regulatory in nature or whether it is simply a technical certification intended for the uniform traceability of all waste?’

Provisions of EU law cited

Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives, in particular recital 33 and Articles 13 and 16 thereof.

Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste, in particular recital 21 and Articles 2, 3, 4 and 12 thereof.

Provisions of national law cited

Decreto legislativo 3 aprile 2006, n. 152 (Legislative Decree No 152 of 3 April 2006) (Codice italiano dell'ambiente (Italian Environment Code)), and in particular Article 182a thereof, which, in accordance with Directive 2008/98 and the principles of self-sufficiency and proximity laid down therein, provides for the recovery of mixed municipal waste at the nearest suitable facility to the place of production or collection; and Article 184, which highlights the fact that, following its amendment, it no longer classifies as 'special' the 'waste derived from the mechanical selection of municipal solid waste'; Annex D, which contains the European Waste Catalogue (EWC).

Outline of the facts and the main proceedings

- 1 The dispute concerns the prior consent requested under Article 4 of Regulation No 1013/2006 by the transport company Plan-eco Srl ('Plan-eco') from the Veneto Region to export waste treated at a facility owned by the company Futura Srl ('Futura') and to be sent to a cement factory in Slovenia for use in co-combustion. The waste was classified by the company that treated it (the waste producer) under EWC code 19.12.12, on the basis of the European Waste Catalogue contained in Annex D to the Italian Environment Code, since it is waste produced by a mechanical treatment facility and composed of mixed materials, but not containing hazardous substances. The parties agree on this classification. The dispute arose because the Veneto Region refused to grant export authorisation. In response to that refusal, Plan-eco brought an action before the Tribunale Amministrativo Regionale (Regional Administrative Court) for the Veneto Region, which granted its application. The Veneto Region subsequently appealed against that decision to the Consiglio di Stato (Council of State, Italy), the referring court.

Principal arguments of the parties to the main proceedings

- 2 According to Plan-eco, the waste to be shipped is special waste since it is produced from the mechanical treatment of other waste. The waste is identified by the EWC code 19.12.12., which designates waste produced by treatment facilities through the recovery of the original waste, derived from a business activity aimed at converting waste into fuel. This argument was accepted by the Regional Administrative Court, which contrasts EWC 19, which identifies special waste produced from industrial and service activities, with EWC 20, which identifies municipal waste, including waste from mixed collection. According to the Regional Administrative Court, the EWC code 19.12.12. classifies as special

waste any municipal waste that has undergone a special process in order to be transformed into a different product.

- 3 According to the Veneto Region, the European Waste Catalogue — in this case Annex D to the Italian Environment Code — corresponds to technical certification, but does not constitute a regulatory proposal and contains cross-cutting chapters, given that there is no unambiguous correlation between the EWC and the classification of waste as municipal or special. Therefore, not all waste classified under EWC code 20 is municipal waste, and code 19 does not exclusively cover special waste. In the case at issue, the Veneto Region claims that the same EWC code 19.12.12. can be assigned to waste produced by mechanical treatment facilities, irrespective of whether it was originally municipal or special waste, because the classification of the waste, following treatment, depends on whether the original properties of the waste have been altered. It submits that this argument is supported by recital 33 of Directive 2008/98, which, specifically with regard to the shipment of waste, provides that mixed municipal waste remains mixed if the treatment has not substantially altered its properties.

Succinct presentation of the reasons for the request for a preliminary ruling

- 4 The referring court notes that there is no doubt as to the veracity of the facts. It is common ground that the waste, which Futura subjected to mechanical treatment for recovery purposes, was originally — that is to say, before such treatment — mixed municipal waste. Following treatment, this waste was correctly classified under EWC code 19.12.12, a fact which the parties do not contest. The Veneto Region has based its refusal to authorise cross-border shipment to another EU Member State on the argument that the classification of the waste as mixed municipal waste should be considered material for the movement of the waste, regardless of the EWC code assigned, when the mechanical treatment of the original waste has not substantially altered its original properties. That appears to be the case here.
- 5 In the light of the facts as established, the referring court is unsure whether the classification EWC 19.12.12., correctly assigned to the waste to be shipped (according to Annex D to the Italian Environment Code), since it was produced by means of mechanical treatment in a facility, should be considered decisive, irrespective of whether that mechanical treatment substantially altered the properties of the waste, which was originally mixed municipal waste (with consequent recognition of the right to export that waste as special waste); or whether the original nature of the treated waste, where the mechanical treatment has not substantially altered its original properties, is decisive, with the result that the EWC classification of the waste resulting from the treatment would be material only in the event of the waste losing its original properties (with the consequent validity, in the present case, of the export ban imposed by the Veneto Region).

- 6 The solution to the dilemma involves the interpretation of provisions of EU law, which are duly referred to by the national court in the text of the question referred, and thus requires the intervention of the Court of Justice.

WORKING DOCUMENT