OPINION OF ADVOCATE GENERAL STIX-HACKL delivered on 14 April 2005 [1]

I — Introduction

1. By this action, the Commission seeks a declaration that the Italian Republic has failed in its obligations under Article 12 of Council Directive 75/442/EEC of 15 July 1975 on waste, [2] as amended by Council Directive 91/156/EEC of 18 March 1991, [3] by omitting in its national law to require undertakings which routinely and regularly collect and transport their own non-hazardous waste and undertakings which transport their own hazardous waste in quantities not exceeding 30 kilograms or 30 litres a day to be registered in the national register.

2. The central issue in this case is to what extent undertakings that collect or transport their own (hazardous or non-hazardous) waste constitute '[e]stablishments or undertakings which collect or transport waste on a professional basis' within the meaning of Article 12 of the Waste Directive and are accordingly to be made subject to a registration requirement.

II — Legislative background

A — *The Community legislation*

3. Article 12 of the Waste Directive as amended is in the following terms:

'Establishments or undertakings which collect or transport waste on a professional basis or which arrange for the disposal or recovery of waste on behalf of others (dealers

1 — Original language: German.

2 — OJ 1975 L 194, p. 39 (hereinafter referred to as 'the Waste Directive' or 'the original Waste Directive').

3 — OJ 1991 L 78, p. 32 (hereinafter referred to as 'the Amending Directive' while the Waste Directive as amended by this directive is referred to as 'the Waste Directive as amended').

or brokers), where not subject to authorisation, shall be registered with the competent authorities'.

B — *The national legislation*

4. Article 30(4) of Decree-Law No 22, of 5 February 1997, as amended by Law No 426, of 9 December 1998 (hereinafter 'the Legislative Decree), provides as follows:

'Undertakings which collect and transport non-hazardous waste produced by others, and undertakings which collect and transport hazardous waste, with the exception of hazardous waste transported by its producer in quantities not exceeding 30 kilograms or 30 litres per day, shall be entered in the [Register]'. [4]

4 — National Register of Waste Disposal Service Providers.

III — Pre-litigation procedure and proceedings before the Court

5. The Commission formed the view that Article 30(4) of the Decree-Law infringed Article 12 of the Waste Directive and so by letter of formal notice dated 24 October 2001 it commenced infringement proceedings under Article 226 EC against the Italian Republic.

6. By reply dated 27 February 2002, the Italian Government rejected the Commission's charge by reference to a memorandum from the Ministry of the Environment and Land Protection.

7. The Commission stood by its view, however, and accordingly on 27 June 2002 issued a reasoned opinion to the Italian Government requiring that Government to comply with same within a time-limit of two months.

8. The reasoned opinion having gone unanswered, the Commission brought the present action by an application of 17 June 2003 lodged at the Court Registry on 23 June 2003.

9. The Commission claims that the Court should

— declare that, by permitting undertakings, in accordance with Article 30(4) of Decree-Law No 22 of 5 February 1997, as amended by Law No 426, of 9 December 1998, to collect and transport their own non-hazardous waste, as a normal and regular activity, without being required to be entered in the National Register of Waste Disposal Service Providers, and to transport their own hazardous waste in quantities not exceeding 30 kg or 30 l per day, without being required to be entered in that register, the Italian Republic has failed to fulfil its obligations under Article 12 of Directive 75/442/EEC on waste, as amended by Directive 91/156/EEC;

— order the Italian Republic to pay the costs.

IV — Analysis of the case

A — *Main submissions of the parties*

10. The *Commission* submits that Article 12 of the Waste Directive as amended requires that all undertakings, without distinction, that collect or transport waste, whether non-hazardous or hazardous, on a professional basis, must be registered with the competent authorities. In the Commission's view, the concept of undertakings which collect or transport waste 'on a professional basis' comprises not only undertakings which carry out those activities on behalf of others but also undertakings that collect or transport their own waste as an ancillary operation to their main business and reap an economic advantage from so doing. This was also the view taken by the Court in its order in Case C-311/99. [5]

11. This interpretation was also in accordance with the scheme and the objectives of the Waste Directive, in particular the need to ensure that waste is monitored from production to final disposal, as set out in the 12th recital to the Amending Directive. Since the obligation to register is what makes such monitoring possible, comprehensive waste monitoring would not be realised if undertakings that collect or transport their own waste were exempted from the registration requirement under Article 12 of the Waste Directive.

12. Article 30 of the Decree-Law, however, imposed a registration requirement only on

5 — Order of the Court of 29 May 2001 made on the basis of Article 104(3) of the Rules of Procedure in Case C-311/99 *Caterino*, not published in the European Court Reports, paragraph 25.

undertakings that collect or transport third-party waste, and this was therefore at variance with the concept of undertakings which collect or transport waste 'on a professional basis' under Article 12 of the Waste Directive as amended.

13. Furthermore, Article 12 did not provide for any quantitative limit, which meant that the exemption from the registration requirement under Article 30 of the Legislative Decree for undertakings transporting waste in quantities not exceeding 30 kilograms or 30 litres a day was also incompatible with the Waste Directive.

14. The *Italian Government* submits that no provision of Community law prescribes that the collection and transport of waste has to be carried out by third parties. The key consideration was the realisation of the objective of monitoring the waste cycle. Under the directive, the holder of the waste was responsible for it until such time as it was discarded to be reused, regenerated or disposed of. The registration requirement under Article 12 of the Waste Directive was accordingly intended to ensure the monitoring of waste as from the point at which its producer ceased to be responsible for it. The waste was 'discarded' by its producer only when consigned to a waste recovery or waste-disposal undertaking. Up to that point the producer undertaking continued to be responsible for the waste and there was therefore no need for that undertaking to be registered for monitoring purposes.

15. In the Italian Government's view, the phrase 'on a professional basis' in Article 12 of the Waste Directive conveys both the idea of a regular activity as well as the idea that the undertaking concerned must possess the expertise and experience needed in order to carry on that activity. To construe the phrase as the Commission does would mean thousands of undertakings being required to register, which would put the authorities' supervisory capacity under strain. Finally, the hazardousness and volume of waste were matters which could properly be taken into account in the transposition of the monitoring system contemplated by the Waste Directive.

B — *Discussion*

16. The Commission's objection to Article 30(4) of the Decree-Law is that it provides for undertakings which collect or transport their own waste to be either — in the case of non-hazardous waste — entirely exempt from the registration requirement or — in the case of hazardous waste — subject to

registration only over a certain quantity of waste (30 kg or 30 l a day).

17. What is at issue in these proceedings is therefore, firstly, whether the registration requirement provided for by Article 12 of the Waste Directive as amended applies equally to undertakings which collect or transport their own waste, and, secondly, whether that registration requirement may — in relation to hazardous waste in any case — be made subject to a quantitative limit as has been done here.

18. Concerning first the question as to whether undertakings which collect or transport their own waste are covered at all by Article 12 of the Waste Directive, it must be observed that this directive lays down clearer rules in relation to disposal and recovery by an undertaking of its own waste than in relation to the collection and transportation of same.

19. Thus, Article 8 of the Waste Directive requires Member States to take the necessary measures to ensure that any holder of waste not consigning same to a waste collector or to a waste disposal or recovery undertaking recovers or disposes of it himself in accordance with the provisions of the directive. According to the 11th recital in the preamble to the Amending Directive, establishments which process their waste themselves or carry out waste recovery may be exempted from permit requirements provided that they comply with environmental protection requirements, but such undertakings must still be subject to a registration requirement. This is given effect by Article 11(1) and (2) of the Waste Directive as amended.

20. There is, by contrast, no explicit reference in the Waste Directive to undertakings which collect or transport their own waste. According to the 12th recital to the Amending Directive, however, 'other undertakings involved with waste, such as waste collectors, carriers and brokers' should also be subject to authorisation or registration and appropriate inspection.

21. Article 12 of the Waste Directive as amended accordingly defines the scope of the requirement of authorisation or registration as comprising 'undertakings which collect or transport waste on a professional basis or which arrange for the disposal or recovery of waste on behalf of others (dealers or brokers)'.

22. At first sight, a purely literal reading of the 12th recital in the preamble to the Amending Directive and Article 12 of the Waste Directive as amended provides some grounds for considering that that article is meant to apply only to collection and transportation undertakings operating in the waste sector and not to undertakings operating in other sectors but who also collect or transport their own waste as an ancillary activity.

23. Like the Commission, however, I take the view that the legislative history of this provision and the overall scheme of the Waste Directive as amended suggest that Article 12 of this directive is also meant to cover undertakings which collect or transport their own waste.

24. In its original version, the Waste Directive made a distinction between two groups of undertakings which were subject to different obligations for the purposes of environmental protection.

25. The first group comprised undertakings 'treating, storing or tipping waste on behalf of third parties'. Such undertakings were required to obtain a permit (Article 8 of the original Waste Directive) and were subject to periodic inspection by the competent authority (Article 9 of the original Waste Directive).

26. The second group comprised '[u]ndertakings transporting, collecting, storing, tipping or treating their own waste and those which collect or transport waste on behalf of third parties'. Such undertakings were subject only to 'supervision' by the competent authority (Article 10 of the original Waste Directive).

27. In the amended Waste Directive, however, 'supervision' by the authority no longer appears as a separate measure.

28. Instead, a section of the undertakings belonging to the second group — namely, those undertakings which store, tip or treat their own waste — now fall into the category of waste disposal or recovery undertakings which are required to hold a permit under Articles 9 and 10 of the amended Waste Directive or, if the conditions for exemption from the permit requirement under Article 11(1) are met, are subject in any case to a registration requirement under paragraph 2 of that article.

29. As far as the other undertakings specified in Article 10 of the original Waste Directive are concerned, namely those undertakings that collect or transport their own or third-party waste, it is common ground that at least those undertakings which collect or transport third-party waste are now covered by Article 12 of the Waste Directive as amended and are thereby subject to a registration requirement where not required to be authorised.

30. The position in summary is therefore that undertakings storing, tipping or treating their own waste and undertakings collecting or transporting waste on behalf of third parties — which under Article 10 of the original Waste Directive were all subject to supervision by the competent authority — are now under the amended Waste Directive subject to an authorisation or registration requirement and are accordingly subject to appropriate periodic inspections by the competent authorities under Article 13 of that Directive.

31. It can hardly be supposed, however, that undertakings which collect or transport their own waste were meant to be excluded from this strengthening of the effectiveness of controls under the Amending Directive — whereby an authorisation or registration requirement coupled with appropriate periodic inspections replaced mere supervision.

32. Above all, the amended Waste Directive contains no specific control measure, outside of Article 12, that would apply to undertakings which collect or transport waste. If Article 12 were therefore to be construed as not extending to undertakings which collect or transport their own waste, then the level of protection and the effectiveness of controls would not only have been strengthened but would actually have been weakened by the Amending Directive, since under the original Waste Directive there was at least provision for the supervision of such undertakings by the competent authorities. Such an interpretation would also, as the Commission pointed out, sit uneasily with the 12th recital to the Amending Directive which refers to the need for waste to 'be monitored from its production to its final disposal'.

33. The fact that an undertaking which collects or transports its own waste is in any event 'responsible' for same as holder of the waste, under Article 8 as well as under Article 4 of the Waste Directive as amended, until such time as the waste is consigned to a waste disposal or recovery undertaking — it is subject to the prohibition of uncontrolled disposal and the obligation to consign the waste to such an undertaking — is not, contrary to the Italian Government's submission, an argument against the proposition that these undertakings are subject to the registration and inspection requirement under Articles 12 and 13 of this directive. For under Articles 4 and 8 of the Waste Directive as amended, undertakings which

recover or dispose of their own waste are also subject to the general prohibition on uncontrolled disposal and the requirement to ensure that recovery or disposal takes place in compliance with the provisions of the directive, and yet these undertakings are subject to an authorisation or registration requirement under Articles 9, 10 and 11 of this directive and to appropriate periodic inspection under Article 12.

34. I therefore conclude that Article 12 of the Waste Directive as amended requires as a general rule that undertakings which collect or transport their own waste and are not subject to authorisation have also to be made subject to a registration requirement.

35. There still remains the question, however, as to the significance of the expression 'on a professional basis' in Article 12 of the Waste Directive as amended.

36. Since, as I have concluded, Article 12 of the Waste Directive as amended applies not only to undertakings operating as collectors or carriers in the waste sector but also to undertakings in other sectors which collect or transport their own waste as a purely ancillary activity, it seems inappropriate to construe the concept of 'on a professional basis' in primarily quantitative terms, that is, in the sense of economic advantage or profitability for the undertaking concerned.

37. The words 'on a professional basis', in my view, are rather intended to circumscribe to some extent the registration requirement under Article 12 of the Waste Directive as amended so that it applies not to every undertaking in which waste arises on an occasional or exceptional basis and is transported by the undertaking itself to a waste collection, recovery or disposal undertaking, but to those undertakings in which the transport or collection of their own waste is a regular/routine activity, arising virtually out of the nature of the business.

38. To that extent I concur with the view which is essentially that of both parties to these proceedings that the words 'on a professional basis' indicate that the collection or transport of waste is an activity which the undertaking regularly or routinely performs in the course of its business proper.

39. As regards the quantitative limit of 30 kilograms or 30 litres a day to which the registration requirement is subject under the Decree-Law in the case of undertakings which collect or transport their own hazardous waste, it is true that the expression 'on a professional basis' in Article 12 of the Waste Directive as amended is imprecise and so allows Member States some latitude in transposition. But since the expression 'on a professional basis' does not have to do with the profitability of the collection or transport of one's own waste, as the Italian Government seems to assume, neither does Article 12 in my view permit undertakings which collect or transport their own hazardous waste in volumes of up to 30 kilograms or 30 litres a day to be given a blanket exemption from the registration requirement.

40. In other words, an undertaking that collects or transports up to 30 kilograms or 30 litres a day of its own hazardous waste can very well be considered to be an undertaking carrying on that activity as a routine activity in the course of its business.

41. Moreover, as the Commission has pointed out, Article 12 of the Waste Directive as amended is expressed in unconditional terms and contains nothing to suggest that the registration requirement is to operate only above a particular minimum quantity. Nor has the Italian Government explained on the basis of what considerations this minimum quantity was fixed.

42. In the light of the above discussion, it must therefore be concluded that the Decree-Law constitutes a breach of obligations arising out of Article 12 of the Waste Directive as amended, in so far as it provides a general exemption from the registration requirement for undertakings which collect or transport their own non-hazardous waste. It must further be concluded that the Decree-Law is incompatible with the same article in so far as it exempts from the registration requirement undertakings which collect or transport their own hazardous waste in volumes of up to 30 kilograms or 30 litres a day.

43. The Commission's action is accordingly well founded.

V — Costs

44. According to Article 69(2), the unsuccessful party is to be ordered to pay the costs. Since the Italian Republic has been unsuccessful, I propose that the costs of the proceedings be awarded against it.

VI — Conclusion

45. I therefore propose that the Court should

— declare that, by permitting undertakings, in accordance with Article 30(4) of Decree-Law No 22 of 5 February 1997, as amended by Law No 426 of 9 December 1998, to collect and transport their own non-hazardous waste, as a normal and regular activity, without being required to be entered in the National Register of Waste Disposal Service Providers, and to transport their own hazardous waste in quantities not exceeding 30 kg or 30 litres a day, without being required to be entered in that register, the Italian Republic has failed to fulfil its obligations under Article 12 of Directive 75/442/EEC on waste, as amended by Directive 91/156/EEC;

— order the Italian Republic to pay the costs.