Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

28 July 2016*

(Reference for a preliminary ruling — Protection of the environment — Waste management — Directive 2006/21/EC — Article 10(2) — Backfilling of excavation voids using waste other than extractive waste — Landfill or recovery of such waste)

In Case C-147/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Consiglio di Stato (Council of State, Italy), made by decision of 16 December 2014, received at the Court on 26 March 2015, in the proceedings

Città Metropolitana di Bari, formerly Provincia di Bari

v

Edilizia Mastrodonato srl,

THE COURT (Fourth Chamber),

composed of T. von Danwitz, President of the Chamber, C. Lycourgos (Rapporteur), E. Juhász, C. Vajda and K. Jürimäe, Judges,

Advocate General: J. Kokott,

Registrar: V. Tourrès, Administrator,

having regard to the written procedure and further to the hearing on 10 March 2016,

after considering the observations submitted on behalf of:

— the Città Metropolitana di Bari, formerly Provincia di Bari, by G. Mariani, avvocato,

— Edilizia Mastrodonato Srl, by M. Ingravalle, avvocato,

— the Italian Government, by G. Palmieri, acting as Agent, and P. Grasso, avvocato dello Stato,

— the Austrian Government, by G. Eberhard, acting as Agent,

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

— the United Kingdom Government, by S. Brandon and L. Christie, acting as Agents, and A. Bates, Barrister,

* Language of the case: Italian.

— the European Commission, by G. Gattinara and E. Sanfrutos Cano, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 21 April 2016,

gives the following

Judgment

1 This request for a preliminary ruling relates to the interpretation of Article 10(2) of Directive 2006/21/EC of the European Parliament and of the Council of 15 March 2006 on the management of waste from extractive industries and amending Directive 2004/35/EC (OJ 2006 L 102, p. 15).

2 The request has been made in proceedings between the Città Metropolitana di Bari (Metropolitan City of Bari, Italy), formerly Provincia di Bari (Province of Bari, Italy) and Edilizia Mastrodonato Srl concerning the authorisation regime to which backfilling operations in respect of disused quarries must be subject.

Legal context

EU law

Council Directive 1999/31/EC

3 Recital 15 of Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste (OJ 1999 L 182, p. 1) states as follows:

‘Whereas the recovery, in accordance with Directive 75/442/EEC, of inert or non-hazardous waste which is suitable, through their use in redevelopment/restoration and filling-in work, or for construction purposes may not constitute a landfilling activity.’

4 Article 2 of Directive 1999/31, entitled ‘Definitions’, provides:

‘For the purposes of this Directive:

…

(g) “landfill” means a waste disposal site for the deposit of the waste onto or into land (i.e. underground), ...

…’

5 Article 3 of Directive 1999/31, entitled ‘Scope’, provides in paragraphs 1 and 2 thereof:

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

2. Without prejudice to existing Community legislation, the following shall be excluded from the scope of this Directive:

…

— the use of inert waste which is suitable, in redevelopment/restoration and filling-in work, or for construction purposes, in landfills,

— …

— the deposit of unpolluted soil or of non-hazardous inert waste resulting from prospecting and extraction, treatment, and storage of mineral resources as well as from the operation of quarries.'

Directive 2006/21

6 Article 2(1) of Directive 2006/21 is worded as follows:

'Subject to paragraphs 2 and 3, this Directive covers the management of waste resulting from the prospecting, extraction, treatment and storage of mineral resources and the working of quarries, hereinafter "extractive waste".'

7 Article 10 of Directive 2006/21, entitled 'Excavation voids', provides:

'1. Member States shall ensure that the operator, when placing extractive waste back into the excavation voids for rehabilitation and construction purposes, whether created through surface or underground extraction, takes appropriate measures in order to:

(1) secure the stability of the extractive waste in accordance, *mutatis mutandis*, with Article 11(2);

(2) prevent the pollution of soil, surface water and groundwater in accordance, *mutatis mutandis*, with Article 13(1), (3) and (5);

(3) ensure the monitoring of the extractive waste and the excavation void in accordance, *mutatis mutandis*, with Article 12(4) and (5).

2. Directive 1999/31/EC shall continue to apply to the waste other than extractive waste used for filling in excavation voids as appropriate.'

Council Directive 2008/98/EC

8 Recital 19 of Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain directives (OJ 2008 L 312, p. 3) states as follows:

'The definitions of recovery and disposal need to be modified in order to ensure a clear distinction between the two concepts, based on a genuine difference in environmental impact through the substitution of natural resources in the economy and recognising the potential benefits to the environment and human health of using waste as a resource. In addition, guidelines may be developed in order to clarify cases where this distinction is difficult to apply in practice or where the classification of the activity as recovery does not match the real environmental impact of the operation.'

9 Article 3 of Directive 2008/98 states:

'For the purposes of this Directive:

…

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

…

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

…’

10 Article 4 of Directive 2008/98, entitled ‘Waste hierarchy’, provides:

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

(a) prevention;

(b) preparation for re-use;

(c) recycling;

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

(e) disposal.

2. When applying the waste hierarchy referred to in paragraph 1, Member States shall take measures to encourage the options that deliver the best overall environmental outcome. This may require specific waste streams departing from the hierarchy where this is justified by life-cycle thinking on the overall impacts of the generation and management of such waste.

…’

11 Article 10(1) of Directive 2008/98 states as follows:

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

12 Article 11 of Directive 2008/98, entitled ‘Re-use and recycling’, provides in paragraphs 1 and 2 thereof:

‘2. In order to comply with the objectives of this Directive, and move towards a European recycling society with a high level of resource efficiency, Member States shall take the necessary measures designed to achieve the following targets:

…

(b) by 2020, the preparing for re-use, recycling and other material recovery, including backfilling operations using waste to substitute other materials, of non-hazardous construction and demolition waste excluding naturally occurring material defined in category 17 05 04 in the list of waste shall be increased to a minimum of 70% by weight.

3. The Commission shall establish detailed rules on the application and calculation methods for verifying compliance with the targets set out in paragraph 2 of this Article, considering Regulation (EC) No 2150/2002 of the European Parliament and of the Council of 25 November 2002 on waste statistics [(OJ 2002 L 332, p. 1)]. These can include transition periods for Member States which, in 2008, recycled less than 5% of either categories of waste referred to in paragraph 2. Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 39(2) of this Directive.'

13 Article 13 of Directive 2008/98 is worded as follows:

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

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

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

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

14 Article 40 of Directive 2008/98 states that the period for transposing that directive expired on 12 December 2010.

15 Annex I to Directive 2008/98, entitled 'Disposal operations', lists the following operations:

'D 1 Deposit into or on to land (e.g. landfill, etc.)

…

D 3 Deep injection (e.g. injection of pumpable discards into wells, salt domes or naturally occurring repositories, etc.)

…

D 12 Permanent storage (e.g. emplacement of containers in a mine, etc.)

…'

16 Annex II to Directive 2008/98, entitled 'Recovery operations', lists the following operations:

'…

R 3 Recycling/reclamation of organic substances which are not used as solvents (including composting and other biological transformation processes) ...

R 4 Recycling/reclamation of metals and metal compounds

R 5 Recycling/reclamation of other inorganic materials ...

…

R 10 Land treatment resulting in benefit to agriculture or ecological improvement

…'

Italian law

17 Article 10(3) of Legislative Decree No 117/2008 of 30 May 2008, which transposes Directive 2006/21 (GURI No 157 of 7 July 2008, p. 4) provides that:

'The filling of voids and spaces created by extraction with waste other than the extractive waste described in this decree shall be subject to the provisions of Legislative Decree No 36 of 13 January 2003 on the landfill of waste.'

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

18 On 16 March 2010 Edilizia Mastrodonato lodged an application for expansion of a quarry, together with, inter alia, an implementation plan for environmental restoration providing for the backfilling of the areas previously quarried using 1 200 000 m^3 of waste other than extractive waste.

19 The expansion of the quarry was authorised on 21 September 2011 by the Regional Mining and Quarrying Activities Department (Servizio regionale Attività estrattive), subject to the requirement that the scheduled restoration be carried out in accordance with the conditions laid down in the plan that was approved at the same time.

20 It is clear from the order for reference that Edilizia Mastrodonato and the Province of Bari disagree as to the procedure that Edilizia Mastrodonato should have followed in order to be able to proceed effectively with the backfilling of the areas previously quarried.

21 On 19 January 2012, Edilizia Mastrodonato submitted to the Province of Bari a notice of commencement of activity under the simplified procedure applicable to waste recovery operations. On 15 November 2012, the Director of the Provincial Police Service — Civil and Environmental Protection (Polizia Provinciale — Protezione Civile e Ambiente) of the Province of Bari indicated that he did not accept that the backfilling plan presented by Edilizia Mastrodonato was subject to the simplified procedure, claiming that the backfilling operation was in fact part of a plan to dispose of special inert waste with a volume of 1 200 000 m^3 by depositing it in landfills, which should be subject to the normal authorisation procedure in accordance with Article 10(3) of Legislative Decree No 117/2008, which transposes Article 10(2) of Directive 2006/21.

22 The decision was set aside by the Tribunale amministrativo regionale Puglia (Regional Administrative Court, Puglia, Italy). The court took the view that the backfilling operation planned may be carried out under a simplified procedure, notwithstanding the wording of Article 10(3) of Legislative Decree No 117/2008. According to that court, this provision should be interpreted in the light of developments in EU law on waste. The court considered that Article 3(15) and Article 11 of Directive 2008/98 suggest that a backfilling operation, even if using waste other than extractive waste, may consist not of the disposal but of the recovery of waste, which, under Italian law, may be subject to the simplified procedure.

23 The Province of Bari brought an appeal against the decision of the Tribunale amministrativo regionale Puglia (Regional Administrative Court, Puglia) before the Consiglio di Stato (Council of State, Italy) which is required to interpret Article 10(3) of Legislative Decree No 117/2008 and, accordingly, Article 10(2) of Directive 2006/21. Unlike the Tribunale amministrativo regionale Puglia (Regional Administrative Court, Puglia), the Consiglio di Stato (Council of State) notes that the Province of Bari argues that, in accordance with those two provisions, only backfilling carried out using extractive waste does not amount to a disposal of waste and may, therefore, follow the simplified procedure under Italian law.

24 In those circumstances, the Consiglio di Stato (Council of State) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Must Article 10(2) of Directive 2006/21 be interpreted as meaning that backfilling with waste — if carried out using waste other than extractive waste — falls under the provisions on waste set out in Directive 1999/31 even when the operation does not consist of the disposal of waste but of recovery?'

Consideration of the question referred

25 By its question, the referring court asks, in essence, whether Article 10(2) of Directive 2006/21 must be interpreted as having the effect of making an operation entailing the backfilling of a quarry using waste other than extractive waste subject to the requirements of Directive 1999/31, if that operation amounts to a recovery of waste.

26 Under Article 2(1) of Directive 2006/21, the directive applies to the management of waste resulting from the prospecting, extraction, treatment and storage of mineral resources and the working of quarries.

27 Article 10 of Directive 2006/21 is entitled 'Excavation voids'. Under Article 10(1) of the directive, Member States are to ensure that the operator takes certain measures when placing extractive waste back into the excavation voids for rehabilitation and construction purposes. Conversely, Article 10(2) of the directive provides that Directive 1999/31 'shall continue to apply to the waste other than extractive waste used for filling in excavation voids [as appropriate]'.

28 It must be noted that the language versions of Article 10(2) of Directive 2006/21 differ as to whether waste other than extractive waste is necessarily covered by Directive 1999/31. In particular, while, inter alia, in the Greek, French and Italian language versions, that provision states that Directive 1999/31 is to continue to apply to waste other than extractive waste used for backfilling purposes, in the German and English language versions, inter alia, the same provision provides that Directive 1999/31 is to continue to apply to such waste 'as appropriate' (in German: 'gegebenenfalls').

29 It must be borne in mind that, according to the Court's settled case-law, the wording used in one language version of a provision of EU law cannot serve as the sole basis for the interpretation of that provision or be given priority over the other language versions. Provisions of EU law must be interpreted and applied uniformly in the light of the versions existing in all EU languages. Where there is divergence between the various language versions of an EU legislative text, the provision in question must be interpreted by reference to the purpose and general scheme of the rules of which it forms part (judgment of 17 March 2016 in *Kødbranchens Fællesråd*, C-112/15, EU:C:2016:185, paragraph 36 and the case-law cited).

30 In that regard, as the Advocate General noted in point 31 of her Opinion, Article 10(2) of Directive 2006/21 specifies that Directive 1999/31 'shall continue to apply' to waste other than extractive waste used for backfilling purposes, which suggests that the backfilling of an excavation void is not covered by Directive 1999/31 unless it meets the requirements for the application of that directive.

31 Directive 1999/31 applies only to waste that is disposed of, not to waste that is to be recovered. As the Advocate General noted in point 38 of her Opinion, Article 3(1) of the directive provides that its provisions are to apply to all landfills, which are defined in Article 2(g) of the directive as waste disposal sites for the deposit of waste onto or into land.

32 This interpretation is supported by the fact that, given the overall scheme of Directive 2006/21, which is directed at governing solely the management of waste resulting from extractive industries, Article 10(2) of the directive may not be interpreted in a way that would result in implicitly broadening the scope of Directive 1999/31 as clearly defined in Article 3(1) thereof.

33 It follows that waste other than extractive waste may fall within the scope of Directive 1999/31 only if the waste is deposited in landfills for disposal, not if it is to be recovered. That is the correct interpretation of the second indent Article 3(2) of the directive, which excludes from its scope the use in landfills of inert waste which is suitable in redevelopment/restoration and filling-in, or for construction purposes.

34 Consequently, Article 10(2) of Directive 2006/21 must be interpreted as not having the effect of making an operation entailing the backfilling of a quarry using waste other than extractive waste subject to the requirements of Directive 1999/31, if that operation does not amount to a disposal, but to a recovery of waste.

35 In order to provide a useful answer to the referring court, it is also necessary to determine the circumstances in which the backfilling of a quarry using waste other than extractive waste may be regarded as a recovery operation.

36 Since Directive 1999/31 does not define the term 'recovery', reference must be made to the definition of that term as set out in Article 3(15) of Directive 2008/98. That directive, which repealed, with effect from 12 December 2010, the relevant provisions of Directive 2006/12/EC of the European Parliament and of the Council of 5 April 2006 on waste (OJ 2006 L 114, p. 9), and for which the time limit for transposition expired on that same day, applies *ratione temporis* to the dispute in the main proceedings, since the notice of commencement of activity that Edilizia Mastrodonato submitted to the Province of Bari under the simplified procedure applicable to waste recovery operations is dated 19 January 2012 (see, by analogy, judgment of 23 March 2006 in *Commission* v *Austria*, C-209/04, EU:C:2006:195, paragraphs 56 and 57).

37 Article 3(15) of Directive 2008/98 defines, inter alia, the 'recovery' of waste as an operation the principal result of which is that the waste in question serves a useful purpose by replacing other materials which would otherwise have been used to fulfil a particular function. Recital 19 of the directive is consistent with this approach in that it specifies that the concept of 'recovery' differs, in terms of environmental impact, from the concept of 'disposal' through the substitution of natural resources in the economy.

38 Thus, that definition corresponds to the definition developed in the Court's case-law, according to which the essential characteristic of a waste recovery operation is that its principal objective is that the waste serves a useful purpose in replacing other materials which would have had to be used for that purpose, thereby enabling natural resources to be preserved (judgment of 27 February 2002 in *ASA*, C-6/00, EU:C:2002:121, paragraph 69).

39 It follows that the main objective of the recovery operation must be the conservation of natural resources. Conversely, if the conservation of natural resources constitutes only a secondary effect of an operation the principal objective of which is the disposal of waste, this cannot affect the classification of that operation as a disposal operation (see, to that effect, judgment of 13 February 2003 in *Commission* v *Luxembourg*, C-458/00, EU:C:2003:94, paragraph 43).

40 In this regard, it is apparent from Article 3(15) and (19) of Directive 2008/98 that the purpose of Annexes I and II to the directive is to set out the most common disposal and recovery operations, not to provide an exhaustive list of all the disposal and recovery operations covered by the directive.

41 That being said, it must be possible to classify any waste treatment operation as either a 'disposal' or a 'recovery' operation, and, as is apparent from Article 3(19) of Directive 2008/98, a single operation may not be classified at the same time as both a 'disposal' and a 'recovery' operation. Consequently, as is the case in the main proceedings, in a situation where, having regard solely to the terms of the operations in question, a waste treatment operation cannot be brought within one of the operations or categories of operations referred to in Annexes I and II to the directive, such operations must be classified on a case-by-case basis in the light of the objectives and definitions set out in the directive (see, by analogy, judgment of 27 February 2002 in *ASA*, C-6/00, EU:C:2002:121, paragraphs 62 to 64).

42 It is a matter for the referring court, having regard to all the relevant factors of the dispute in the main proceedings, and taking into consideration the objective of protecting the environment pursued by Directive 2008/98, to determine whether the main purpose of the backfilling of the quarry at issue in the main proceedings is to recover waste other than extractive waste intended to be used during this operation.

43 This may be the case if, on the one hand, it is established that the backfilling of the quarry in question would have taken place even if such waste had not been available and, accordingly, other materials would have had to be used (see, by analogy, judgment of 27 February 2002 in *ASA*, C-6/00, EU:C:2002:121, paragraph 69).

44 In this context, the referring court must take into consideration the circumstances surrounding the backfilling operation in order to determine whether the operation would have gone ahead even in the absence of waste other than extractive waste. Thus, for instance, the fact that the operator of the quarry at issue in the main proceedings acquires such waste in exchange of payment to the waste producer or holder may indicate that the main objective of the operation in question is the recovery of such waste (see, to that effect, judgment of 13 February 2003 in *Commission* v *Luxembourg*, C-458/00, EU:C:2003:94, paragraph 44).

45 On the other hand, the backfilling of the quarry at issue in the main proceedings may not be regarded as a recovery operation unless, in the light of the most recent state of scientific and technical knowledge, the waste used is suitable for that purpose.

46 Article 10(1) and Article 13 of Directive 2008/98 require Member States to take the necessary measures to ensure that recovery operations are carried out without harming the environment and without endangering human health, which presupposes that the waste may be used in place of other materials in the same conditions of environmental protection (see, by analogy, judgment of 22 December 2008 in *Commission* v *Italy*, C-283/07, not published, EU:C:2008:763, paragraph 61 and the case-law cited).

47 Regarding whether it is suitable to use waste other than extractive waste for backfilling the quarry at issue in the main proceedings, it is apparent from Article 3(1) and the second to fourth indents of Article 3(2) of Directive 1999/31 that non-inert waste and hazardous waste are not suitable for redevelopment/restoration and filling-in work, or for construction purposes. Thus, using non-inert or hazardous waste in such a manner may not be regarded as a recovery operation, and, therefore, falls within the scope of the directive.

48 Using unsuitable waste for backfilling excavation voids in a quarry would have a significantly more negative impact on the environment than using other materials for the backfilling operation. As recital 19 of Directive 2008/98 states, it is not possible to classify an activity as a recovery operation if the classification of the activity as recovery does not match the real environmental impact of the operation, which, according to the waste hierarchy laid down in Article 4(1) of the directive, is meant to be better in the case of waste recovery than in the case of waste disposal.

49 In the light of the considerations set out in paragraphs 41 to 46 of the present judgment, it is incumbent on the referring court to determine whether, first, Edilizia Mastrodonato would still proceed with the backfilling of the excavation voids of the quarry it owns even if it had to refrain from using waste other than extractive waste to do so, and, second, whether the waste which is planned to be used is suitable for such backfilling. The operation at issue in the main proceedings may not be classified as a 'recovery' unless these two cumulative requirements are satisfied.

50 In that regard, it is clear from the reply the referring court provided to the Court's request for clarification that the types of waste at issue in the main proceedings are widely different and that they probably consist of non-inert waste or even hazardous waste, which, as established in paragraph 47 above, are unsuitable for the purpose of backfilling a quarry. It is, however, for the national court, which alone has jurisdiction to assess the facts of the dispute, to determine whether the plans for backfilling the excavation voids in the quarry owned by Edilizia Mastrodonato meet the requirements set out in the preceding paragraph.

51 In the light of all the foregoing, the answer to the question referred is that Article 10(2) of Directive 2006/21 must be interpreted as not having the effect of making an operation entailing the backfilling of a quarry using waste other than extractive waste subject to the requirements of Directive 1999/31, if that operation amounts to a recovery of waste, which is a matter to be determined by the national court.

Costs

52 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 (Fourth Chamber) hereby rules:

Article 10(2) of Directive 2006/21/EC of the European Parliament and of the Council of 15 March 2006 on the management of waste from extractive industries and amending Directive 2004/35/EC must be interpreted as not having the effect of making an operation entailing the backfilling of a quarry using waste other than extractive waste subject to the requirements of Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste, where that operation amounts to a recovery of waste, which is a matter to be determined by the national court.

[Signatures]