

Department for Environment, Food and Rural Affairs

European Court of Justice judgments: the definition of waste

Zanetti – Federal Republic Of Germany

1.1 On 28 March 1990 the European Court of Justice (ECJ) delivered the following judgments in Joined Cases C-206/88 and C-207/88 (**Vessoso and Zanetti** [1990] 2 LME LR 133) and C-359/88 (**Zanetti and Others**):-

(a) “The concept of waste, within the meaning of Article 1 of Directive 75/442/EEC and Article 1 of Directive 78/319/EEC¹, is not to be understood as excluding substances and objects which are capable of economic re-utilization. The concept does not presume that the holder disposing of a substance or object intends to exclude all economic re-utilization of the substance or object by others.”

(b) “National legislation which defines waste as excluding substances and objects which are capable of economic re-utilization is not compatible with Council Directives 75/442 and 78/319.”

1.2 In a judgment delivered on 10 May 1995 the ECJ held that their finding on **Zanetti** was not affected by the amendments made to Directive 75/442/EEC by Council Directive 91/156/EEC (Case C-422/92 **Commission of the European Communities v Federal Republic of Germany**, paragraphs 22-23).

Tombesi – Savini

1.3 On 25 June 1997 the ECJ delivered its judgment on Joined Cases C-304/94, C-330/94, C-342/94 and C-224/95 (Criminal proceedings against **Euro Tombesi and Others**). In doing so, the ECJ held that:-

“The concept of ‘waste’ in Article 1 of Council Directive 75/442/EEC of 15 July 1975 on waste, as amended by Council Directive 91/156/EEC of 18 March 1991, referred to in Article 1(3) of Council Directive 91/689/EEC of 12 December 1991 on hazardous waste and Article 2(a) of Council Directive 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, is not to be understood as excluding substances and objects which are capable of economic reutilization, even if the materials in question may be the subject of a transaction or quoted on public or private commercial lists. In particular, a deactivation process intended merely to render waste harmless, landfill tipping in hollows or embankments and waste incineration constitute disposal or recovery operations falling within the scope of the above mentioned Community rules. The fact that a substance is classified as

¹ On toxic and dangerous waste.

a re-usable residue without its characteristics or purpose being defined is irrelevant in that regard. The same applies to the grinding of a waste substance.”

Wallonie

1.4 On 18 December 1997 the ECJ delivered its judgment on Case C-129/96 (*Inter-Environnement Wallonie v Région Wallonne*). In doing so, the ECJ held that in relation to the question on the definition of waste:-

“A substance is not excluded from the definition of waste in Article 1(a) of Council Directive 75/442, as amended, by the mere fact that it directly or indirectly forms an integral part of an industrial production process”.

ARCO Chemie

1.5 On 15 June 2000 the ECJ delivered its judgment on Joined Cases C-418/97 and C-419/97 (*ARCO Chemie Nederland Ltd etc*). In doing so, the ECJ held that in relation to the question on the definition of waste:-

Case C-418/97

“1. It may not be inferred from the mere fact that a substance such as LUWA-bottoms undergoes an operation listed in Annex IIB to Council Directive 75/442/EEC of 15 July 1975 on waste, as amended by Council Directive 91/156/EEC of 18 March 1991, that that substance has been discarded so as to enable it to be regarded as waste for the purposes of that Directive.

2. For the purpose of determining whether the use of a substance such as LUWA-bottoms as a fuel is to be regarded as constituting discarding, it is irrelevant that that substance may be recovered in an environmentally responsible manner for use as fuel without substantial treatment.

3. The fact that that use as fuel is a common method of recovering waste and the fact that that substance is commonly regarded as waste may be taken as evidence that the holder has discarded that substance or intends or is required to discard it within the meaning of Article 1(a) of Directive 75/442, as amended by Directive 91/156. However, whether it is in fact waste within the meaning of the directive must be determined in the light of all the circumstances, regard being had to the aim of the directive and the need to ensure that its effectiveness is not undermined.

4. The fact that a substance used as fuel is the residue of the manufacturing process of another substance, that no use for that substance other than disposal can be envisaged, that the composition of the substance is not suitable for the use made of it or that special environmental precautions must be taken when it is used may be regarded as evidence that the holder has discarded that substance or intends or is required to discard it within the meaning of Article 1(a) of

that Directive. However, whether it is in fact waste within the meaning of the directive must be determined in the light of all the circumstances, regard being had to the aim of the directive and the need to ensure that its effectiveness is not undermined.”

Case C-419/97

“1. It may not be inferred from the mere fact that a substance such as wood chips undergoes an operation listed in Annex IIB to Directive 75/442, as amended by Directive 91/156, that that substance has been discarded so as to enable it to be regarded as waste for the purposes of the Directive.

2. The fact that a substance is the result of a recovery operation within the meaning of Annex IIB to that Directive is only one of the factors which must be taken into consideration for the purpose of determining whether that substance is still waste, and does not as such permit a definitive conclusion to be drawn in that regard. Whether it is waste must be determined in the light of all the circumstances, by comparison with the definition set out in Article 1(a) of Directive 75/442, as amended by Directive 91/156, that is to say the discarding of the substance in question or the intention or requirement to discard it, regard being had to the aim of the Directive and the need to ensure that its effectiveness is not undermined.

3. For the purpose of determining whether the use of a substance such as wood chips as a fuel is to be regarded as constituting discarding, it is irrelevant that that substance may be recovered in an environmentally responsible manner for use as fuel without substantial treatment.

4. The fact that that use as fuel is a common method of recovering waste and the fact that that substance is commonly regarded as waste may be taken as evidence that the holder has discarded that substance or intends or is required to discard it within the meaning of Article 1(a) of Directive 75/442, as amended by Directive 91/156. However, whether it is in fact waste within the meaning of that Directive must be determined in the light of all the circumstances, regard being had to the aim of the Directive and the need to ensure that its effectiveness is not undermined.”

Palin Granit Oy

1.6 On 18 April 2002 the ECJ delivered its judgment on Case C-9/00 (***Palin Granit Oy and Vehmassalon kansanterveystyön kuntayhtymän hallitus***). In doing so, the ECJ held that:-

“1. The holder of leftover stone resulting from stone quarrying which is stored for an indefinite length of time to await possible use discards or intends to discard that leftover stone, which is accordingly to be classified as waste within the meaning of Council Directive 75/442/EEC of 15 July 1975 on waste.

2. The place of storage of leftover stone, its composition and the fact, even if proven, that the stone does not pose any real risk to human health or the environment are not relevant criteria for determining whether the stone is to be regarded as waste.”

Mayer Parry Recycling Ltd

1.7 On 19 June 2003 the ECJ delivered its judgment on Case C-444/00 (*Mayer Parry Recycling Ltd*). In doing so, the ECJ held that:-

“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.”

AvestaPolarit Chrome Oy

1.8 On 11 September 2003 the ECJ delivered its judgment on Case C-114/01 (*AvestaPolarit Chrome Oy*). In doing so the ECJ held that:-

“1. In a situation such as that at issue in the main proceedings, the holder of leftover rock and residual sand from ore-dressing operations from the operation of a mine discards or intends to discard those substances, which must consequently be classified as waste within the meaning of Council Directive 75/442/EEC of 15 July 1975 on waste, as amended by Council Directive 91/156/EEC of 18 March 1991, unless he uses them lawfully for the necessary filling in of the galleries of that mine and provides sufficient guarantees as to the identification and actual use of the substances to be used for that purpose.

2. In so far as it does not constitute a measure of application of Directive 75/442, as amended by Directive 91/156, and in particular Article 11 of that directive, national legislation must be regarded as other legislation within the meaning of Article 2(1)(b) of that directive covering a category of waste mentioned in that provision, if it relates to the management of that waste as such within the meaning of Article 1(d) of Directive 75/442, and if it results in a level of protection of the environment at least equivalent to that aimed at by that directive, whatever the date of its entry into force.”

Mario Antonio Saetti and Andrea Frediani (Petroleum Coke)

1.9 On 14 January 2004 the ECJ delivered its judgment on Case C-235/02 (*Mario Antonio Saetti and Andrea Frediani*). In doing so, the ECJ held that:-

“Petroleum coke which is produced intentionally or in the course of producing other petroleum fuels in an oil refinery and is certain to be used as fuel to meet the energy needs of the refinery and those of other industries does not constitute waste within the meaning of Council Directive 75/442/EEC of 15 July 1975 on waste, as amended by Council Directive 91/156/EEC of 18 March 1991.”

Van de Walle (Contaminated Soil)

1.10 On 7 September 2004 the ECJ delivered its judgment on Case C-1/03 (*Paul Van de Walle, Daniel Laurent, Thierry Mersch and Texaco Belgium SA*). In doing so, the ECJ held that:-

“Hydrocarbons which are unintentionally spilled and cause soil and groundwater contamination are waste within the meaning of Article 1(a) of Council Directive 75/442/EEC of 15 July 1975 on waste, as amended by Council Directive 91/156/EEC of 18 March 1991. The same is true for soil contaminated by hydrocarbons, even if it has not been excavated. In circumstances such as those in the main proceedings, the petroleum undertaking which supplied the service station can be considered to be the holder of that waste within the meaning of Article 1(c) of Directive 75/442 only if the leak from the service station’s storage facilities which gave rise to the waste can be attributed to the conduct of that undertaking.”

Antonio Niselli

1.11 On 11 November 2004 the ECJ delivered its judgment on Case C-457/02 (*Antonio Niselli*). In doing so, the ECJ held that:-

“1. The definition of ‘waste’ in the first subparagraph of Article 1(a) of Council Directive 75/442/EEC of 15 July 1975 on waste, as amended by Council Directive 91/156/EEC of 18 March 1991 and by Commission Decision 96/350/EC of 24 May 1996, cannot be construed as covering exclusively substances or objects intended for, or subjected to, the disposal or recovery operations mentioned in Annexes IIA and IIB to that Directive or in the equivalent lists, or to which their holder intends or is required to subject them.

2. The meaning of ‘waste’ for the purposes of the first subparagraph of Article 1(a) of Directive 75/442, as amended by Directive 91/156 and by Decision 96/350, is not to be interpreted as excluding all production or consumption residues which can be or are reused in a cycle of production or consumption, either without prior treatment and without harm to the environment, or after undergoing prior treatment without,

however, requiring a recovery operation within the meaning of Annex IIB to that Directive.”

European Commission v Kingdom Of Spain

1.12 On 8 September 2005 the ECJ delivered its judgment on Case C-416/02 (*Commission of the European Communities v Kingdom of Spain*). In doing so, the ECJ held that:-

Livestock Effluent (Manure/slurry)

“89. As the United Kingdom Government correctly maintains in its statement of intervention, livestock effluent may, on the same terms, fall outside classification as waste, if it is used as soil fertiliser as part of a lawful practice of spreading on clearly identified parcels and if its storage is limited to the needs of those spreading operations.”

“90. Contrary to the Commission’s submission, it is not appropriate to limit that analysis to livestock effluent uses as a fertiliser on land forming part of the same agricultural holding as that which generated the effluent. As the Court has already held, it is possible for a substance not to be regarded as waste within the meaning of Directive 75/442 if it is certain to be used to meet the needs of economic operators other than that which produced it (see, to that effect, *Saetti and Frediani*, cited above, paragraph 47).”

Animal Carcasses

“91 On the other hand, the analysis which allows, in certain situations, a production residue to be regarded not as waste but as a by-product or a raw material reusable within the continuing process of production cannot apply to carcasses of animals being reared, where those animals died on the farm and were not slaughtered for human consumption.”

“92 Such carcasses cannot, as a general rule, be reused for the purposes of human consumption. They are regarded by Community legislation, in particular by Council Directive 90/667/EEC of 27 November 1990 laying down the veterinary rules for the disposal and processing of animal waste, for its placing on the market and for the prevention of pathogens in feedstuffs of animal or fish origin and amending Directive 90/425/EEC (OJ 1990 L363, p.51; Directive 90/667 was repealed, after the date fixed by the reasoned opinion, by Article 37 of Regulation (EC) No 1774/2002 of the European Parliament and of the Council of 3 October 2002 laying down health rules concerning animal by-products not intended for human consumption (OJ 2002 L273, p.1)), as ‘animal waste’ and, furthermore, as waste within the category of ‘high-risk materials’, which must be processed in factories approved by the Member States or disposed of by incineration or burial. Directive 90/667 provides that such matter may be used in feedstuffs for animals which do not enter the human food chain, but

only by virtue of authorisations issued by the Member States and under the veterinary supervision of the competent authorities.”

“93 In no case may carcasses of animals which die on the farm in question therefore be used in conditions which would enable them not to be defined as waste within the meaning of Directive 75/442. The holder of those carcasses is certainly obliged to discard them, with the result that that matter must be regarded as waste.”

KVZ retec GmbH

1.13 On 1 March 2007 the ECJ delivered its judgment on Case C-176/05 (*KVZ retec GmbH v Republik Österreich*). In doing so, the ECJ held that:

“Under Article 1(3)(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, as amended by Commission Regulation (EC) No 2557/2001 of 28 December 2001, the shipment of meat-and-bone meal classified as waste on account of a requirement or intention to discard it, which is destined for recovery only and listed in Annex II to that regulation, is excluded from the scope of the provisions of the regulation except as provided for in Article 1(3)(b) to (e), Article 11 and Article 17(1) to (3) thereof. However, it is for the national court to ensure that that shipment takes place in compliance with the requirements arising from the provisions of Regulation (EC) No 1774/2002 of the European Parliament and of the Council of 3 October 2002 laying down health rules concerning animal by-products not intended for human consumption, as amended by Commission Regulation (EC) No 808/2003 of 12 May 2003, amongst which those of Articles 7, 8 and 9 and of Annex II to the regulation may prove to be relevant.”

Thames Water Utilities Limited

1.14 On 10 May 2007 the ECJ delivered its judgment on Case C-252/05 (*Thames Water Utilities Limited*). In doing so, the ECJ held that:-

“1. Waste water which escapes from a sewerage network maintained by a statutory sewerage undertaker pursuant to Council Directive 91/271/EEC of 21 May 1991 concerning urban waste water treatment and the legislation enacted to transpose that directive constitutes waste within the meaning of Council Directive 75/442/EEC of 15 July 1975 on waste, as amended by Council Directive 91/156/EEC of 18 March 1991.

2. Directive 91/271 is not ‘other legislation’ within the meaning of Article 2(1)(b) of Directive 75/442, as amended by Directive 91/156. It falls to the national court to ascertain whether, in accordance with the criteria set out in the present judgment, the national rules may be regarded as ‘other legislation’ within the meaning of that provision. Such is the case

if those national rules contain precise provisions organising the management of the waste in question and if they are such as to ensure a level of protection of the environment equivalent to that guaranteed by Directive 75/442, as amended by Directive 91/156, and, more particularly, by Articles 4, 8 and 15.

3. Directive 91/271 cannot be considered, as regards the management of waste water which escapes from sewerage network, to be special legislation (a *lex specialis*) vis-à-vis Directive 75/442, as amended by Directive 91/156, and cannot therefore be applied pursuant to Article 2(2) of Directive 75/442.”

European Commission v Italian Republic

1.15 On 18 December 2007 the ECJ delivered its judgment on Cases C-194/05, C-195/05 and C-263/05 (***Commission of the European Communities v Italian Republic***). The Court’s declaration in each case was:-

Case C-194/05

“1....that, in so far as Article 10 of Law No 93 of 23 March 2001 concerning provisions on the environment and Article 1(17) and (19) of Law No 443 of 21 December 2001 delegating to the Government matters of infrastructure and strategic installations of production and of other action to boost production excluded from the scope of the national legislation relating to waste excavated earth and rocks intended for actual re-use for filling, backfilling, embanking, or as aggregates, with the exception of those from contaminated and decontaminated sites with a concentration of pollutants above the acceptable limits laid down by the regulations in force, the Italian Republic has failed to fulfil its obligations under Council Directive 75/442/EEC of 15 July 1975 on waste, as amended by Council Directive 91/156/EEC of 18 March 1991;”

Case C-195/05

“1....that the Italian Republic has failed to fulfil its obligations under Article 1(a) of Council Directive 75/442/EEC of 15 July 1975 on waste as amended by Council Directive 91/156/EEC of 18 March 1991, by:

- adopting operational instructions valid for the whole of the national territory, specified in particular in the circular of 28 June 1999 of the Minister for the Environment setting out explanatory guidance on the concept of waste and in the communication of the Ministry of Health of 22 July 2002 containing guidelines on the health and hygiene requirements relating to the use for animal feed of materials and by-products deriving from the production and commercial cycle of the agro-food industry, the purpose of which was to exclude, from the scope of the legislation on waste, food scraps from the agro-food industry intended for the production of animal feed; and

- excluding, by means of Article 23 of Law No 179 of 31 July 2002 laying down provisions on environmental matters, from the scope of the legislation on waste leftovers from the kitchen preparation of all types of solid food, cooked and uncooked, which have not entered the distribution system and are intended for shelters for pet animals.”

Case C-263/05

“1....that the Italian Republic has failed to fulfil its obligations under Article 1(a) of Council Directive 75/442/EEC of 15 July 1975 on waste, as amended by Council Directive 19/156/EEC of 18 March 1991 and Commission Decision 96/350/EC of 24 May 1996, by adopting and maintaining in force Article 14 of Decree-Law No 138 of 8 July 2002 laying down urgent measures concerning taxation, privatisation and control of pharmaceutical expenditure and economic support in disadvantaged areas, now, after amendment, Law No 178 of 8 August 2002, which excludes from the scope of Legislative Decree No 22 of 5 February 1997 implementing Directives 91/156/EEC on waste, 91/689/EEC on hazardous waste and 94/62/EC on packaging and packaging waste the following: (i) substances, objects or goods intended for waste disposal or recovery operations not expressly listed in Annexes B or C to Legislative Decree No 22/97; and (ii) substances or objects forming production residue which the holder intends or is required to discard, where they may be and are re-used in a production or consumption cycle without undergoing prior treatment and without harming the environment, or, if they have undergone prior treatment, provided that that treatment is not one of the recovery operations listed in Annex C to Legislative Decree No 22/97.”

Commune de Mesquer (Municipality of Mesquer) v Total France SA, Total International Ltd

1.16 On 24 June 2008 the ECJ delivered its judgment on Case C-188/07 (**Commune de Mesquer v Total France SA, Total international Ltd**). In doing so the ECJ held that:-

“1. A substance such as that at issue in the main proceedings, namely heavy fuel oil sold as a combustible fuel, does not constitute waste within the meaning of Council Directive 75/442/EEC of 15 July 1975 on waste, as amended by Commission Decision 96/350/EC of 24 May 1996, where it is exploited or marketed on economically advantageous terms and is capable of actually being used as a fuel without requiring prior processing.

2. Hydrocarbons accidentally spilled at sea following a shipwreck, mixed with water and sediment and drifting along the coast of a Member State until being washed up on that coast, constitute waste within the meaning of Article 1(a) of Directive 75/442, as amended by

Decision 96/350, where they are no longer capable of being exploited or marketed without prior processing.

3. For the purposes of applying Article 15 of Directive 75/442, as amended by Decision 96/350, to the accidental spillage of hydrocarbons at sea causing pollution of the coastline of a Member State:

- The national court may regard the seller of those hydrocarbons and charterer of the ship carrying them as a producer of that waste within the meaning of Article 1(b) of Directive 75/442, as amended by Decision 96/350, and as a ‘previous holder’ for the purposes of applying the first part of the second indent of Article 15 of that Directive, if that court, in the light of the elements which it alone is in a position to assess, reaches the conclusion that seller-charterer contributed to the risk that the pollution caused by the shipwreck would occur, in particular if he failed to take measures to prevent such an incident, such as measures concerning the choice of ship;
- If it happens that the cost of disposing of the waste produced by an accidental spillage of hydrocarbons at sea is not borne by the International Oil Pollution Compensation Fund, or cannot be borne because the ceiling for compensation for that accident has been reached, and that, in accordance with the limitations and/or exemptions of liability laid down, the national law of a Member State, including the law derived from international agreements, prevents that cost from being borne by the ship-owner and/or the charterer, even though they are to be regarded as ‘holders’ within the meaning of Article 1(c) of Directive 75/442, as amended by Decision 96/350, such a national law will then, in order to ensure that Article 15 of that Directive is correctly transposed, have to make provision for that cost to be borne by the producer of the product from which the waste thus spread came. In accordance with the ‘polluter pays’ principle, however, such a producer cannot be liable to bear that cost unless he has contributed by his conduct to the risk that the pollution caused by the shipwreck will occur.”

Updated June 2008