Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

14 October 2020*

(Reference for a preliminary ruling – Environment – Waste – Directive 2008/98/EC – Article 2(2)(a), point 1 of Article 3 and Article 6(1) – Waste water – Sewage sludge – Scope – Concept of 'waste' – Cessation of waste status – Recovery or recycling operation)

In Case C-629/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Landesverwaltungsgericht Steiermark (Regional Administrative Court, Styria, Austria), made by decision of 14 August 2019, received at the Court on 23 August 2019, in the proceedings

Sappi Austria Produktions-GmbH & Co. KG,

Wasserverband 'Region Gratkorn-Gratwein'

v

Landeshauptmann von Steiermark,

THE COURT (Second Chamber),

composed of A. Arabadjiev (Rapporteur), President of the Chamber, R. Silva de Lapuerta, Vice-President of the Court, acting as a Judge of the Second Chamber, A. Kumin, T. von Danwitz and P.G. Xuereb, Judges,

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Sappi Austria Produktions-GmbH & Co. KG, and the Wasserverband 'Region Gratkorn-Gratwein', by P. Schaden and W. Thurner, Rechtsanwälte,

– the Austrian Government, by J. Schmoll, acting as Agent,

– the European Commission, by F. Thiran and M. Noll-Ehlers, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

* Language of the case: German.

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 2(2)(a), point 1 of Article 3, Article 5(1) and Article 6(1) 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).

2 The request has been made in proceedings between Sappi Austria Produktions-GmbH & Co. KG ('Sappi') and the Wasserverband 'Region Gratkorn-Gratwein' (water board for the region of Gratkorn-Gratwein, Austria; 'the Wasserverband'), on the one hand, and the Landeshauptmann von Steiermark (Governor of Styria, Austria; 'the regional authority'), on the other, concerning a decision of the latter finding that the modifications concerning the industrial plant of Sappi and that of the Wasserverband, which are located in the same place, must be subject to prior authorisation.

Legal context

EU law

3 The essential objective of Council Directive 75/442/EEC of 15 July 1975 on waste (OJ 1975 L 194, p. 39), as amended by Council Directive 91/156/EEC of 18 March 1991 (OJ 1991 L 78, p. 32) ('Directive 75/442'), was the protection of human health and the environment against harmful effects caused by the collection, transport, treatment, storage and tipping of waste.

4 Directive 75/442 was consolidated in Directive 2006/12/EC of the European Parliament and of the Council of 5 April 2006 on waste (OJ 2006 L 114, p. 9) which was itself repealed and replaced by Directive 2008/98. Articles 4, 8 and 9 of Directive 75/442 are reproduced, in essence, in Article 13, Article 36(1) and in Articles 15 and 23 of Directive 2008/98.

5 Chapter I of Directive 2008/98, entitled 'Subject matter, scope and definitions', includes Articles 1 to 7 thereof.

6 Article 1 of that directive is worded as follows:

'This Directive lays down measures to protect the environment and human health by preventing or reducing the adverse impacts of the generation and management of waste and by reducing overall impacts of resource use and improving the efficiency of such use.'

7 Article 2(2)(a) of that directive provides:

'The following shall be excluded from the scope of this Directive to the extent that they are covered by other Community legislation:

(a) waste waters;

…'

8 Article 3 of that directive, entitled 'Definitions', provides:

'For the purposes of this Directive, the following definitions shall apply:

1. "waste" means any substance or object which the holder discards or intends or is required to discard;

…

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;

…'

9 Article 5 of Directive 2008/98, entitled 'By-products', provides:

'1. A substance or object, resulting from a production process, the primary aim of which is not the production of that item, may be regarded as not being waste referred to in point (1) of Article 3 but as being a by-product only if the following conditions are met:

(a) further use of the substance or object is certain;

(b) the substance or object can be used directly without any further processing other than normal industrial practice;

(c) the substance or object is produced as an integral part of a production process; and

(d) further use is lawful, i.e. the substance or object fulfils all relevant product, environmental and health protection requirements for the specific use and will not lead to overall adverse environmental or human health impacts.

…'

10 Under Article 6 of that directive, entitled 'End-of-waste status':

'1. Certain specified waste shall cease to be waste within the meaning of point (1) of Article 3 when it has undergone a recovery, including recycling, operation and complies with specific criteria to be developed in accordance with the following conditions:

(a) the substance or object is commonly used for specific purposes;

(b) a market or demand exists for such a substance or object;

(c) the substance or object fulfils the technical requirements for the specific purposes and meets the existing legislation and standards applicable to products; and

(d) the use of the substance or object will not lead to overall adverse environmental or human health impacts.

The criteria shall include limit values for pollutants where necessary and shall take into account any possible adverse environmental effects of the substance or object.

…'

Austrian law

11 The relevant provisions of the Abfallwirtschaftsgesetz of 2002 (Austrian Federal Law of 2002 on Waste Management; 'the AWG 2002') which transpose Directive 2008/98 are worded as follows:

'Definitions

Paragraph 2(1) For the purposes of this Federal Law, waste means any movable property,

1. which the holder intends to discard or has discarded, or

2. whose collection, storage, transport and treatment as waste is necessary in order not to harm public interests (Paragraph 1(3)).

…

(3a) A substance or object, resulting from a production process, the primary aim of which is not the production of that item, may be regarded as not being waste but as being a by-product only if the following conditions are met:

1. further use of the substance or object is certain;

2. the substance or object can be used directly without any further processing other than normal industrial practice;

3. the substance or object is produced as an integral part of a production process; and

4. further use is permitted, in particular, the substance or object can be used safely for its intended useful purpose, no protected interests (cf. Paragraph 1(3)) are harmed by the use and all relevant legal provisions are complied with.

…

Exclusions from the scope

Paragraph 3(1) The following is not waste within the meaning of this Federal Law

1. waste water including other water which is listed in Paragraph 1(1), points 1 to 4 and 6 and Paragraph 1(2) of the *Verordnung über die allgemeine Begrenzung von Abwasseremissionen in Fließgewässer und öffentliche Kanalisationen* (Regulation on the general limitation of emissions of waste water into watercourses and public sewers, BGB1. 186/1996).

…

End-of-waste status

Paragraph 5(1) Unless otherwise specified in a regulation referred to in Paragraph 5(2) or in a regulation referred to in Article 6(2) of Directive 2008/98/EC on waste, existing substances shall be deemed to be waste until they or substances directly obtained from them are used as a substitute for

raw materials or for products obtained from primary raw materials. In the case of preparing for re-use within the meaning of point 6 of Paragraph 2(5), the end-of-waste status occurs at the end of that recovery operation.

…

Declaratory decisions

Paragraph 6 …

(6) On request by a project developer or the Umweltanwalt (Environmental Ombudsman) or, of its own motion, the *Landeshauptmann* (Governor) shall determine within three months whether

1. a plant shall be subject to authorisation pursuant to Paragraph 37(1) or (3) or in accordance with Paragraph 52, or if there is an exception under Paragraph 37(2),

…

3. modification to a waste treatment facility shall be subject to authorisation pursuant to Paragraph 37(1) or (3) or whether it is subject to compulsory notification under Paragraph 37(4).

…'

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

12 Sappi operates a large industrial paper and pulp production plant in Gratkorn (Austria). On that site is also a sewage treatment plant, operated jointly by Sappi and the Wasserverband, which treats waste water from paper and pulp production as well as municipal waste water. During the treatment of that waste water, which is required by national law, the sewage sludge in question in the main proceedings arises. That sludge is therefore made up of both substances from industrial waste water and substances from municipal waste water. Sewage sludge which is produced in the sewage treatment plant is then incinerated in a boiler of Sappi and in a waste incineration plant operated by the Wasserverband, and the steam reclaimed for the purposes of energy recovery is used in the production of paper and pulp.

13 The regional authority determined, after an extensive preliminary investigation pursuant to Paragraph 6(6) of the AWG 2002, that modifications to a boiler of Sappi and the waste incineration plant owned by the Wasserverband, also located in Gratkorn, were subject to authorisation.

14 That authority found that, admittedly, the majority of the sewage sludge used for incineration, namely 97%, originated from a paper production process and that this proportion could be regarded as having 'by-product' status within the meaning of Paragraph 2(3a) of the AWG 2002. However, that does not apply to the proportion of sewage sludge arising from municipal waste water treatment. That sewage sludge remains waste.

15 Since, according to the case-law of the Verwaltungsgerichtshof (Supreme Administrative Court, Austria), there is no *de minimis* limit for the classification of a substance as 'waste', it is to be assumed that all the sewage sludge incinerated in the industrial plants of Sappi and of the Wasserverband must be classified as 'waste' within the meaning of Paragraph 2(1) of the AWG 2002. Sappi and the Wasserverband appealed against that decision before the referring court.

16 By a judgment of 19 December 2016, that court upheld the appeal of Sappi and the Wasserverband. The Verwaltungsgerichtshof (Supreme Administrative Court), on appeal on a point of law ('*Revision*') against that judgment dismissed that appeal by a judgment of 27 February 2019 and remitted the case back to the referring court.

17 The Verwaltungsgerichtshof (Supreme Administrative Court) notes that, in accordance with Article 5 of Directive 2008/98, Paragraph 2(3a) of the AWG 2002 lays down the conditions under which a substance or object – which, while resulting from a production process, is not the primary aim of that process – may be regarded as not being 'waste' but as being a 'by-product'. It is clear from that provision that the substance or object must arise from a production process.

18 The referring court wonders whether, as the Verwaltungsgerichtshof (Supreme Administrative Court) found, sewage sludge resulting from the joint treatment of industrial and municipal waste water constitutes 'waste' within the meaning of EU law. That court emphasises that, if waste water treatment was not part of a production process, one of the fundamental conditions for the existence of a by-product would not be met.

19 The referring court notes, nonetheless, that the sewage sludge is conveyed by means of a closed, automated system within the plant, the sewage sludge is used without interruption and this process does not present a risk to the environment or human health. In addition, this approach also pursues the objective of waste prevention and the substitution of fossil raw materials.

20 In those circumstances, the Landesverwaltungsgericht Steiermark (Regional Administrative Court, Styria, Austria) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Is sewage sludge to be regarded as waste in light of the exclusion under Article 2(2)(a) of [Directive 2008/98], in conjunction with [Council] Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment [(OJ 1991 L 135, p. 40)] and/or [Directive 86/278/EEC of 12 June 1986 on the protection of the environment, and in particular of the soil, when sewage sludge is used in agriculture (OJ 1986 L 181, p. 6)], as amended by Regulation (EC) No 1137/2008 of the European Parliament and of the Council of 22 October 2008 [adapting a number of instruments subject to the procedure laid down in Article 251 of the Treaty to Council Decision 1999/468/EC, with regard to the regulatory procedure with scrutiny – Adaptation to the regulatory procedure with scrutiny – Part One (OJ 2008 L 311, p. 1)]?

(2) If the first question is answered in the affirmative:

Does Article 6(1) of Directive 2008/98 … permit a substance to be classified as a "by-product" within the meaning of the concept of "waste" under EU law if, for process-related reasons, other substances which would otherwise have to be regarded as waste are added to that substance in a small proportion, if this has no effect on the composition of the substance as a whole and provides a significant benefit to the environment?'

Admissibility of the questions referred for a preliminary ruling

21 In its written observations, the Austrian Government submits that the request for a preliminary ruling is manifestly inadmissible.

22 First, it is unnecessary to answer the first question. The purpose of the main proceedings is to determine whether sewage sludge is 'waste' within the meaning of point 1 of Article 3 of Directive 2008/98, if necessary, read in conjunction with Articles 5 and 6 of that directive. The first question

concerns Article 2(2)(a) of that directive. Since sewage sludge is not a constituent element of waste water, that provision clearly bears no relation to the purpose of the main proceedings and the question is therefore hypothetical.

23 Second, the reasons why the referring court has doubts on the interpretation of that provision is unclear from the statement of reasons. That court is unsure only whether Paragraph 2(1) and (3a) of the AWG 2002 is compatible with EU law and the interpretation thereof. However, those provisions transpose not Article 2(2)(a) but point 1 of Article 3 and Article 5 of Directive 2008/98.

24 The referring court is in fact seeking an interpretation not of Article 6 but of Article 5 of Directive 2008/98. However, meeting the criteria for a substance to be classified as a 'by-product' would have the effect that there is no waste. Lastly, the referring court has no doubts as regards the interpretation of Article 6 of that directive but limits itself to complain, generally, that there is no 'encouragement of the waste hierarchy' in the case in the main proceedings and raises no questions of EU law which have not already been resolved.

25 In that regard, it must be recalled that, according to the settled case-law of the Court, Article 267 TFEU gives national courts the widest discretion in referring matters to the Court if they consider that a case pending before them raises questions involving, inter alia, the interpretation of provisions of EU law which are necessary for the resolution of the case before them and they are free to exercise that discretion at whatever stage of the proceedings they consider appropriate (judgment of 26 June 2019, *Addiko Bank*, C-407/18, EU:C:2019:537, paragraph 35 and the case-law cited).

26 Similarly, the Court has repeatedly stated that questions submitted by national courts relating to EU law enjoy a presumption of relevance. The Court may thus refuse to rule on such questions only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgments of 10 December 2018, *Wightman and Others*, C-621/18, EU:C:2018:999, paragraph 27, and of 26 June 2019, *Addiko Bank*, C-407/18, EU:C:2019:537, paragraph 36).

27 However, that is not the case here.

28 First, it must be held that the substance in question in the main proceedings consists of sewage sludge from the treatment of waste water from the sewage treatment plant operated by Sappi and the Wasserverband. In certain circumstances, Article 2 of Directive 2008/98 excludes waste water from the scope of that directive. Accordingly, the fact that the referring court seeks the Court's interpretation of that article appears to bear no relation to the purpose of the dispute in the main proceedings.

29 Second, the referring court's questions have dealt with the classification of such sludge as 'waste' or as a 'by-product', which has specific legal consequences and is clearly linked to the dispute in the main proceedings. By its second question, the referring court asks, in essence, whether all the conditions in Article 5(1) or in Article 6(1) of Directive 2008/98 are met. To that end, the referring court set out sufficient factual and legal material in order for the Court to give a useful answer to that question.

30 It follows that the present request for a preliminary ruling is admissible.

Consideration of the questions referred

31 By its questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 2(2)(a), point 1 of Article 3, Article 5(1) and Article 6(1) of Directive 2008/98 must be interpreted as meaning that sewage sludge arising during the joint treatment of industrial or residential and municipal waste water in a sewage treatment plant which is incinerated in a waste incineration plant for the purposes of energy recovery by generating steam must be classified as 'waste'.

32 It is appropriate, in the first place, to examine whether the substances in question in the main proceedings fall within the scope of Directive 2008/98.

33 Under Article 2(2)(a) of Directive 2008/98, waste water, with the exception of waste in liquid form, is excluded from the scope of that directive, provided however that that waste water is already covered by 'other [EU] legislation'.

34 The EU legislature intended expressly to classify waste water as 'waste' within the meaning of that directive, while providing that that waste may, in certain circumstances, fall outside its scope and be covered by other legislation (see, by analogy, as regards Article 2(1) of Directive 75/442, judgment of 10 May 2007, *Thames Water Utilities*, C-252/05, EU:C:2007:276, paragraph 26).

35 To be regarded as 'other [EU] legislation' within the meaning of Article 2(2)(a) of Directive 2008/98, the rules in question must not merely relate to a particular substance, but must contain precise provisions organising its management as 'waste' within the meaning of point 1 of Article 3 of Directive 2008/98. Otherwise, the management of that waste would be organised neither on the basis of that directive nor on that of another directive nor on that of national legislation, which would be contrary both to the wording of Article 2(2) of that directive and to the very objective of the EU legislation on waste (see, by analogy, as regards Article 2(1) of Directive 75/442, judgment of 10 May 2007, *Thames Water Utilities*, C-252/05, EU:C:2007:276, paragraph 33 and the case-law cited).

36 It follows that, for the EU rules in question to be regarded as constituting 'other [EU] legislation' within the meaning of Article 2(2) of Directive 2008/98, they must contain precise provisions organising the management of waste and ensure a level of protection which is at least equivalent to that resulting from that directive (see, to that effect, judgment of 10 May 2007, *Thames Water Utilities*, C-252/05, EU:C:2007:276, paragraph 34 and the case-law cited).

37 Directive 91/271 does not ensure such a level of protection. Although it regulates the collection, treatment and discharge of waste water, it contains no specific provisions on the management of sewage sludge. It cannot therefore be regarded as relating to the management of such sewage sludge and ensuring a level of protection which is at least equivalent to that resulting from Directive 2008/98 (see, by analogy, judgment of 10 May 2007, *Thames Water Utilities*, C-252/05, EU:C:2007:276, paragraph 35).

38 As regards Directive 86/278, which was relied on both by the referring court and by the parties to the main proceedings, as is clear from its very title as well as from its Article 1, it governs only the use of sewage sludge in agriculture. That directive is therefore irrelevant for the purposes of classifying sewage sludge incinerated in a waste incineration plant for the purposes of energy recovery by generating steam without any relation to agricultural activities.

39 Therefore, it should be noted that that waste water is not excluded from the scope of Directive 2008/98. This also applies to the sewage sludge in question in the main proceedings, which arises during the treatment of that waste water, since, under Article 2(2) of that directive, sewage sludge is also not included in the substances or the objects which can be excluded from its scope.

40 In the second place, it should be determined whether the sewage sludge in question in the main proceedings constitutes 'waste' within the meaning of point 1 of Article 3 of Directive 2008/98.

41 It should be recalled that that provision defines the concept of 'waste' as being any substance or object which the holder discards or intends or is required to discard.

42 In accordance with the Court's settled case-law, the classification of a substance or object as waste is to be inferred primarily from the holder's actions and the meaning of the term 'discard' (judgment of 4 July 2019, *Tronex*, C-624/17, EU:C:2019:564, paragraph 17 and the case-law cited).

43 As regards the meaning of the term 'discard', it also follows from the Court's settled case-law that that term must be interpreted in the light of the aim of Directive 2008/98, which, in the words of recital 6 thereof, is to minimise the negative effects of the generation and management of waste on human health and the environment, having regard to Article 191(2) TFEU, which provides that EU policy on the environment is to aim at a high level of protection and is to be based, in particular, on the precautionary principle and the principle that preventive action should be taken. It follows that the term 'discard', and therefore the concept of 'waste' within the meaning of point 1 of Article 3 of Directive 2008/98, cannot be interpreted restrictively (judgment of 4 July 2019, *Tronex*, C-624/17, EU:C:2019:564, paragraph 18 and the case-law cited).

44 Moreover, it is apparent from the provisions of that directive that the term 'discard' covers both 'recovery' and 'disposal' of a substance or object, within the meaning of points 15 and 19 of Article 3 of that directive (judgment of 4 July 2019, *Tronex*, C-624/17, EU:C:2019:564, paragraph 19 and the case-law cited).

45 More specifically, the existence of 'waste', within the meaning of Directive 2008/98, must be determined in the light of all the circumstances, regard being had to the aim of that directive and the need to ensure that its effectiveness is not undermined. Thus, certain circumstances may constitute evidence that a substance or object has been discarded or of an intention or requirement to discard it within the meaning of point 1 of Article 3 of Directive 2008/98 (judgment of 4 July 2019, *Tronex*, C-624/17, EU:C:2019:564, paragraphs 20 and 21).

46 Among the circumstances that may constitute such evidence is the fact that a substance is a production or consumption residue, that is to say, a product which was not itself sought (see, to that effect, judgments of 24 June 2008, *Commune de Mesquer*, C-188/07, EU:C:2008:359, paragraph 41, and of 3 October 2013, *Brady*, C-113/12, EU:C:2013:627, paragraph 40).

47 Such evidence may likewise be constituted by the fact that the substance in question is a production residue for which special precautions must be taken if it is used owing to the environmentally hazardous nature of its composition (judgment of 3 October 2013, *Brady*, C-113/12, EU:C:2013:627, paragraph 41 and the case-law cited).

48 It is also clear from the Court's case-law that neither the method of treatment reserved for a substance nor the use to which that substance is put determines conclusively whether or not the substance is to be classified as 'waste' and that the concept of 'waste' does not exclude substances or objects which are capable of economic re-use. The system of supervision and control established by Directive 2008/98 is intended to cover all objects and substances discarded by their owners, even if they have a commercial value and are collected on a commercial basis for recycling, reclamation or re-use (see, to that effect, judgments of 24 June 2008, *Commune de Mesquer*, C-188/07, EU:C:2008:359, paragraph 40, and of 3 October 2013, *Brady*, C-113/12, EU:C:2013:627, paragraph 42 and the case-law cited).

49 In addition, particular attention must be paid to the fact that the object or substance in question is not or is no longer of any use to its holder, such that that object or substance constitutes a burden which that holder will seek to discard. If that is indeed the case, there is a risk that that holder will dispose of

the object or substance in his or her possession in a way likely to cause harm to the environment, particularly by dumping it or disposing of it in an uncontrolled manner. That object or substance, because it falls within the concept of 'waste' within the meaning of Directive 2008/98, is subject to the provisions of that directive, which means that the recovery or disposal of that object or substance must be carried out in such a way that human health is not endangered and without using processes or methods likely to harm the environment (judgment of 4 July 2019, *Tronex*, C-624/17, EU:C:2019:564, paragraph 22).

50 In that regard, the degree of probability that goods, a substance or a product will be re-used without a prior processing operation constitutes a criterion relevant to assessing whether or not they constitute waste within the meaning of Directive 2008/98. If, beyond the mere possibility of re-using the goods, substance or product in question, there is also a financial advantage for the holder in so doing, the likelihood of such re-use is high. In such circumstances, the goods, substance or product in question must no longer be regarded as a burden which its holder seeks to 'discard', but as a genuine product (judgment of 4 July 2019, *Tronex*, C-624/17, EU:C:2019:564, paragraph 23 and the case-law cited).

51 Similarly, in certain situations, goods, materials or raw materials resulting from an extraction or manufacturing process the primary aim of which is not their production may be regarded not as a residue, but as by-products, which their holder does not seek to 'discard', within the meaning the point 1 of Article 3 of Directive 2008/98, but which he or she intends to exploit or market on terms advantageous to him or herself in a subsequent process – including, as the case may be, in order to meet the needs of economic operators other than the producer of those substances – provided that such re-use is not a mere possibility but a certainty, without any further processing prior to re-use and as part of the continuing process of production (judgment of 3 October 2013, *Brady*, C-113/12, EU:C:2013:627, paragraph 44 and the case-law cited).

52 It would indeed not be justified at all to make goods, substances or products which the holder intends to exploit or market on economically advantageous terms in a subsequent recovery process subject to the requirements of Directive 2008/98, which seek to ensure that recovery and disposal operations will be carried out without endangering human health and without using processes or methods which could harm the environment. However, having regard to the requirement to interpret the concept of 'waste' widely, it is only situations in which the re-use of the goods or substance in question is not a mere possibility but a certainty that are envisaged, which it is for the referring court to ascertain, without the necessity of using any of the waste recovery processes referred to in Annex II to Directive 2008/98 prior to re-use (judgment of 4 July 2019, *Tronex*, C-624/17, EU:C:2019:564, paragraph 24 and the case-law cited).

53 It is ultimately for the referring court, which alone has jurisdiction to assess the facts of the case before it, to verify whether the holder of the object or substance in question did in fact intend to 'discard' it, taking into account all the facts of the case, while ensuring compliance with the objective of Directive 2008/98. That being so, it is for the Court to provide that court with any helpful guidance to resolve the dispute before it (judgment of 4 July 2019, *Tronex*, C-624/17, EU:C:2019:564, paragraph 25 and the case-law cited).

54 In the present case, the purpose of the main proceedings is to establish whether sewage sludge from the sewage treatment plant jointly operated by Sappi and the Wasserverband is to be classified as 'waste' and whether, accordingly, its incineration is covered by the provisions applicable to waste. As the case may be, it is appropriate, under national law, to make modifications made to the boiler of Sappi and to the waste incineration plant owned by the Wasserverband subject to authorisation.

55 Sappi maintains that this is not the case, since the sewage sludge in question in the main proceedings consists of almost 100% vegetable residues from paper and pulp production, which formed an integral part from the plant's design phase and was used for the purposes of energy recovery for paper

production. It therefore procured a significant economic advantage for that company. Due to the closed circuit operation including 24-hour-a-day transport by conveyor belt, there is no substance which the holder would like to discard.

56 It is also apparent from the order for reference that that sewage sludge arises during the joint treatment of industrial and, to a small extent, residential or municipal waste water in a sewage treatment plant and is used, after mechanical dewatering in a waste incineration plant, for the purposes of energy recovery by generating steam in Sappi's production process. Due to the fact that the sewage sludge is an integral part of the emission-neutral, seamlessly continuous incineration carried out to generate steam in the paper production process, the referring court takes the view that that sewage sludge is re-used permanently, immediately and with certainty.

57 As follows from the case-law referred to in paragraphs 41 and 42 of this judgment, the concept of 'waste' is defined as being any substance or object which the holder discards or intends or is required to discard.

58 In that regard, it must be held that the fact that in the sewage treatment plant, municipal waste water is added to the waste water from the paper and pulp production to only a small extent is irrelevant for the purposes of determining whether or not the sewage sludge which originates from the joint treatment of that waste water constitutes 'waste'.

59 That is the only interpretation which guarantees compliance with the objective of minimising the negative effects of the generation and management of waste on human health and the environment pursued by Directive 2008/98. In such a case, the waste water from the paper and pulp production is not separable from residential or municipal waste water and can be recovered or disposed of only if it is also subject to necessary treatment operations which are required by national law. It is common knowledge that residential or municipal waste water is to be regarded as a substance which its holder discards.

60 It follows from the foregoing that, subject to verifications to be carried out by the referring court, the waste water at issue in the main proceedings is to be regarded as a substance that the holder wishes to discard, which entails its classification as 'waste' within the meaning of Directive 2008/98.

61 According to the information in the file submitted to the Court, the purification of such waste water constitutes a treatment process imposed by national water management legislation prior to the discharge of waste water into a watercourse, inasmuch as only harmless substances may be discharged. It is clear in this respect from the evidence in that file that, depending on the type of waste water and the treatment process, sewage sludge may contain certain harmful substances, such as pathogenic germs or heavy metals, which pose a risk to the environment and to human and animal health.

62 As regards the sewage sludge in question in the main proceedings, it is common knowledge that it is a residue from waste water treatment. As is clear from the case-law referred to in paragraphs 46 and 47 of this judgment, such evidence supports the fact that the status of waste is maintained.

63 However, it appears that the referring court considers that even before its incineration, sewage sludge could no longer be classified as 'waste'.

64 It must be recalled in this respect that the first subparagraph of Article 6(1) of Directive 2008/98 sets out the conditions to be met by the specific criteria which make it possible to determine which waste ceases to be 'waste' within the meaning of point 1 of Article 3 of that directive when it has undergone a recovery or recycling operation.

65 During the recovery of waste, a high level of protection of the environment and human health must be guaranteed. In particular, the recovery of sewage sludge entails certain risks for the environment and human health, particularly linked to the potential presence of hazardous substances (see, to that effect, judgment of 28 March 2019, *Tallinna Vesi*, C-60/18, EU:C:2019:264, paragraph 28).

66 In the present case, it must be stated that, in a situation where incineration of sewage sludge consists in 'recovery' within the meaning of point 15 of Article 3 of Directive 2008/98 on waste operations, that sludge must still be classified as 'waste' when it is incinerated. A change of status such as that mentioned by the referring court would thus presuppose that the treatment carried out for the purposes of recovery makes it possible to obtain sewage sludge with a high level of protection of the environment and human health, such as required by Directive 2008/98, which is, in particular, free from any dangerous substance. For that purpose, it is necessary to ensure that the sewage sludge in question in the main proceedings is harmless.

67 It is for the referring court to determine whether the conditions laid down in Article 6(1) of Directive 2008/98 are already met before the sewage sludge is incinerated. It must in particular be determined, as appropriate, on the basis of a scientific and technical analysis, that the sewage sludge meets the statutory limit values for pollutants and that its incineration does not lead to overall adverse environmental or human health impacts.

68 In connection with that assessment, it is particularly relevant that the heat generated during the incineration of the sewage sludge is re-used in a paper and pulp production process and that such a process provides a significant benefit to the environment because of the use of recovered material in order to preserve natural resources and to enable the development of a circular economy.

69 Even though, on the basis of such an analysis, were the referring court to find that the conditions laid down in Article 6(1) of Directive 2008/98 were met before the incineration of the sewage sludge in question in the main proceedings, it must be held that that sludge does not constitute waste.

70 On the contrary assumption, it should be considered that that sewage sludge is still covered by the concept of 'waste' at the time of that incineration.

71 In those conditions, and to the extent that, as is clear from the wording of Article 5(1) of Directive 2008/98, the classification of 'by-product' and the status of 'waste' are mutually exclusive, it is not necessary to examine whether the sludge in question in the main proceeding is to be classified as a 'by-product' within the meaning of that provision.

72 In the light of the foregoing, the answer to the questions referred is that Article 2(2)(a), point 1 of Article 3 and Article 6(1) of Directive 2008/98 must be interpreted as meaning that sewage sludge generated during the joint treatment of industrial and residential or municipal waste water in a sewage treatment plant, which is incinerated in a waste incineration plant for the purposes of energy recovery by generating steam, must be regarded as not being waste if the conditions in Article 6(1) of Directive 2008/98 are already met before its incineration. It is for the referring court to determine whether that is the case in the main proceedings.

Costs

73 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Second Chamber) hereby rules:

Article 2(2)(a), point 1 of Article 3 and Article 6(1) of Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives must be interpreted as meaning that sewage sludge generated during the joint treatment of industrial and residential or municipal waste water in a sewage treatment plant, which is incinerated in a waste incineration plant for the purposes of energy recovery by generating steam, must be regarded as not being waste if the conditions in Article 6(1) of Directive 2008/98 are already met before its incineration. It is for the referring court to determine whether that is the case in the main proceedings.

[Signatures]