JUDGMENT OF THE COURT (First Chamber)

14 April 2005 *

In Case C-6/03,

REFERENCE for a preliminary ruling under Article 234 EC from the Verwaltungsgericht Koblenz (Germany), made by decision of 4 December 2002, registered at the Court on 8 January 2003, in the proceedings

Deponiezweckverband Eiterköpfe

v

Land Rheinland-Pfalz,

THE COURT (First Chamber),

composed of P. Jann, President of the Chamber, N. Colneric, J.N. Cunha Rodrigues (Rapporteur), M. Ilešič and E. Levits, Judges,

* Language of the case: German.

Advocate General: D. Ruiz-Jarabo Colomer,
Registrar: K. Sztranc, Administrator,

having regard to the written procedure and further to the hearing on 15 September 2004,

after considering the observations submitted on behalf of:

— Deponiezweckverband Eiterköpfe, by W. Klett, G. Moesta and H. Oexle, Rechtsanwälte,

— the Land Rheinland-Pfalz, by P. Delorme, acting as Agent, and D. Sellner, Rechtsanwalt,

— the German Government, by W.-D. Plessing, M. Lumma and A. Tiemann, acting as Agents,

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

— the Austrian Government, by E. Riedl and M. Hauer, acting as Agents,

— the Commission of the European Communities, by U. Wölker and M. Konstantinidis, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 30 November 2004,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 5 of Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste (OJ 1999 L 182, p. 1, 'the Directive'), and of Article 176 EC and of the principle of proportionality.

2 The reference was made in the course of proceedings brought before the Verwaltungsgericht Koblenz (Administrative Court, Koblenz) by the association Deponiezweckverband Eiterköpfe ('Deponiezweckverband') against Land Rheinland-Pfalz (the Land of Rhineland-Palatinate) concerning authorisation to operate a landfill site.

Legal background

Relevant provisions of Community law

3 In connection with the Community's policy in the sphere of the environment, Article 176 EC provides:

'The protective measures adopted pursuant to Article 175 shall not prevent any Member State from maintaining or introducing more stringent protective measures. Such measures must be compatible with this Treaty. They shall be notified to the Commission.'

4 The Directive was adopted on the basis of Article 130s(1) of the EC Treaty (now, after amendment, Article 175(1) EC).

5 Article 1(1) of the Directive provides:

'With a view to meeting the requirements of Directive 75/442/EEC, and in particular Articles 3 and 4 thereof, the aim of this Directive is, by way of stringent operational and technical requirements on the waste and landfills, to provide for measures, procedures and guidance to prevent or reduce as far as possible negative effects on the environment, in particular the pollution of surface water, groundwater, soil and

air, and on the global environment, including the greenhouse effect, as well as any resulting risk to human health, from landfilling of waste, during the whole life-cycle of the landfill.'

6 Article 2(a) of the Directive defines 'waste' as any substance or object which is covered by Council Directive 75/442/EC on waste (OJ 1975 L 194, p. 39). Article 1(a) of the latter defines 'waste' as 'any substance or object which the holder disposes of or is required to dispose of pursuant to the provisions of national law in force'.

7 'Municipal waste' is defined in Article 2(b) of the Directive as 'waste from households, as well as other waste which, because of its nature or composition, is similar to waste from households'.

8 Under Article 2(m) of the Directive, 'biodegradable waste' means 'any waste that is capable of undergoing anaerobic or aerobic decomposition, such as food and garden waste, and paper and paperboard'.

9 Article 3(1) of the Directive provides:

'Member States shall apply this Directive to any landfill as defined in Article 2(g).'

10 According to Article 5(1) and (2) of the Directive:

'(1) Member States shall set up a national strategy for the implementation of the reduction of biodegradable waste going to landfills, not later than two years after the date laid down in Article 18(1) and notify the Commission of this strategy. This strategy should include measures to achieve the targets set out in paragraph 2 by means of in particular, recycling, composting, biogas production or materials/energy recovery ...

(2) This strategy shall ensure that:

(a) not later than five years after the date laid down in Article 18(1), biodegradable municipal waste going to landfills must be reduced to 75% of the total amount (by weight) of biodegradable municipal waste produced in 1995 or the latest year before 1995 for which standardised Eurostat data are available;

(b) not later than eight years after the date laid down in Article 18(1), biodegradable municipal waste going to landfills must be reduced to 50% of the total amount (by weight) of biodegradable municipal waste produced in 1995 or the latest year before 1995 for which standardised Eurostat data are available;

(c) not later than 15 years after the date laid down in Article 18(1), biodegradable municipal waste going to landfills must be reduced to 35% of the total amount

(by weight) of biodegradable municipal waste produced in 1995 or the latest year before 1995 for which standardised Eurostat data are available.

...'.

11 Article 6(a) of the Directive states that:

'Member States shall take measures in order that:

(a) only waste that has been subject to treatment is landfilled. This provision may not apply to inert waste for which treatment is not technically feasible, nor to any other waste for which such treatment does not contribute to the objectives of this Directive, as set out in Article 1, by reducing the quantity of the waste or the hazards to human health or the environment'.

12 The date fixed by Article 18(1) of the Directive, and mentioned in Article 5 thereof, is 16 July 2001. That is the date by which, at the latest, the Member States were required to have transposed the Directive into their domestic law.

Relevant provisions of domestic law

13 The Regulation on the environmentally sound deposit of municipal waste (Verordnung über die umweltverträgliche Ablagerung von Siedlungsabfällen) of 20 February 2001 (BGBl. 2001 I, p. 305, 'the regulation of 2001') was adopted for the purpose of transposing the Directive into domestic German law.

14 'Municipal waste' is defined in Paragraph 2(1) of the regulation of 2001 as 'household waste, and also other waste that, by its nature or composition, is similar to household waste'.

15 'Waste that may be disposed of as municipal waste' is defined in Paragraph 2(2) of the national regulation as 'waste that, by its nature or composition, may be disposed of with or as municipal waste, in particular, residual sludge from urban waste-water-treatment plants or from waste waters with similarly a low pollution load, faeces and faecal sludge, residues from waste-water-treatment plants, sludge from the treatment of waste water, waste from building-sites and waste specifically connected to manufacturing ...'.

16 Paragraph 3(3) of that regulation provides:

'Municipal waste and waste within the meaning of Paragraph 2(2), save for waste treated by mechanical and biological processes, may be deposited only if they meet the reference criteria laid down in Annex 1 for Category I or II landfill.'

17 Paragraph 4(1) of that regulation provides:

'Waste treated by mechanical and biological processes may be deposited only if

...

the waste meets the reference criteria in Annex 2 ...'.

18 Annex 1 to the regulation of 2001 provides that in the classifying of waste in landfill sites the following reference values have to be observed:

No	Criteria	Reference values	
		Landfill category I	Landfill category II
2	Organic content of the dry residue of the original substance		
2.01	expressed as combustion loss	< or = to 3% by mass	< or = to 5% by mass
2.02	expressed as TOC (total organic carbon)	< or = to 1% by mass	< or = to 3% by mass
4	Eluate criteria		
4.03	TOC	< or = to 20 mg/l	< or = to 100 mg/l

19 Annex 2 to that regulation provides that in the classifying of waste previously treated by mechanical and biological processes in landfill sites the following reference values have to be observed:

No	Criteria	Reference values
2	Organic content of the dry residue of the original substance expressed as TOC	< or = to 18% by mass
4	Eluate criteria	
4.03	TOC	< or = to 250 mg/l
5	biodegradability of the dry residue of the original substance expressed as aerobic activity (AT_4) or expressed as the rate of gas formation in the fermentation test (GB_{21})	< or = to 5 mg/g < or = to 20 l/kg»

20 The regulation of 2001 entered into force on 1 March 2001. As a transitional measure, Paragraph 6 of that regulation provides that, on certain conditions, the depositing of waste that does not meet its criteria may be authorised until 31 May 2005, and the depositing of waste that does meet its criteria in old landfill sites that do not meet its requirements may be authorised until 15 July 2009.

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

21 The plaintiff in the main proceedings, the Deponiezweckverband, is an association of the Landkreises (administrative districts) of Mayen-Koblenz and Cochem-Zell and the city of Koblenz, which operates the Eiterköpfe central landfill site. It seeks to

obtain from the Land Rheinland-Pfalz, the defendant in the main proceedings, a permit to fill, after 31 May 2005 and until 31 December 2013 at the latest, two landfill cells with waste that has previously been treated by mechanical processes only. The Land Rheinland-Pfalz argues that the national regulation applicable does not allow that.

22 The Verwaltungsgericht Koblenz, hearing the dispute, has expressed doubts as to the compatibility of that national regulation with Article 5(1) and (2) of the Directive, and with the Community principle of proportionality. It has therefore decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Must Article 5(1) of the Directive and the Community rules for a strategy for the reduction of biodegradable waste going to landfills be interpreted as meaning that, in accordance with Article 176 EC and notwithstanding the measures referred to in Article 5(2) of the Directive, namely, the reduction of the quantity of biodegradable municipal waste going to landfills to a certain percentage of the total amount by weight of biodegradable municipal waste in relation to a given calendar year, those measures may be made more stringent by a provision of domestic law, intended to implement the Community rules, which provides that municipal waste and waste that may be disposed of as municipal waste may not be landfilled unless the reference criterion "organic content of the dry residue of the original substance" — expressed as either combustion loss or as total organic carbon (TOC) is satisfied?

(2) (a) If so, must the rules of Community law fixed by Article 5(2) of the Directive be construed as meaning that the reduction requirements laid down therein, viz.:

— 75% by weight as from 16 July 2006

— 50% by weight as from 16 July 2009 and

— 35% by weight as from 16 July 2016,

have been satisfied, having regard to the Community-law principle of proportionality, by a national provision under which, in the case of municipal waste and waste that can be deposited in the same way as municipal waste, the organic content of dry residue of the original substance must, after 1 June 2005, be no more than 5% by mass, expressed as combustion loss, or no more than 3% by mass, expressed as TOC, and under which as from 1 March 2001 waste treated by mechanical and biological processes may be landfilled at old sites until 15 July 2009 at the latest, or beyond that date in certain cases, only if the organic content of the dry residue of the original substance is no more than 5 mg/g, expressed as aerobic activity (AT_4), or no more than 20 l/kg, expressed as the rate of gas formation in the fermentation test (GB_{21})?

(b) Does the Community-law principle of proportionality grant extensive or restricted discretion in the assessing of the effects of laying waste treated by thermal or mechanical and biological processes on untreated waste? May it be deduced from the principle of proportionality that hazards caused by waste treated by mechanical processes alone may be offset by other safety measures?'

Concerning the application for reopening of the oral procedure

23 By document lodged at the Court Registry on 27 December 2004, and supplemented by a letter of 16 February 2005, the Deponiezweckverband Eiterköpfe sought to have the oral procedure reopened in order for certain experts' reports to be taken into consideration.

24 According to point 62 of the Advocate General's Opinion, 'the information necessary in order to undertake a judicious appraisal has not been supplied', and according to footnote 35 of that Opinion '[t]he case file does not contain the technical reports ...'. Nevertheless, the plaintiff argues that the documents before the national court include five experts' reports containing exactly the information referred to by the Advocate General. In its view, reopening the oral procedure is advisable in order to permit him to take that information into account.

25 The Court may, of its own motion, on a proposal from the Advocate General or at the request of the parties, reopen the oral procedure, in accordance with Article 61 of its Rules of Procedure, if it considers that it lacks sufficient information, or that the case must be dealt with on the basis of an argument which has not been debated between the parties (Case C-309/99 *Wouters and Others* [2002] ECR I-1577, paragraph 42, and Case C-434/02 *Arnold André* [2004] ECR I-11825, paragraph 27). In the circumstances of this case, however, the Court, after hearing the Advocate General, considers that it is in possession of all the facts necessary for it to answer the questions referred. In consequence, the request for reopening of the oral procedure must be rejected.

On the questions referred for a preliminary ruling

26 Questions 1 and 2(a) may appropriately be dealt with together, in so far as they concern the interpretation of the Directive in the light of Article 176 EC. In so far as Questions 2(a) and 2(b) concern the Community principle of proportionality, they too may be dealt with together.

Preliminary remark

27 The first point to be noted is that the Community rules do not seek to effect complete harmonisation in the area of the environment. Even though Article 174 EC refers to certain Community objectives to be attained, Article 176 EC allows the Member States to introduce more stringent protective measures (Case C-318/98 *Fornasar and Others* [2000] ECR I-4785, paragraph 46). Article 176 EC makes such measures subject only to the conditions that they should be compatible with the Treaty and that they should be notified to the Commission.

28 According to Article 174(2) EC, Community policy on the environment is to aim at a high level of protection taking into account the diversity of situations in the various regions of the Community. It is to be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay.

29 The Directive was adopted on the basis of Article 130s(1) of the EC Treaty (now Article 175(1) EC) and, therefore, for the purpose of attaining the objectives set out in Article 174 EC.

30 It is apparent from the ninth recital in the preamble to, and Article 1(1) of, the Directive that the latter is intended to pursue and clarify the objectives of Directive 75/442 by laying down measures to prevent or reduce as far as possible negative effects of landfilling of waste on the environment.

31 Under Article 5(1) of the Directive, the Member States are to set up national strategies in order to reduce the amount of biodegradable waste going to landfills. Under the same provision, those national strategies must include measures to achieve the targets fixed in Article 5(2) of the Directive. The last-mentioned provision states that those national strategies must provide that the amount of waste going to landfill should be reduced by certain percentages before certain fixed dates. The wording and broad logic of those provisions make it clearly apparent that they set a minimum reduction to be achieved by the Member States and they do not preclude the adopting by the latter of more stringent measures.

32 It follows that Article 176 EC and the Directive allow the Member States to introduce more stringent protection measures that go beyond the minimum requirements fixed by the Directive (see, to that effect, *Fornasar and Others*, paragraph 46, concerning Council Directive 91/689/EEC of 12 December 1991 on hazardous waste, OJ 1991 L 377, p. 20).

On the first question

33 By its first question the national court seeks in essence to ascertain whether it is contrary to Article 5(1) and (2) of the Directive, read in the light of Article 176 EC,

for measures of domestic law to impose more stringent requirements than those laid down by the Directive with regard to the landfilling of waste. The question covers four kinds of requirements laid down by rules of domestic law. They are to be examined in turn.

34 First, Article 5(2) of the Directive provides that, no later than 2016, the amount of biodegradable municipal waste going to landfill must be progressively reduced to 35% by weight of the total amount of such waste produced in 1995. In comparison, the regulation of 2001, in particular Paragraphs 3(3) and 4(1) thereof and Annexes 1 and 2 thereto, fixes lower thresholds for organic waste remaining in waste accepted in landfills.

35 That regulation uses, inter alia, the tests of combustion loss and total organic carbon (TOC) to define the limit values which it imposes, whereas in Article 5(2) of the Directive the test of percentage by weight is used.

36 It is to be noted here that using a method of measurement such as TOC or combustion loss is not an end in itself, like the objectives referred to in Article 5(2) of the Directive, but simply a means by which those objectives may be attained.

37 The Member States being free to choose the means of attaining the goals fixed by Article 5(2) of the Directive, measurements tests such as those contained in the regulation of 2001 are in keeping with the requirements of the Directive.

38 With regard to the thresholds fixed for quantities of organic matter remaining in waste accepted in landfills, a measure of domestic law such as that concerned in the main proceedings clearly pursues the same objective as the Directive, in particular, the reduction of pollution of water and air by reducing the landfilling of biodegradable waste.

39 In order to achieve those thresholds, the regulation of 2001 demands that biodegradable waste should be treated before being landfilled. In the case of waste treated mechanically and biologically, that treatment involves processes such as crushing, sorting, composting and fermenting. For other waste thermal treatment is used, in this case incineration.

40 All those forms of treatment are in keeping with the Directive. Article 6(a) of the latter requires the Member States to take measures so that only waste that has already been treated is landfilled. Treatment is defined in Article 2(h) of the Directive as 'physical, thermal, chemical or biological processes, including sorting, that change the characteristics of the waste in order to reduce its volume or hazardous nature, facilitate its handling or enhance recovery'. That makes it apparent in particular that the Directive provides for thermal treatment of waste so as to lessen its hazardousness.

41 It is clear from the foregoing that the thresholds and tests contained in a measure of domestic law such as that at issue in the main proceedings follow the same policy of protecting the environment as the Directive does. Inasmuch as such a regulation imposes requirements stricter than those of that Directive, it constitutes a more stringent protective measure for the purposes of Article 176 EC.

42 Second, under Article 5(2) of the Directive the Member States must reduce the amount of waste referred to in three stages, ending no later than 2006, 2009 and 2016. The regulation of 2001 imposes earlier time-limits, viz., until 31 May 2005 at the latest.

43 The use of the expression 'not later than' in Articles 5(2) and 18 of the Directive shows that the Member States are at liberty to apply earlier time-limits if they deem it necessary (see, to that effect, Case C-11/92 *Gallaher and Others* [1993] ECR I-3545, paragraph 20, on the subject of the expression 'at least').

44 If a Member State chooses, in this regard, to fix earlier time-limits than those under the Directive, that is a more stringent protective measure for the purposes of Article 176 EC.

45 Third, Article 5(1) and (2) of the Directive applies to biodegradable waste only. For its part, the regulation of 2001 concerns not only biodegradable waste but also non-biodegradable organic waste.

46 Although Article 5 of the Directive specifically concerns a strategy the purpose of which is to reduce waste going to landfill, the Directive as a whole plainly applies to waste in the liberal sense of the word, as it is defined in Article 2(a).

47 Article 1(1) of the Directive lays down strict technical and operational requirements applicable to waste and to landfills, without restricting the kind of waste or landfill. Moreover, in accordance with Article 3(1) of the Directive the Member States are to apply that act to any landfill, a concept defined in Article 2(g) as 'a waste disposal site ...' with no limitation of the kind of waste covered by that provision.

48 That is the context in which the sixth subparagraph of Paragraph 2 of Annex II to the Directive states that the criteria for acceptance of waste for landfill may include limitations on the amount of organic matter in the waste.

49 It follows that a measure of domestic law, such as that referred to in paragraph 45 above, which, in order to authorise landfilling, extends restrictions not to biodegradable substances only but to all organic substances, pursues the same goals as the Directive. In so far as such a measure covers a range of substances wider than that to be found in Article 5 of the Directive, it is a more stringent protective measure for the purposes of Article 176 EC.

50 Fourth, Article 5(2) of the Directive refers to municipal waste. The regulation of 2001 covers not only municipal waste but also, under Paragraphs 2(2) and 3(3), waste which may be disposed of with or as municipal waste, in particular sludge from the treatment of waste water, waste from building-sites and waste connected to manufacturing.

51 While it is true that Article 5(2) of the Directive refers to municipal waste only, the national strategy, the purpose of which is to reduce biodegradable waste going to landfill, provided for in Article 5(1) includes all waste within the definition given in Article 2(a) of the Directive. Likewise, the obligation imposed on the Member States by Article 6(a), that they should take measures to ensure that only previously treated waste is landfilled, applies to non-municipal as well as to municipal waste. In addition, Article 1(1) of the Directive makes it clear that the latter as a whole has as its aim the reduction of the amount of waste going to landfills, without any distinction drawn between municipal and other waste.

52 It follows that a measure of domestic law, such as that at issue in the main proceedings, which seeks to reduce the amount of waste going to landfill and which applies to waste other than municipal waste, is compatible with the Directive and constitutes a more stringent protective measure for the purposes of Article 176 EC.

53 It follows from the foregoing that, in each of the four cases examined, the measure of domestic law under contemplation is in keeping with the Directive, read in the light of Article 176 EC.

54 In addition, the national court asks whether such measures, taken as a whole, may be regarded as contrary to the Directive.

55 With regard to that question, it must be held that, each of the four national measures under consideration being individually in keeping with Community law, there are no grounds for regarding them collectively as contrary to Community law. That is thus the case even if the limits fixed by the measure of domestic law in respect of the acceptance of biodegradable waste for landfill are so low that they call for treatment by mechanical and biological processes or the incineration of such waste before it is landfilled.

56 The reply to be given to the first question must therefore be that it is not contrary to Article 5(1) and (2) that a measure of domestic law should:

— fix limits in respect of the acceptance of biodegradable waste for landfill lower than those fixed by the Directive, even if those limits are so low that they call for treatment by mechanical and biological processes or the incineration of such waste before it is landfilled,

— fix earlier time-limits than those under the Directive in order to reduce the amount of waste going to landfill,

— apply not only to biodegradable waste but also to non-biodegradable organic substances, and

— apply not only to municipal waste but also to waste that may be disposed of as municipal waste.

On the second question

57 By its second question, the national court in substance asks the Court whether measures of national law such as those at issue in the main proceedings are compatible with the Community law principle of proportionality.

58 In order to answer that question, it is to be recalled that, in connection with the Community's environmental policy, to the extent that a measure of domestic law pursues the same objectives as a directive, Article 176 EC makes provision for and authorises the minimum requirements laid down by that directive to be exceeded, in the conditions set by that article.

59 Article 176 EC authorises the Member States to maintain or introduce more stringent protective measures, on condition that they are compatible with the Treaty and notified to the Commission.

60 As may be deduced from the reply given to the first question, measures of domestic law such as those about which the national court has referred questions to the Court constitute more stringent protective measures for the purposes of Article 176 EC.

61 It is clear from the broad logic of Article 176 EC that, in adopting stricter measures, Member States still exercise powers governed by Community law, given that such measures must in any case be compatible with the Treaty. Nevertheless, it falls to the Member States to define the extent of the protection to be achieved.

62 In that context, in so far as it is a matter of ensuring that the minimum requirements laid down by the Directive are enforced, the Community principle of proportionality demands that measures of domestic law should be appropriate and necessary in relation to the objectives pursued.

63 In contrast, and inasmuch as other provisions of the Treaty are not involved, that principle is no longer applicable so far as concerns more stringent protective measures of domestic law adopted by virtue of Article 176 EC and going beyond the minimum requirements laid down by the Directive.

64 As a result, the reply to the second question has to be that the Community-law principle of proportionality is not applicable so far as concerns more stringent protective measures of domestic law adopted by virtue of Article 176 EC and going beyond the minimum requirements laid down by a Community directive in the sphere of the environment, inasmuch as other provisions of the Treaty are not involved.

Costs

65 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 (First Chamber) rules as follows:

1. **It is not contrary to Article 5(1) and (2) of Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste that a measure of domestic law should:**

   — **fix limits in respect of the acceptance of biodegradable waste for landfill lower than those fixed by the Directive, even if those limits are so low**

that they call for treatment by mechanical and biological processes or the incineration of such waste before it is landfilled,

— **fix earlier time-limits than those under the Directive in order to reduce the amount of waste going to landfill,**

— **apply not only to biodegradable waste but also to non-biodegradable organic substances, and**

— **apply not only to municipal waste but also to waste that may be disposed of as municipal waste.**

2. **The Community-law principle of proportionality is not applicable so far as concerns more stringent protective measures of domestic law adopted by virtue of Article 176 EC and going beyond the minimum requirements laid down by a Community directive in the sphere of the environment, inasmuch as other provisions of the Treaty are not involved.**

[Signatures]