OPINON OF ADVOCATE GENERAL KOKOTT

delivered on 8 February 2007 [1]

I — Introduction

1. In the present proceedings, the Court of Justice must take a view on the relationship between waste law and sewage (waste-water) law. The question is asked as to whether sewage which escapes from a sewerage network (collecting system) is to be regarded as waste. In this connection, it is to be settled, in particular, whether waste-water law contains adequate rules for this situation.

1 — Original language: German.

II — Legal framework

A — *Community law*

1. Waste law

2. At the material time, waste law was governed above all by Council Directive 75/442/EEC of 15 July 1975 on waste [2] ('the Waste Framework Directive').

2 — OJ 1975 L 194, p. 47, as amended by Council Directive 91/156/EEC of 18 March 1991 amending Directive 75/442/EEC on waste (OJ 1991 L 78, p. 32), and as last amended by Commission Decision 96/350/EC of 24 May 1996 adapting Annexes IIA and IIB to Council Directive 75/442/EEC on waste (OJ 1996 L 135, p. 34). The directive was repealed by Directive 2006/12/EC of the European Parliament and of the Council of 5 April 2006 on waste (OJ 2006 L 114, p. 9) which, without any substantive amendment, replaced it with a consolidated version.
See also the Commission Proposal of 4 January 2006 for a Directive of the European Parliament and of the Council on waste, COM (2005) 667 final, http://register.consilium.europa.eu/pdf/en/06/st05/st05050.en06.pdf. In this on-going legislative process, the Waste Framework Directive is to be fundamentally revised.

3. The concept of 'waste' is defined in Article 1(a) of the Waste Framework Directive. Under this definition, waste covers 'any substance or object in the categories set out in Annex I which the holder discards or intends or is required to discard'.

4. In Article 1(d) the concept of 'management' is defined as 'the collection, transport, recovery and disposal of waste, including the supervision of such operations and after-care of disposal sites'.

5. Under Article 2(1)(b), however, the Waste Framework Directive does not apply to certain types of waste expressly referred to, where they are already covered by other legislation. 'Waste waters, with the exception of waste in liquid form' is included in this list as Article 2(1)(b)(iv).

6. Article 2(2) of the Waste Framework Directive provides that specific rules for particular instances, or supplementing those of this directive, on the management of particular categories of waste, may be laid down by means of individual directives.

7. Article 4 of the Waste Framework Directive lays down the principal obligations under waste law:

'Member States shall take the necessary measures to ensure that waste is recovered or disposed of without endangering human health and without using processes or methods which could harm the environment, and in particular:

— without risk to water, air or soil, or to plants or animals;

— without causing a nuisance through noise or odours;

— without adversely affecting the countryside or places of special interest.

Member States shall take the necessary measures to prohibit the abandonment, dumping or uncontrolled disposal of waste.'

2. Waste-water law

8. Waste-water law stems from Council Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment [3] ('the Waste Water Directive'). According to the first paragraph of Article 1, the directive concerns the collection, treatment and discharge of urban waste water and the treatment and discharge of waste water from certain industrial sectors. According to the second paragraph of Article 1, its objective is to protect the environment from the adverse effects of such waste-water discharges.

9. Article 3 governs the installation of collecting systems. Various time-limits apply according to the size of the agglomeration and the sensitivity of the environment. Under Article 3(2) those collecting systems are to 'satisfy the requirements of Annex I (A)'.

10. Annex I(A) is worded as follows:

'Collecting systems shall take into account waste-water treatment requirements.

The design, construction and maintenance of collecting systems shall be undertaken in accordance with the best technical knowledge not entailing excessive costs, notably regarding:

— volume and characteristics of urban waste water,

— prevention of leaks,

— limitation of pollution of receiving waters due to storm water overflows.'

11. Articles 4 to 7 of the Waste Water Directive regulate the type of treatment waste water must undergo. Article 8 provides for certain exceptions.

12. Article 10 sets out further requirements for treatment plants:

'Member States shall ensure that the urban waste-water treatment plants built to comply

3 — OJ 1991 L 135, p. 40, as last amended by Commission Directive 98/15/EC of 27 February 1998 amending Council Directive 91/271/EEC with respect to certain requirements established in Annex I thereof (OJ 1998 L 67, p. 29).

with the requirements of Articles 4, 5, 6 and 7 are designed, constructed, operated and maintained to ensure sufficient performance under all normal local climatic conditions. When designing the plants, seasonal variations of the load shall be taken into account.'

13. Article 9 concerns the solution of problems where the discharge of waste water affects another Member State.

14. Article 11 sets out requirements for the discharge of industrial waste water into collecting systems, Article 13 set out conditions for the untreated discharge of certain industrial waste waters, Article 12 concerns the re-use of treated waste water, and Article 14 concerns the management of sludge.

15. Article 15 governs the monitoring of the application of the Waste Water Directive, Article 16 public information, Article 17 implementation by the Member States, Article 18 action by the Commission and Article 19 transposition of the directive.

B — *National law*

16. The order for reference does not contain any detailed information on domestic law. In so far as is apparent, the provisions relevant to the questions referred, in particular the Water Industry Act 1991 mentioned in the questions, merely transpose Community law.

III — Facts and questions referred

17. Thames Water Utilities is responsible for approximately 80 000 kilometres of sewerage pipes in the Thames region. Thames Water Utilities is accused of the escape of sewage from the sewerage network on 11 occasions between February and April 2003 and its discharge onto land in the County of Kent.

18. Following informations laid by the Environment Agency, Thames Water Utilities was prosecuted inter alia for illegally depositing waste. Thames Water Utilities

takes the view, however, that sewage which escapes does not amount to waste.

19. The referring court has therefore asked the following questions:

'(1) Whether sewage which escapes from a sewerage network maintained by a statutory sewerage undertaker pursuant to the [Waste Water Directive] and/or the Water Industry Act 1991 ... amounts to "directive waste" for the purposes of the [Waste Framework Directive]?

(2) If the answer to (1) is in the affirmative, whether the aforesaid sewage:

(a) is excluded from the scope of "directive waste" under the [Waste Framework Directive] by virtue of Article 2(1)(b)(iv) of the [Waste Framework Directive], in particular by virtue of the [Waste Water Directive] and/or the Water Industry Act 1991; or,

(b) comes within Article 2(2) of the [Waste Framework Directive] and is excluded from the scope of "directive waste" under the [Waste Framework Directive], in particular, by virtue of the [Waste Water Directive]?'

20. Thames Water Utilities, the Environment Agency, the United Kingdom, Belgium, the Netherlands and the Commission have taken part in the proceedings.

IV — Assessment

21. By the questions referred, clarification is sought as to whether waste water falls within the scope of general waste law where it escapes from a waste-water collecting network. The referring court is therefore enquiring as to the meaning of two exceptions to the Waste Framework Directive. Under Article 2(1)(b)(iv) of the Waste Framework Directive, the directive does not apply to waste waters, with the exception of

waste in liquid form, where they are already covered by other legislation (discussed below under B). Under Article 2(2), specific rules on waste may take precedence over the general rules (discussed below under C). Application of both exceptions presupposes that waste water constitutes waste within the meaning of Article 1(a) of the Waste Framework Directive (discussed below under A). [4]

A — *The definition of waste*

22. In accordance with Article 1(a) of the Waste Framework Directive, it must be examined whether waste water falls within a category of waste listed in Annex I and whether the holder discards, or intends or is required to discard, the waste water.

23. At the very least waste water falls within the category of waste Q 16, which covers any materials, substances or products which are not contained in the other categories. It also seems obvious to me that the original holder discarded and intended to discard the waste water when it discharged it into the collecting system. This view is shared by the Environment Agency, the United Kingdom and the Netherlands.

24. When the waste water was discharged into the collecting system, it therefore constituted waste. Furthermore, this view is supported by the existence of the exception to waste law to be addressed next. If waste water were not waste, this exception would not be needed.

25. Waste water ceases to be waste when, through treatment provided for under the Waste Water Directive, it achieves a quality permitting discharge into water or reuse. The relevant treatment corresponds to recycling, as the Court of Justice has explained in relation to packaging waste. [5] Untreated waste water, however, has the same characteristics as the waste water discharged into

4 — See, for an examination of the exception under Article 2(1)(b)(iv), the judgment of 16 December 2004 in Case C-62/03 *Commission* v *United Kingdom*, not published in the ECR and only available in English and French, paragraph 11, Case C-416/02 *Commission* v *Spain* [2005] ECR I-7487, paragraph 98 et seq., and Case C-121/03 *Commission* v *Spain* [2005] ECR I-7569, paragraph 69 et seq., the latter cases dealing with pig farms and the animal carcasses generated there.

5 — Case C-444/00 *Mayer Parry Recycling* [2003] ECR I-6163, in particular paragraphs 63 to 69.

the collecting system and is thus to continue to be regarded as waste, in particular where it escapes from the collecting system.

B — *Article 2(1)(b)(iv) of the Waste Framework Directive*

26. However, the Waste Framework Directive, in accordance with Article 2(1)(b)(iv), does not apply to waste waters, with the exception of waste in liquid form, where they are already covered by other legislation. It must therefore be examined whether the Waste Water Directive provides for such legislation.

27. In order for the exception under Article 2(1)(b) of the Waste Framework Directive to apply, it is not sufficient that the other legislation merely relates to the substances or objects in question from — for instance — an industrial point of view; rather, it must contain precise provisions organising their management as waste within the meaning of Article 1(d) of that directive. [6] It must also result in a level of protection of the environment which is at least equivalent to that resulting from the measures taken in application of the Waste Framework Directive. Otherwise, the objectives of the Community in the field of the environment as defined in Article 174 EC, and more particularly the objectives of the Waste Framework Directive itself, would be jeopardised. [7]

28. Thames Water Utilities takes the view that, with regard to the need for an equivalent level of protection, a distinction must be made between other Community legislation and other domestic legislation. In its submission, relevant Community legislation is always equivalent because it is adopted by the legislature in awareness of the requirements. As the Environment Agency contends, however, the Court of Justice has already made it clear in its judgments on Spanish pig farms that the need for an equivalent level of protection also applies to other Community legislation. [8] This equivalence must be specifically checked in each individual case. [9]

29. The objective of the Waste Water Directive, according to the second paragraph

6 — Case C-114/01 *AvestaPolarit Chrome* [2003] ECR I-8725, paragraph 52.

7 — *AvestaPolarit Chrome* (cited in footnote 6, paragraph 59). See also the *Commission* v *Spain* judgments (cited in footnote 4, Case C-416/02, paragraph 102, or Case C-121/03, paragraph 72) and my Opinion in Case C-176/05 *KVZ retec* c, pending before the Court, point 98.

8 — The *Commission* v *Spain* judgments (cited in footnote 4, Case C-416/02, paragraph 99, and Case C-121/03, paragraph 69).

9 — See the *Commission* v *Spain* judgments on pig farms (cited in footnote 4, Case C-416/02, paragraph 101, and Case C-121/03, paragraph 71).

of Article 1, is to protect the environment from the adverse effects of waste water. According to the first paragraph of Article 1, this directive concerns the collection, treatment and discharge of urban waste water and the treatment and discharge of waste water from certain industrial sectors. As all the parties submit, there can be no doubt that the directive's provisions constitute other legislation within the meaning of Article 2(1)(b) of the Waste Framework Directive which precludes the application of waste law. [10] Thames Water Utilities concludes from this that the exception for waste waters also covers the escape of waste waters from a collecting system.

30. The Court of Justice has not yet expressly ruled on how far the exception under Article 2(1)(b) of the Waste Framework Directive in conjunction with other legislation extends. The effect of the view of Thames Water Utilities and, it would appear, Belgium would be that the existence of other legislation which provides an adequate legal framework for certain issues excludes the application of waste law for all other issues as well.

31. This view is hardly consistent, however, with the wording of Article 2(1)(b) of the Waste Framework Directive. In the German version, the Waste Framework Directive does not apply to the types of waste mentioned 'soweit für diese bereits andere Rechstvorschriften gelten' (in so far as other legislation is already applicable to them). It therefore follows, conversely, that waste law applies in so far as other legislation is not applicable.

32. The same thinking is conveyed somewhat differently in other language versions, namely by a less precise conjunction together with the verb 'cover'. [11] 'Coverage' of specific substances that is comparable with waste law is possible only in so far as corresponding rules apply.

33. Furthermore, the view of Thames Water Utilities is not compatible with the conclusions of the Court of Justice that the other legislation must contain precise provisions organising management of the substances as waste within the meaning of Article 1(d) of the Waste Framework Directive [12] and must result in a level of protection of the

10 — Advocate General Jacobs considered this to be the case in his Opinion in *AvestaPolarit Chrome* (cited in footnote 6, point 68).

11 — English: 'where they are already covered by other legislation'; French: 'lorsqu'ils sont déjà couverts par une autre législation'; Spanish: 'cuando ya están cubiertos por otra legislación'.

12 — *AvestaPolarit Chrome* (cited in footnote 6, paragraph 52).

environment which is at least equivalent to that resulting from the measures taken in application of the Waste Framework Directive. [13] The Court of Justice has based these requirements as to the quality of the other legislation on, in particular, the objectives of the Waste Framework Directive and of Community environmental law.

34. In so far as there are no provisions on management or they fail to ensure a sufficient level of protection, general waste law must therefore apply. Accordingly, the Environment Agency, in particular, is correct in requesting, in relation to the application of Article 2(1)(b)(iv) of the Waste Framework Directive, consideration as to whether the Waste Water Directive ensures a level of protection comparable to waste law in the event of waste water escaping from a collecting system. [14]

35. As already explained, the Waste Water Directive regulates the collection, treatment and discharge of waste water. In principle, the exception for waste water therefore applies when it is collected — namely, in particular, when it is in a collecting system — when it is treated in a treatment plant and when it is discharged.

36. The discharge of waste water is comparable to escape from the collecting system in so far as the waste water moves outside the field of application of the Waste Water Directive. However, the Waste Water Directive lays down rules for the adoption of the necessary measures for the protection of the environment in the case of discharge. [15] Hence, the exception under Article 2(1)(b)(iv) of the Waste Framework Directive applies to discharge as such. Since, moreover, waste water ceases, before it is discharged, to be waste through the prescribed treatment, [16] waste law is also not applicable — contrary to what Thames Water Utilities fears — after discharge.

13 — *AvestaPolarit Chrome* (cited in footnote 6, paragraph 59). See also the *Commission* v *Spain* judgments (cited in footnote 4, Case C-416/02, paragraph 102, and Case C-121/03, paragraph 72) and my Opinion in *KVZ retec* (cited in footnote 7, point 98).

14 — See, to this effect, the *Commission* v *Spain* judgments (cited in footnote 4, Case C-416/02, paragraph 101, and Case C-121/03, paragraph 71) where the Court compares with waste law the rules in Council Directive 90/667/EEC of 27 November 1990 laying down the veterinary rules for the disposal and processing of animal waste, for its placing on the market and for the prevention of pathogens in feedstuffs of animal or fish origin and amending Directive 90/425/EEC (OJ 1990 L 363, p. 51), and my Opinion in *KVZ retec* (cited in footnote 7, point 103 et seq.), where I compare the requirements laid down for the shipment of meat-and-bone meal in Regulation (EC) No 1774/2002 of the European Parliament and of the Council of 3 October 2002 laying down health rules concerning animal by-products not intended for human consumption (OJ 2002 L 273, p. 1) with the requirements of the regulation on the shipment of waste.

15 — See Articles 4(1), 5(2) and (5), 6(2), 7, 9, 12(2) and (3), and 15(1) and (2).

16 — See point 25 above.

37. The present case does not, however, concern discharge as provided for in the Waste Water Directive. On the contrary, the waste water escaped *before* it could be treated in accordance with the Waste Water Directive.

38. As Belgium in particular points out, the Waste Water Directive also takes account of this type of case. Under Article 3(2) in conjunction with Annex I(A), the design, construction and maintenance of collecting systems are to be undertaken in accordance with the best technical knowledge not entailing excessive costs. In this connection, express mention is made of prevention of leaks and limitation of pollution of receiving waters due to storm water overflows. The Commission adds that under Article 10 waste-water treatment plants must be designed, constructed, operated and maintained to ensure sufficient performance under *all* normal local climatic conditions. When designing plants, seasonal variations of the load are to be taken into account.

39. Accordingly, the Waste Water Directive regulates the *escape* of waste water from collecting systems and even accepts this where prevention of such escape in accordance with the best technical knowledge would entail excessive costs. In addition, any leaks that may occur are to be repaired according to the same principles, since this forms part of the required maintenance of the collecting system.

40. Contrary to the view of the Environment Agency, the Waste Water Directive does not thereby fail to achieve the level of protection required under the Waste Framework Directive, Article 4 of which provides for a prohibition on the uncontrolled release ['unkontrollierte Ableitung'; 'dumping' in the English version] of waste. While the escape of waste water could be regarded as an uncontrolled release, this prohibition cannot apply absolutely to every instance of release. Rather, the scope of the prohibition should be limited in accordance with the principle of proportionality, to the effect that the holder of the waste cannot be accused of an uncontrolled release where he has exercised due diligence.

41. The Waste Water Directive provides precisely for the standard of diligence to be exercised. It lays down the measures to be taken to prevent uncontrolled escape of waste water. Regard is to be had to the best technical knowledge, and the costs of securing the collecting system are to be weighed up against the possible damage in the event of overflows.

42. In addition, waste law does not contain more far-reaching rules which are designed to protect the environment in respect of accidents occurring when waste is transported and the level of regulation of which the Waste Water Directive might fail to achieve. In particular, no rules are laid down as to the applicable safety standards and the proportionality of safety measures. For the transport of waste, Articles 12 and 13 of the Waste Framework Directive require only registration and periodic inspections. In addition, Article 13 of Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community [17] provides that Member States are to establish an appropriate system for the supervision and control of waste shipments within a Member State. The Waste Water Directive achieves this level of protection as the identity of the operator of the prescribed fixed infrastructure, that is to say the collecting system and the treatment plants, is known, as is the nature of the waste transported in the collecting system.

43. Therefore, the Waste Framework Directive, in accordance with Article 2(1)(b)(iv) thereof in conjunction with the Waste Water Directive, does not apply to the escape of waste water from collecting systems. The requirements for collecting systems must be applied within the framework of the Waste Water Directive.

44. The Environment Agency — and, in the final analysis, the United Kingdom and the Commission as well — correctly maintain, on the other hand, that the Waste Water Directive does not contain adequate rules for untreated waste water *after* it has escaped from a collecting system.

45. Only where waste water flows back into the collecting system is the exception for waste water once again applicable. It does not apply, however, where the waste water stays outside the collecting system, in particular where it contaminates land. This may happen, for example, because the liquid parts seep into the ground, while the solid parts remain on the surface. Where seepage is not possible, the waste water, if no further action is taken, stays on the surface until the liquid parts have evaporated.

46. In this situation various provisions of the Waste Framework Directive could be applic-

17 — OJ 1993 L 30, p. 1, as amended by Commission Regulation (EC) No 2557/2001 of 28 December 2001 amending Annex V to Regulation No 259/93 (OJ 1993 L 349, p. 1).

able: Article 4 requires the prohibition not only of dumping, to which concrete expression is given in the Waste Water Directive, but also of abandonment. This might be assumed to occur where the person responsible leaves the escaped waste water on the contaminated land. Furthermore, Article 4 contains requirements for the recovering and disposing of waste. In so doing, human health is not to be endangered or procedures or methods used which could harm the environment, in particular by putting at risk water, air, soil or plants or animals, causing a nuisance through noise or odours, or adversely affecting the countryside or places of special interest. In addition, reference should be made to the requirement under Article 8 to have waste handled by a waste collector and to the rules under Article 15 as to liability for the costs in accordance with the 'polluter pays' principle. [18]

47. Accordingly, it would possibly be necessary under the Waste Framework Directive to pump away the accumulated waste water, clear away the solid parts of the waste water which have stayed on the surface or — contrary to the view of Belgium — treat the soil affected. [19]

48. The Waste Water Directive contains no trace of similar rules. Contrary to the view of the Netherlands, obligations to have effects eliminated cannot therefore be read into that directive. Thames Water Utilities, Belgium and the Netherlands fail to appreciate this when they maintain that the Waste Water Directive contains a comprehensive set of general rules on dealing with waste water which also exclude application of waste law in the event of escape.

49. Accordingly, notwithstanding the Waste Water Directive, waste law applies to

18 — See, in that connection, Case C-1/03 *Van de Walle and Others* [2004] ECR I-7613, paragraph 56 et seq.

19 — See *Van de Walle and Others* (cited in footnote 18, paragraph 52). It should be noted that the discussions on revising the Waste Framework Directive include the issue whether its application to soil contaminated by waste is to be excluded. See, in that connection, Article 2(1)(f) of the Commission proposal cited in footnote 2 and Article 2(2)(b) of the compromise proposal of the Finnish Presidency of 31 October 2006, Council Document 14750/06, http://register.consilium.europa.eu/pdf/en/06/st14/st14750.en06.pdf. Any such rule could, however, substantially weaken the practical effectiveness of European waste law in respect of dealing with infringements, since illegal disposal of waste frequently involves its being mixed with soil. This applies in particular to contamination with liquids, but this may also be the case with the depositing of solid substances on illegal waste tips.

untreated waste water after it has escaped from a collecting system.

50. This conclusion is also not undermined by the argument of Belgium that it is contradictory if Council 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 [20] excludes sludge from the scope of waste law, as stated in the third recital in the preamble to the directive, but this is not the case for escaped waste water. It is doubtful as to whether this recital still accurately reflects the state of the law. As the Environment Agency pointed out at the hearing by reference to the clearer Commission proposal for this directive, [21] this recital is still based on the original version of the Waste Framework Directive. In the version at that time, the Waste Framework Directive excluded waste water and all other waste covered by specific Community rules from its scope, without any further condition. [22] According to the law as it stands today, however, it would have to be examined to what extent Directive 86/278 contains other legislation within the meaning of Article 2(1)(b) of the Waste Framework Directive. Even if this examination led to the conclusion that sludge in a comparable situation is not subject to waste law, this would not be at odds with the conclusion here. Rather, this difference would be justified by the existence of other corresponding legislation applicable to sludge.

51. Furthermore, Belgium makes a comparison with one of the judgments in the Spanish pig farm cases, where the Court refused to conclude, on the basis of a possible breach of Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources, [23] that spreading of slurry is tantamount to abandonment of waste. [24] However, this comparison does not affect the conclusion either.

52. First, I do not consider the judgment referred to convincing on this point. A breach of Directive 91/676 when spreading slurry is a further indication that the holder intends to discard the slurry. The directive seeks to allow only as much slurry to be

20 — OJ 1986 L 181, p. 6.

21 — Proposal for a Council Directive on the use of sewage sludge in agriculture, OJ 1982 C 264, p. 3.

22 — See Article 2(2): 'The following shall be excluded from the scope of this Directive ... (d) waste waters, with the exception of waste in liquid form; ... (f) waste covered by specific Community rules.'

23 — OJ 1991 L 375, p. 1.

24 — Case C-416/02 *Commission* v *Spain* (cited in footnote 4 above, paragraph 96).

spread as the plants can use as fertiliser. To spread more slurry is therefore not only harmful to the environment, but it also does not serve the purpose of fertilisation, rather only that of disposal. [25]

53. Far more significant, however, is the fact that the situation in the above case concerning a pig farm is considerably different from that of the present case. It is not necessary to regard slurry as waste in every situation, since the holder does not intend to discard it in every case, but may instead use it as fertiliser depending on how he organises his business. [26] On the other hand, it is clear that the original owners discarded the waste water when they introduced it into the collecting system. A possible breach of the Waste Water Directive would, in this context — unlike the case concerning the pig farm — provide no possible indication that the substance in question is waste.

54. Although it has now been established that escaped waste water, notwithstanding the Waste Water Directive, falls within the scope of waste law, it may be that domestic law contains provisions on waste water going beyond the Waste Water Directive which also cover escaped waste water that does not flow back into the collecting system and provide a sufficient level of environmental protection. Such provisions would also exclude application of waste law under Article 2(1)(b)(iv) of the Waste Framework Directive. [27]

55. Given the lack of sufficient information from the referring court on the content of the relevant provisions, the Court of Justice is unable in the present case to provide assistance in assessing this point. However, on the basis of the arguments of the parties — in particular, those of the United Kingdom — the existence of such rules in the Water Industries Act 1991 mentioned in the question referred seems unlikely. Rather, this Act seems to be essentially limited to implementation of the Waste Water Directive. As regards the provisions of the Environmental Protection Act 1990, concerning measures against certain damage to the environment, which were referred to by Thames Water Utilities at the hearing, it seems doubtful that they are precise provisions on the manage-

25 — See also the much more convincing Opinion of Advocate General Stix-Hackl in Case C-416/02 *Commission* v *Spain* (cited in footnote 4, point 38 et seq.).

26 — The *Commission* v *Spain* judgments (Case C-416/02, cited in footnote 4, paragraph 94, and Case C-121/03, paragraph 65); clearer still is the Opinion of Advocate General Stix-Hackl in Case C-416/02, point 35 et seq.

27 — See *AvestaPolarit Chrome* (cited in footnote 6, paragraph 49 et seq.).

ment of waste water as waste within the meaning of Article 1(d) of the Waste Framework Directive. [28] Such provisions would be necessary, however, for the exception under Article 2(1)(b)(iv) of the Waste Framework Directive to apply.

C — *The existence of specific rules within the meaning of Article 2(2) of the Waste Framework Directive*

56. For a comprehensive answer to the questions referred, an answer must be, finally, given to the question as to whether the Waste Water Directive contains specific rules within the meaning of Article 2(2) of the Waste Framework Directive which exclude the application of general waste law to escaped waste water.

57. As the Environment Agency, the Netherlands and the Commission submit, the Court of Justice has already explained in *AvestaPolarit Chrome* that specific rules within the meaning of Article 2(2) of the Waste Framework Directive can supersede general rules on dealing with waste, without the relevant substances falling outside the scope of waste law in other respects. [29] In this connection, the United Kingdom refers, as an example, to *Mayer Parry Recycling*, [30] which concerned special rules on the recycling of packaging waste.

58. As the Environment Agency and the United Kingdom submit, the Waste Water Directive however contains simply no specific provisions on escaped waste water which does not flow back into a collecting system. [31] If that were not so, the exception for waste water would also cover escaped waste water and there would remain no scope for applying Article 2(2) of the Waste Framework Directive.

59. Whether and to what extent Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage [32] contains specific rules is not relevant to the present case, since the date for its implementation does not expire until 30 April

28 — See above, point 27.

29 — Cited in footnote 6, paragraph 48.

30 — Cited in footnote 5.

31 — See above, point 48.

32 — OJ 2004 L 143, p. 56.

2007 and it does not apply to damage caused by an emission, event or incident that takes place before this date. Application of this directive to the cases of escaped water at issue here is therefore excluded. This directive was also not discussed by the parties.

60. In future, the question will probably be asked as to how general waste law operates in relation to water damage and land damage as defined in Article 2(1)(b) and (c) of Directive 2004/35. Such damage triggers remedial obligations under Article 6 et seq., which might be of a more specific nature as compared with the obligation to recover or dispose of waste.

61. For the sake of completeness, it should be pointed out, finally, that Directive 2004/35 does not contain other legislation within the meaning of Article 2(1)(b)(iv) of the Waste Framework Directive in respect of waste water located outside collecting systems, since it does not specifically deal with waste water as waste.

V — Conclusion

62. I therefore propose that the questions referred for a preliminary ruling be answered as follows:

(1) Untreated waste water which escapes from a collecting system constitutes waste within the meaning of Article 1(1) of Council Directive 75/442/EEC of 15 July 1975 on waste.

(2) Article 2(1)(b)(iv) of Directive 75/442, in conjunction with Council Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment, excludes

the application of Directive 75/442 to waste water when it is escaping from a collecting system onto land, but not its application to untreated waste water after it has escaped from a collecting system.

(3) Directive 91/271 contains no specific rules, within the meaning of Article 2(2) of Directive 75/442, for escaped waste water.