Reports of Cases

OPINION OF ADVOCATE GENERAL
KOKOTT
delivered on 21 April 2016[1]

Case C-147/15

Provincia di Bari
v
Edilizia Mastrodonato srl
(Request for a preliminary ruling

from the Consiglio di Stato (Council of State, Italy))

(Directive 2006/21/EC — Mining waste — Directive 1999/31/EC — Landfill of waste — Backfilling of a disused quarry with waste — Recovery of waste)

I – Introduction

1. The Italian region of Apulia continually confronts the Court with environmental questions: How, in the light of the Habitats Directive,[2] are certain decisions of a city council to be judged?[3] Does that directive prohibit the installation of wind turbines in bird protection areas?[4] And was there an illegal waste disposal site in that region or not?[5] These are just a few examples of environmental proceedings from this region.

2. Perhaps these cases have contributed to an increased awareness of the competent authorities, so that they are keeping a critical eye upon plans for backfilling a former quarry with waste. They are in dispute with the operator of this project as to whether the strict provisions of the Landfill Directive[6] are applicable or just the general law on waste.

3. At the basis of the dispute is the fact that the Mining Waste Directive[7] refers to the Landfill Directive for the backfilling of excavation voids with waste. The Court must now ascertain whether this reference is to the legal ground or the legal consequences, that is whether the conditions for application of the Landfill Directive must be met or whether its legal consequences are applicable to backfilling without further examination. This question is influenced by differences in the language versions in which the reference to the Landfill Directive is formulated.

1 — Original language: German.

2 — Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7).

3 — Judgment in *Commission* v *Italy* (C-179/06, EU:C:2007:578).

4 — Judgment in *Azienda Agro-Zootecnica Franchini and Eolica di Altamura* (C-2/10, EU:C:2011:502).

5 — My Opinion in *Commission* v *Council* (C-196/13, EU:C:2014:2162, points 113 to 134).

6 — Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste (OJ 1999 L 182, p. 1) as amended by Council Directive 2011/97/EU of 5 December 2011 amending Directive 1999/31/EC as regards specific criteria for the storage of metallic mercury considered as waste (OJ 2011 L 328, p. 49).

7 — European Parliament and Council Directive 2006/21/EC of 15 March 2006 on the management of waste from extractive industries and amending Directive 2004/35/EC (OJ 2006 L 102, p. 15) as amended by European Parliament and Council Regulation (EC) No 596/2009 of 18 June 2009 adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 1999/468/EC with regard to the regulatory procedure with scrutiny (OJ 2009 L 188, p. 14).

4. Moreover, the Court must in particular address whether and under which conditions the backfilling of a quarry with waste is a waste recovery operation or a waste disposal operation.

II – Legal background

A – *The Mining Waste Directive*

5. Article 1 of the Mining Waste Directive governs its subject matter:

'This Directive provides for measures, procedures and guidance to prevent or reduce as far as possible any adverse effects on the environment, in particular water, air, soil, fauna and flora and landscape, and any resultant risks to human health, brought about as a result of the management of waste from the extractive industries.'

6. Article 2 of the Mining Waste Directive sets out its scope:

'(1) 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".

…

(4) Without prejudice to other Community legislation, waste which falls within the scope of this Directive shall not be subject to [the Landfill Directive].'

7. Article 10 of the Mining Waste Directive governs the backfilling of excavation voids and refers in this context to the Landfill Directive:

'(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 …

(2) [The Landfill Directive] shall continue to apply to the waste other than extractive waste used for filling in excavation voids as appropriate.'

8. Recital 20 of the Mining Waste Directive clarifies this condition as follows:

'Waste placed back into the excavation voids either for their rehabilitation or for construction purposes related to the mineral extraction process, such as the building or maintenance within voids of means of access for machinery, haulage ramps, bulkheads, safety barricades or berms, needs also to be subject to certain requirements in order to protect surface water and/or groundwater, secure the stability of such waste, and ensure appropriate monitoring upon cessation of such activities. Accordingly, such waste should not be subject to the requirements of this Directive which relate exclusively to "waste facilities", except for the requirements mentioned in the specific provision on excavation voids.'

B – *The Landfill Directive*

9. Recital 15 of the Landfill Directive addresses the use of waste for backfilling.

'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.'

10. Article 2 of the Landfill Directive defines in particular the terms 'landfill' and 'treatment':

'For the purposes of this Directive:

…

e) "inert waste" means waste that does not undergo any significant physical, chemical or biological transformations. Inert waste will not dissolve, burn or otherwise physically or chemically react, biodegrade or adversely affect other matter with which it comes into contact in a way likely to give rise to environmental pollution or harm human health. The total leachability and pollutant content of the waste and the ecotoxicity of the leachate must be insignificant, and in particular not endanger the quality of surface water and/or groundwater;

…

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

— internal waste disposal sites (i.e. landfill where a producer of waste is carrying out its own waste disposal at the place of production), and

— a permanent site (i.e. more than one year) which is used for temporary storage of waste,

but excluding:

— facilities where waste is unloaded in order to permit its preparation for further transport for recovery, treatment or disposal elsewhere, and

— storage of waste prior to recovery or treatment for a period less than three years as a general rule, or

— storage of waste prior to disposal for a period less than one year;

h) "treatment" means the 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;

...'

11. Article 3 of the Landfill Directive provides its scope:

'(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;

— ...'

12. Pursuant to Article 6(a) Member States are to ensure that only waste that has been subject to treatment is landfilled:

'Only waste that has been subject to treatment is landfilled. This provision may not apply to ...'

C – *The Waste Directive*

13. The foundations of the EU law on waste are laid down in the Waste Directive.[8] It replaced the consolidated version[9] of the former Waste Directive,[10] to which the greater part of the existing case-law refers, with effect from 12 December 2010 (Article 41).

14. Article 3 of the Waste Directive defines various terms:

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

…

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;

...'

D – *Decision 2011/753/EU*

15. Decision 2011/753/EU[11] is intended to promote the implementation of Article 11(2) of the Waste Directive, according to which Member States must before 2020 reach certain minimum targets on preparation for re-use, recycling and other material recovery (including backfilling, by which waste is used as a replacement for other materials). To that end, Article 1(6) of the decision defines backfilling:

'In addition to the definitions laid down in Article 3 of … [the Waste Directive], the following definitions shall apply for the purposes of this Decision:

…

6. "backfilling" means a recovery operation where suitable waste is used for reclamation purposes in excavated areas or for engineering purposes in landscaping and where the waste is a substitute for non-waste materials.'

8 — European Parliament and Council Directive 2008/98/EC of 19 November 2008 on waste and repealing certain Directives (OJ 2008 L 312, p. 3).

9 — European Parliament and Council Directive 2006/12/EC of 5 April 2006 on waste (OJ 2006 L 114, p. 9).

10 — 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).

11 — Commission Decision of 18 November 2011 establishing rules and calculation methods for verifying compliance with the targets set in Article 11(2) of Directive 2008/98/EC of the European Parliament and of the Council (OJ 2011 L 310, p. 11).

III – Factual background and request for a preliminary ruling

16. Edilizia Mastrodonato srl ('Edilizia Mastrodonato') lodged an application on 16 March 2010 for the 'expansion' of a quarry, which in particular included a plan for the environmental restoration of the areas affected by the quarrying in question.

17. In particular, that plan provided for the areas not yet being worked to be laid bare in parallel with the environmental restoration of the areas already exploited. The restoration was to be carried out over a period of twenty years by means of the gradual use of certain waste other than extractive waste with a total volume of 1 200 000 cubic metres. Non-hazardous waste was to be used, pursuant to a Ministerial Decree of 5 February 1998. The time period for the environmental restoration was to be concurrent with the period of validity of the requested authorisation to work further areas of land.

18. After the close of the written procedure the Council of State informed the Court, upon its request, that a technical report from Edilizia Mastrodonato foresaw the use of various types of waste. Those types of waste were said to include inter alia slag from steel production, brick-, plaster- and concrete waste, plaster from the chemical industry and many other types of stone- or lime-based waste.

19. By decision of the competent environmental authorities of 19 January 2011, the favourable opinion on the environmental impact assessment given to Edilizia Mastrodonato by the authority in 2007 was extended.

20. On 21 September 2011, the mining authorities authorised the expansion of the quarry subject to the express requirement that the 'restoration of the mining areas in question be carried out according to the conditions laid down in the plan'.

21. Subsequently, Edilizia Mastrodonato initiated a simplified procedure to begin the environmental restoration. However, a body of the Province of Bari ordered the suspension of that procedure by a document dated 15 November 2012 which was contested at first instance.

22. The parties have disputed since then whether backfilling is to be seen as landfill of waste in the sense of the Landfill Directive and thus subject to a corresponding authorisation regime.

23. From these proceedings, the Italian Council of State refers the following question to the Court for a preliminary ruling:

'Must Article 10(2) of the Mining Waste Directive 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 the Landfill Directive even when the operation does not consist of the disposal of waste but of recovery?'

24. Alongside Edilizia Mastrodonato, the Republic of Austria, the Italian Republic, the Republic of Poland, the United Kingdom and the European Commission made submissions in the written procedure. The Province of Bari, Italy, Poland, the United Kingdom and the Commission took part in the hearing on 10 March 2016.

IV – Legal assessment

25. Although the Italian Council of State asks about the backfilling of a landfill, it is apparent from the main proceedings that the question actually concerns the backfilling of a quarry. Its question is aimed at whether this backfilling falls under the Landfill Directive, as in this case the simplified procedure initiated by Edilizia Mastrodonato is not applicable.

26. In order to clarify this point, three sub-questions must be answered, namely

— first, whether the Landfill Directive is always applicable to the backfilling of a quarry with waste under Article 10(2) of the Mining Waste Directive,

— secondly, whether the Landfill Directive is only applicable to operations consisting of waste disposal or also to recovery, and

— thirdly, whether the backfilling of a quarry with waste is to be seen as its disposal or recovery under the provisions on waste.

A – *Article 10(2) of the Mining Waste Directive*

27. The question of whether, under Article 10(2) of the Mining Waste Directive, the backfilling of a quarry with waste other than extractive waste always falls under the Landfill Directive is, on the basis of the German version of Article 10(2), surprising, but becomes more apparent in the Italian version of this provision.

28. According to the German version, the Landfill Directive is to continue to apply to waste other than extractive waste which is used for filling in excavation voids *as appropriate* ('gegebenfalls'). The use of 'as appropriate' contradicts the idea that the Landfill Directive is always applicable. On the contrary, its conditions for application would have to be met. The English version, for example, of Article 10(2) of the Mining Waste Directive similarly provides that the Landfill Directive is only applicable 'as appropriate'. [12]

29. On the other hand, both the Italian version of Article 10(2) of the Mining Waste Directive and also, for example, the French version have no such qualifications. [13] This could be understood to the effect that the Landfill Directive always applies to waste which is not extractive waste that is used for filling in excavation voids.

30. Since there is thus a divergence between the various language versions of Article 10(2) of the Mining Waste Directive, the need for uniform interpretation of that provision requires that it must be interpreted by reference to the context and purpose of the rules of which it forms part. [14] The origin of a provision is also to be considered, in so far as it shows the real intention of its author. [15]

31. In this respect, it must be noted first that all language versions of Article 10(2) of the Mining Waste Directive contain an indication which contradicts the idea of the automatic application of the Landfill Directive. It is common to all language versions that the Landfill Directive 'continues' to apply. This suggests that prior applicability of that directive is required, meaning that its conditions for application must have been met at a previous point in time.

12 — The Danish, Polish and Portuguese versions also seem to follow this pattern.

13 — The Spanish, Dutch, Romanian and Swedish versions also seem to follow this pattern.

14 — See judgments in *Nike European Operations Netherlands* (C-310/14, EU:C:2015:690, paragraph 17) and in *Léger* (C-528/13, EU:C:2015:288, paragraph 35).

15 — Judgment in *Zurita García and Choque Cabrera* (C-261/08 and C-348/08, EU:C:2009:648, paragraph 54 with further references).

32. The Commission's proposal [16] already contained the stipulations of Article 10(1) of the Mining Waste Directive for the backfilling of excavation voids but not the reference in Article 10(2) to the Landfill Directive. That reference was put forward by the Parliament [17] and adopted by the Council in the Common Position. [18] The qualification 'as appropriate' was not yet contained in the Parliament's proposal for amendment, but was in the language versions of the Common Position, which also feature it in the final version.

33. The origin of Article 10(2) of the Mining Waste Directive thus provides no indication that the reference to the Landfill Directive was intended to extend its scope of application. It is more appropriate to see it as a clarification that the rules of the Mining Waste Directive on the backfilling of excavation voids do not exclude the further application of the Landfill Directive to waste other than extractive waste.

34. This also corresponds with the scheme and aims of the Mining Waste Directive. This directive regulates according to its Articles 1 and 2 the management of waste from extractive industries, which are defined in the directive as extractive waste. However, Article 10(2) concerns only waste other than extractive waste. It would thus be contradictory if the Mining Waste Directive were, almost incidentally, to extend the scope of other rules on waste to some extent.

35. Article 10(2) of the Mining Waste Directive must thus be interpreted as meaning that backfilling with waste other than extractive waste must be subject to the legislation regarding waste set out in the Landfill Directive only when the conditions for application of that directive are met.

B – *The conditions for application of the Landfill Directive*

36. The second part of the Italian Council of State's question concerns the scope of application of the Landfill Directive, namely whether it is only applicable to waste disposal or also applies to certain recovery operations.

37. The distinction between the disposal and the recovery of waste is of central importance in the EU law on waste. In the hierarchy of waste under Article 4(1) of the Waste Directive, disposal is in last place, being the worst option, whereas recovery is in the second to last place. Recovery is therefore in principle to be preferred over disposal. Recovery according to Article 3(15) serves as a sensible use of waste, as the waste replaces other materials which would otherwise have been used to fulfil a particular function. [19]

38. Article 3(1) of the Landfill Directive provides that its provisions are to apply to all landfills. These are defined in Article 2(g) as waste *disposal* sites for the deposit of waste onto or into land.

39. Accordingly, *recovery* of waste through the deposit of waste onto or into land does not fall under the Landfill Directive and the parties also express themselves to that effect.

40. However, the Landfill Directive also contains some misleading passages which cast doubt as to whether it is exclusively applicable to waste disposal, such as recital 15, Article 3(2), second indent, or Article 6(a).

16 — COM(2003) 319 final.

17 — Position of the European Parliament adopted at first reading on 31 March 2004 with a view to the adoption of European Parliament and Council Directive 2004/…/EC on the management of waste from extractive industries.

18 — Common Position (EC) No 23/2005 adopted by the Council on 12 April 2005 with a view to adopting Directive 2005/…/EC of the European Parliament and of the Council of … on the management of waste from extractive industries and amending Directive 2004/35/EC (OJ 2005 C 172 E, p. 1). See also Council Document 8933/04 of 28 April 2004.

19 — See also judgment in *ASA* (C-6/00, EU:C:2002:121, paragraph 69).

41. Recital 15 of the Landfill Directive states that the recovery, in accordance with the Waste Directive, of inert waste[20] 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. Interpreted literally this type of recovery can — at least in the German, English, Dutch or French language versions — possibly be seen as a landfilling activity. On the other hand, the Italian version of this recital categorically excludes such use of waste from constituting a landfilling activity ('non può costituire un'attività riguardante le discariche').

42. Article 3(2), second indent, of the Landfill Directive takes up this notion and excludes from the scope of application of the directive the use of waste which is suitable in redevelopment/restoration and filling-in work, or for construction purposes, in landfills. Such an exception is only necessary if this use of waste could otherwise fall under the Landfill Directive.

43. In particular, Article 6(a) of the Landfill Directive is worth mentioning in this context. According to its first sentence, only waste which has been subject to treatment can be landfilled. The treatment of waste encompasses according to the definition in Article 2(h) various procedures which are aimed inter alia at the 'enhancement' of recovery. This also suggests that landfilling activity can be a recovery operation.

44. However, the fact remains that none of these provisions decrees the application of the Landfill Directive to the recovery of waste. Additionally, no other rule to this effect is evident. It can therefore be assumed that these are ambiguously formulated provisions due to the fact that it was only after the adoption of the Landfill Directive that the Court of Justice ruled on the extent to which the deposit of waste could constitute a recovery operation.[21]

45. This does not mean, however, that the environment would be inadequately protected if backfilling a quarry were to be seen as a recovery operation. Although the strict and detailed provisions of the Landfill Directive would not be applicable in this case, the general provisions of the law on waste would continue to apply in principle to the recovery of waste, in particular the obligation to protect human health and the environment resulting from Article 1 and Article 13 of the Waste Directive. The actual content of the measures to be taken is not specified, but Member States are bound as to the objective to be achieved whilst being left a discretion in assessing the need for such measures.[22]

46. These measures include in particular measures to prevent the deposit of *unsuitable* waste, for instance an inspection of the waste used, as provided for in Article 11 of the Landfill Directive. But even beyond that, as Austria states, it makes sense that Member States orientate themselves by the rules of the Landfill Directive for the determination of protective measures relating to the recovery of waste through its deposit.

47. Only after suitable waste is completely recovered through deposit or another procedure, and thus has acquired the same properties and characteristics as a raw material used for backfilling, could it fall outside the scope of application of the law on waste.[23]

48. In summary, therefore, the answer to the second part of the question is that the Landfill Directive is not applicable to recovery, but only to the disposal of waste through its deposit onto or into the ground.

20 — See the definition in Article 2(e) of the Landfill Directive, cited in point 10 above.

21 — Judgment in *ASA* (C-6/00, EU:C:2002:121, paragraphs 58 to 71).

22 — Judgment in *EU-Wood-Trading* (C-277/02, EU:C:2004:810, paragraph 45).

23 — Judgment in *Lapin ELY-keskus, liikenne ja infrastruktuuri* (C-358/11, EU:C:2013:142, paragraphs 56 and 57).

C – The distinction between waste disposal and waste recovery for backfilling quarries with waste

49. Finally, in order to establish whether the specific provisions of the Landfill Directive or just the general stipulations of the Waste Directive apply to backfilling quarries with waste, it must be clarified whether, or under which conditions, this use is to be seen as waste disposal or waste recovery.

50. This question is to be answered on the basis of the currently applicable Waste Directive, as so far no waste has been deposited in the quarry. All waste coming into question must as a result be treated in accordance with the currently applicable provisions. The fact that the authorisation procedure for backfilling the quarry was initiated when the consolidated former Waste Directive was still in force cannot alter that conclusion.

51. The definition of 'disposal' in Article 3(19) of the Waste Directive encompasses any operation which is not recovery, even where the operation has as a secondary consequence the reclamation of substances or energy.

52. Article 3(15) of the Waste Directive defines 'recovery' on the other hand as 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. This definition — as is particularly apparent in the English version — largely corresponds to the case-law of the Court on the old Waste Directive. [24]

53. Recovery has two conditions, namely that first the waste must serve a useful purpose and secondly must replace materials which would otherwise have been used to fulfil a particular function.

54. The first condition is essential, as only a useful employment of waste can even be recognised as a recovery of waste. The use of waste for backfilling quarries seems in principle to be useful. However, the definition of disposal already shows that the reclamation of substances or energy does not preclude a disposal, [25] and that a useful employment of waste in itself is not sufficient.

55. More crucial to a recovery operation is that the waste replaces materials which would otherwise have been used to fulfil a particular function. [26]

56. The United Kingdom rightly points out this characteristic. Because of high costs, this Member State doubts that quarries would typically continue to be backfilled when no waste is available for it. The fact that backfilling may possibly be a condition of the authorisation for the quarry alters nothing, as authorisation as a general rule reflects the plans of the operator and can also normally be changed if it should emerge that backfilling would cause disproportionate costs.

57. At first glance this view is surprising, as the Court has already in principle recognised backfilling as a recovery operation. However, those cases concerned the backfilling of galleries which, without long term backfilling, were in danger of collapsing, which could result in damage on the surface. [27] Comparable risks for disused quarries are clearly much more limited. Where such risks exist, complete backfilling is probably not necessary to counter them. Contrary to Poland's submission, it also does not appear necessary in every case to backfill a quarry in order to be able to use that land for other purposes.

24 — Judgment in *ASA* (C-6/00, EU:C:2002:121, paragraph 69).

25 — See also judgment in *Commission* v *Luxembourg* (C-458/00, EU:C:2003:94, paragraph 43).

26 — Compare Opinions of Advocate General Jacobs in *ASA* (C-6/00, EU:C:2001:610, points 86 and 87) and in *Palin Granit and Vehmassalon kansanterveystyön kuntayhtymän hallitus* (C-9/00, EU:C:2002:24, point 37) and the judgment in *Commission* v *Luxembourg* (C-458/00, EU:C:2003:94, paragraph 44).

27 — Compare Opinion of Advocate General Jacobs in *ASA* (C-6/00, EU:C:2001:610, points 85 and 87) and the judgment *AvestaPolarit Chrome* (C-114/01, EU:C:2003:448, paragraphs 36 to 38).

58. Accordingly the United Kingdom is correct in its view that the competent national authorities must carefully assess whether other materials are in fact being replaced through backfilling a quarry with waste. An important indicator in this regard is whether the operator of the quarry has to pay for the waste used or whether he is paid for its use. In the latter case there are strong grounds for the assumption that the quarry would not be backfilled without the waste and it is therefore a case of waste disposal. [28]

59. Moreover, in his Opinion in the *ASA* case Advocate General Jacobs already stated that the replacing of other materials comprises a criterion which the Commission in particular emphasises, namely the suitability of the waste for the specific function. [29] Unsuitable waste cannot replace suitable other materials. Furthermore, the use of unsuitable waste can hardly be considered as useful in the sense of the first condition for recovery of waste.

60. In so far as the definition of the term backfilling in Article 1(6) of Decision 2011/753 requires the suitability of the waste, it does not thereby restrict the notion of recovery, but clarifies a characteristic of that term which was already implicit in it. A similar meaning results from the reference to the suitability of waste in recital 15 and in Article 3(2), second indent, of the Landfill Directive.

61. As the Province of Bari and the Commission submit, from the information given by the Council of State on the waste provided for backfilling doubts emerge that all of the envisaged types of waste are actually suitable. It is apparent from recital 15 of the Landfill Directive that in principle only inert waste or non-hazardous waste is eligible. It is not clear whether all of the envisaged types of waste fall under one of these categories. This question must be further clarified by the national authorities and courts.

62. The third part of the question is to be answered in the sense that backfilling a quarry with waste other than extractive waste constitutes a waste recovery operation if the competent authorities determine that the waste serves a useful purpose by actually replacing other materials, which in particular requires the suitability of the waste as a replacement for those materials.

V – Conclusions

63. I therefore propose that the Court answer the questions referred for a preliminary ruling as follows:

(1) 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 meaning that backfilling a quarry with waste other than extractive waste falls under the provisions on waste set out in Directive 1999/31/EC on the landfill of waste only when the conditions for application of that directive are met.

(2) Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste is not applicable to recovery, but only to waste disposal through its deposit onto or into the ground.

(3) The backfilling of a quarry with waste other than extractive waste constitutes a waste recovery operation if the competent authorities determine that the waste serves a useful purpose by actually replacing other materials, which in particular requires the suitability of the waste as a replacement for those materials.

28 — See Opinion of Advocate General Jacobs in *ASA* (C-6/00, EU:C:2001:610, point 88).

29 — EU:C:2001:610, point 87.