JUDGMENT OF THE COURT (Third Chamber)

18 December 2007 *

In Case C-263/05,

ACTION under Article 226 EC for failure to fulfil obligations, brought on 23 June 2005,

Commission of the European Communities, represented by M. Konstantinidis and L. Cimaglia, acting as Agents, with an address for service in Luxembourg,

applicant,

v

Italian Republic, represented by I.M. Braguglia, acting as Agent, and G. Fiengo, avvocato dello Stato, with an address for service in Luxembourg,

defendant,

* Language of the case: Italian.

THE COURT (Third Chamber),

composed of A. Rosas, President of the Chamber, U. Lõhmus, J.N. Cunha Rodrigues, A. Ó Caoimh (Rapporteur) and P. Lindh, Judges,

Advocate General: Y. Bot,
Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 7 February 2007,

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

gives the following

Judgment

1 By its application, the Commission of the European Communities claims that the Court should declare that the Italian Republic has failed to fulfil its obligations under Article 1(a) 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) and Commission Decision 96/350/EC of 24 May 1996 (OJ 1996 L 135, p. 32) ('the Directive'), by adopting and maintaining in force Article 14 of

Decree-Law No 138 of 8 July 2002 laying down urgent measures concerning taxation, privatisation and control of pharmaceutical expenditure and economic support in disadvantaged areas (GURI No 158 of 8 July 2002), now, after amendment, Law No 178 of 8 August 2002 (GURI No 187 of 10 August 2002, Ordinary Supplement), which excludes from the scope of Legislative Decree No 22 of 5 February 1997 implementing Directives 91/156/EEC on waste, 91/689/EEC on hazardous waste and 94/62/EC on packaging and packaging waste (GURI No 38 of 15 February 1997, Ordinary Supplement) ('Legislative Decree No 22/97') the following: (i) substances, objects or goods intended for waste disposal or recovery operations not expressly listed in Annexes B or C to Legislative Decree No 22/97; (ii) substances or objects forming production residue which the holder intends or is required to discard, where they may be and are re-used in a production or consumption cycle, provided that they have not undergone prior treatment and do not harm the environment or, if they have undergone prior treatment, provided that that treatment is not one of the recovery operations listed in Annex C to Legislative Decree No 22/97.

Legal background

Community legislation

2 For the purposes of the Directive, the first paragraph of Article 1(a) defines 'waste' as 'any substance or object in the categories set out in Annex I [to that directive] which the holder discards or intends or is required to discard'.

3 The Commission adopted Decision 94/3/EC of 20 December 1993 establishing a list of wastes pursuant to Article 1(a) of Directive 75/442 (OJ 1994 L 5, p. 15). The list was updated by Commission Decision 2000/532/EC of 3 May 2000 replacing

Decision 94/3 and Council Decision 94/904/EC establishing a list of hazardous waste pursuant to Article 1(4) of Council Directive 91/689/EEC on hazardous waste (OJ 2000 L 226, p. 3). The European Waste Catalogue established by Decision 2000/532 has been amended on a number of occasions, most recently by Council Decision 2001/573/EC of 23 July 2001 (OJ 2001 L 203, p. 18). The Annex to Decision 2000/532, which sets out the European Waste Catalogue, begins with an introduction, paragraph 1 of which states that the list is a harmonised list which will be periodically reviewed. Paragraph 1 further states that 'inclusion in the [European Waste Catalogue] does not mean that the material is a waste in all circumstances. Materials are considered to be waste only where the definition of waste in Article 1(a) of [the Directive] is met'.

4 Points (e) and (f) of Article 1 of the Directive define the concepts of disposal and recovery of waste as any of the operations provided for, respectively, in Annexes II A and II B to that directive. Those annexes were adapted to scientific and technical progress by Decision 96/350.

National law

5 Article 6(1)(a) of Legislative Decree No 22/97 is worded as follows:

'For the purposes of this Decree,

(a) "waste" shall mean any substance or object in the categories set out in Annex A which the holder discards, or intends or is required to discard.

...'

6 Annex A to Legislative Decree No 22/97 reproduces the list of waste categories set out in Annex I to the Directive. Annexes B and C to the Legislative Decree list the waste disposal and recovery operations in the same way as Annexes II A and II B to the Directive.

7 Article 14 of Law No 178 of 8 August 2002 ('the provision at issue'), which, after amendment, replaced Decree-Law No 138 of 8 July 2002, contains an 'authentic interpretation' of the definition of 'waste' in Article 6(1)(a) of Legislative Decree No 22/97, which states as follows:

'1. The terms "discards", "intends" or "is required to discard" ... shall be interpreted as follows:

(a) "discards": any conduct whereby, directly or indirectly, substances, materials or goods are disposed of or made to undergo disposal or recovery operations, in accordance with Annexes B and C to Legislative Decree [No 22/97];

(b) "intends": the intention to make substances, materials or goods undergo disposal or recovery operations in accordance with Annexes B and C to Legislative Decree [No 22/97];

(c) "is required to discard": the obligation to make materials, substances or goods undergo recovery or disposal operations, required by statute, or by a measure taken by a public authority, or by the very nature of the materials, substances or goods themselves, or by virtue of the fact that they are included in the list of hazardous waste set out in Annex D to Legislative Decree [No 22/97].

2. Points (b) and (c) of paragraph 1 shall not apply in the case of goods, substances or materials which are production or consumption residues, where one of the following conditions is fulfilled:

(a) they can be, and are actually and objectively, re-used in the same or in a similar or different production or consumption cycle, without undergoing any prior treatment and without causing harm to the environment;

(b) they can be, and are actually and objectively, re-used in the same or a similar or different production or consumption cycle, after undergoing prior treatment, where none of the recovery operations listed in Annex C to Legislative Decree [No 22/97] is necessary.'

The pre-litigation procedure

8 On the view that the rules of interpretation laid down in the provision at issue are not in conformity with the Directive and, in particular, Article 1(a) thereof, the Commission initiated infringement proceedings under Article 226 EC.

9 Since the Italian authorities did not reply in good time to a letter of formal notice of 18 October 2002, the Commission delivered a reasoned opinion on 3 April 2003, calling on the Italian Republic to comply with the Directive within two months of the date of receipt.

10 However, as the Italian authorities had meanwhile replied to the letter of formal notice of 18 October 2002 — albeit after expiry of the period allowed — the Commission formed the view that the reasoned opinion had to be deemed void.

11 Taking the view none the less that the reply was unsatisfactory, the Commission sent an additional reasoned opinion to the Italian Republic by letter of 11 July 2003, calling on that Member State to act on that opinion within a further period of two months from the date of receiving it.

12 After requesting that the deadline be deferred for another two months, the Italian Government replied to the Commission's comments regarding the national legislation in the form of notes from the Permanent Representation of 12 November and 19 December 2003.

13 In order to specify further its position concerning the infringement complained of — particularly in the light of the Opinion of Advocate General Kokott in Case C-457/02 *Niselli* [2004] ECR I-10853, delivered on 10 June 2004 — the Commission sent a second additional reasoned opinion by letter of 9 July 2004, again calling on the Italian Republic to act on the opinion within two months of the date of receipt.

14 The Italian authorities replied to the second additional reasoned opinion by note of 29 September 2004.

15 Taking the view that the situation remained unsatisfactory, the Commission decided to bring the present action.

The action

Arguments of the parties

16 By the two parts of its complaint, the Commission submits that the interpretation of Article 6(1)(a) of Legislative Decree No 22/97 imposed by the Italian legislature in paragraphs 1 and 2 of the provision at issue is contrary to Article 1(a) of the Directive.

17 First, the references in points (a) and (b) of paragraph 1 of the provision at issue to 'disposal and recovery operations', in so far as they are accompanied by the clarification 'in accordance with Annexes B and C to Legislative Decree [No 22/97]', introduce a distinction between disposal or recovery operations envisaged generally, on the one hand, and those expressly provided for in Annexes B and C to the Legislative Decree, on the other. Thus, all materials, substances or goods covered by Annex A to Legislative Decree No 22/97 that the holder causes to undergo, sets aside for undergoing, or intends causing to undergo disposal operations other than those listed in Annex B to that Legislative Decree, or recovery operations other than those listed in Annex C thereto, escape classification as waste and, as a result, they are not subject in any way to the legislation on waste management.

18 Consequently, the effect of that provision is to narrow unlawfully the meaning of 'waste' and thus to restrict the scope of the Italian legislation on waste management.

19 Second, the Commission submits with respect to paragraph 2 of the provision at issue that, in effect, by providing that the criteria laid down in paragraph 1(b) and (c) thereof for interpreting the concept of waste are not to apply to certain production or consumption residues, and by thus precluding their classification as waste, in accordance with the conditions specified in paragraph 2(a) and (b), the Italian legislature is implicitly acknowledging that, in the circumstances referred to, those residues have the characteristics of waste, while at the same time — on the basis of circumstances relating to the treatment of those residues — refraining from applying the legislation on waste.

20 In the view of the Commission, it is not permissible to exclude categorically from the scope of the Directive substances or objects whose holder intends or is required to discard them, even if they are re-usable and re-used in a production or consumption cycle with or without the need for prior treatment — provided only, if prior treatment is needed, that they do not undergo any of the recovery operations expressly mentioned in the corresponding annex — and even if they are not harmful to the environment in the absence of prior treatment.

21 The Commission concludes, contrary to the contentions of the Italian Republic, that the provision at issue does not merely lay down interpretative criteria for establishing whether the conditions determining the existence of waste are satisfied, but has a restrictive effect with respect to the concept of waste and its application, in particular by removing a large part of recoverable waste from the scope of the national provisions transposing the Directive.

22 The Italian Republic maintains that re-used material is not waste, including where its holder is considering assigning it to other production processes. The case-law of the Court has broadened the exclusion from the concept of waste, in certain circumstances, to cover materials which are genuinely re-used, even by third parties.

23 According to the Italian Republic, the provision at issue identifies the criteria for determining whether the holder of material has discarded it, has decided to discard it or is required to do so. Those criteria, by extending the test down a level to the actual and objective use of the material concerned, enable the two conditions laid down in *Niselli* to be complied with, namely the certainty of re-use and the inclusion of abandoned materials in the concept of waste.

24 The Italian Republic contends that abandonment is an indirect way of setting aside a substance or object for a disposal or recovery operation, so that the act of abandoning a substance or object is actually covered by paragraph 1(a) of the provision at issue.

25 According to the Italian Republic, paragraph 2 of the provision at issue, in accordance with the principles underpinning the case-law of the Court, precludes the classification as waste of industrial residues which, although they do not constitute the material which it is primarily sought to produce, cannot be regarded as waste because they are re-used as they are, without any operation designed to 'discard' them, that is to say, without 'prior processing', or after prior treatment which does not amount to complete recovery, such as sorting, selection, separation, compacting or screening.

26 By the provision at issue, which should be read as a whole, the Italian legislature sought to provide positive interpretative criteria for categorising as waste materials whose holder discards, or intends or is required to discard them. It is necessary, by means of definitive interpretative criteria, to provide a 'positive' list of waste, rather than starting from the premiss that everything is waste except substances or objects in relation to which it can be shown that their holder is not discarding them, intending to discard them, or required to discard them.

27 According to the Italian Republic, the Commission's argument implies that any clarification of the term 'discard' inevitably narrows the scope of the Directive, an approach which hinders the powers of the Member States to define the methods of implementing directives.

28 Lastly, at the hearing, the Italian Republic stated that, in Italy, waste management is sometimes undertaken by persons who operate 'on the fringes of the law', so that it has preferred to rely on the producers of waste to take care of waste management rather than see those producers entrust waste management to third parties.

Findings of the Court

29 By the first part of its complaint, the Commission submits, essentially, that the interpretation imposed in paragraph 1 of the provision at issue has the effect of unlawfully narrowing the meaning of 'waste' for the purposes of the application of Italian legislation in that field by restricting that definition to materials which undergo the disposal and recovery operations listed in Annexes B and C to Legislative Decree No 22/97 — which reproduce verbatim Annexes II A and II B, respectively, to the Directive — to the exclusion of other disposal or recovery operations not listed in the annexes to that decree.

30 By the second part of its complaint, the Commission submits, essentially, that the exclusion provided for in paragraph 2 of the provision at issue also has the effect of unlawfully narrowing the meaning of 'waste', in so far as that exclusion covers production or consumption residues, where they may be or are re-used in the same production or consumption cycle, or in a similar or different cycle, without prior treatment and without causing harm to the environment, or after prior treatment

but without requiring one of the recovery operations listed in Annex C to Legislative Decree No 22/97.

31 In the light of the position adopted by the Italian Republic, which takes the view essentially that the provision at issue must be read as a whole and that it seeks to clarify the content of the concept of 'waste' as defined in Article 1(a) of the Directive, it is appropriate, before examining the two parts of the Commission's complaint together, to recall the case-law of the Court relating to that concept.

32 The first paragraph of Article 1(a) of the Directive defines waste as 'any substance or object in the categories set out in Annex I [to the Directive] which the holder discards or intends ... to discard'. The annex referred to clarifies and illustrates that definition by providing a list of categories of substances and objects which may be classified as 'waste'. That list is intended only as guidance, however, and 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' (see, to that effect, Case C-129/96 *Inter-Environnement Wallonie* [1997] ECR I-7411, paragraph 26; Case C-1/03 *Van de Walle and Others* [2004] ECR I-7613, paragraph 42; and Case C-252/05 *Thames Water Utilities* [2007] ECR I-3883, paragraph 24).

33 The term 'discard' must be interpreted in the light not only of the fundamental aim of the directive, which, according to the third recital in the preamble thereto, is 'the protection of human health and the environment against harmful effects caused by the collection, transport, treatment, storage and tipping of waste', but also of Article 174(2) EC. The latter provision states that 'Community policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Community. It shall be based on the precautionary principle and on the principles that preventive action should be taken ... '. It follows that the term 'discard' — and, accordingly, the concept of 'waste', within the meaning of Article 1(a) of the directive — cannot be interpreted restrictively (see, to

that effect, inter alia, Joined Cases C-418/97 and C-419/97 *ARCO Chemie Nederland and Others* [2000] ECR I-4475, paragraphs 36 to 40, and *Thames Water Utilities*, paragraph 27).

34 Certain circumstances may constitute evidence that the holder has discarded a substance or object, or intends or is required to discard it, within the meaning of Article 1(a) of the directive (*ARCO Chemie Nederland and Others*, paragraph 83). That is the case in particular where a substance is a production or consumption residue, that is to say, a product which it was not, as such, sought to produce (see, to this effect, *ARCO Chemie Nederland and Others*, paragraph 84, and *Niselli*, paragraph 43).

35 Moreover, neither the method of treatment reserved for a substance nor the use to which that substance is put determines conclusively whether or not it is to be classified as waste (see *ARCO Chemie Nederland and Others*, paragraph 64, and Case C-176/05 *KVZ retec* [2007] ECR I-1721, paragraph 52).

36 The Court has thus stated, first, that the fact that a substance or object undergoes one of the disposal or recovery operations listed, respectively, in Annexes II A and II B to the directive does not, by itself, mean that a substance or object involved in such an operation is to be classified as waste (see, to that effect, inter alia, *Niselli*, paragraphs 36 and 37); and, secondly, that the concept of waste does not exclude substances and objects which are capable of economic re-use (see, to that effect, inter alia, Joined Cases C-304/94, C-330/94, C-342/94 and C-224/95 *Tombesi and Others* [1997] ECR I-3561, paragraphs 47 and 48). The system of supervision and control established by the directive 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, recovery or re-use (see, inter alia, Case C-9/00 *Palin Granit and Vehmassalon kansanterveystyön kuntayhtymän hallitus* [2002] ECR I-3533, '*Palin Granit*', paragraph 29).

37 However, it is also clear from the case-law of the Court that, 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 residue, but as by-products which their holder does not seek to 'discard', within the meaning of Article 1(a) of the directive, but which he intends to exploit or market on terms advantageous to himself 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 a certainty, does not require any further processing prior to re-use and forms an integral part of the process of production or use (see, to that effect, *Palin Granit*, paragraphs 34 to 36; Case C-114/01, *AvestaPolarit Chrome* [2003] ECR I-8725, paragraphs 33 to 38; *Niselli*, paragraph 47; and also Case C-416/02 *Commission* v *Spain* [2005] ECR I-7487, paragraphs 87 and 90, and Case C-121/03 *Commission* v *Spain* [2005] ECR I-7569, paragraphs 58 and 61).

38 Accordingly, in addition to the criterion of whether a substance constitutes a production residue, a relevant criterion for determining whether or not that substance is waste within the meaning of the directive is the degree of likelihood that that substance will be re-used without any prior processing. If, beyond the mere possibility of re-using the substance, there is also a financial advantage for the holder in so doing, the likelihood of such re-use is high. In such circumstances, the substance in question must no longer be regarded as a burden which its holder seeks to 'discard', but as a genuine product (see *Palin Granit*, paragraph 37, and *Niselli*, paragraph 46).

39 However, if such re-use requires long-term storage operations which constitute a burden to the holder and are also potentially the cause of precisely the environmental pollution which the directive seeks to reduce, that re-use cannot be described as a certainty and is foreseeable only in the longer term, and accordingly the substance in question must, as a general rule, be regarded as waste (see, to that effect, *Palin Granit*, paragraph 38, and *AvestaPolarit Chrome*, paragraph 39).

40 Whether a substance is in fact 'waste' within the meaning of the directive must be determined in the light of all the circumstances, account being taken of the aim of the directive and the need to ensure that its effectiveness is not undermined (see *ARCO Chemie Nederland and Others*, paragraph 88; *KVZ retec*, paragraph 63; and the order in Case C-235/02 *Saetti and Frediani* [2004] ECR I-1005, paragraph 40).

41 Since the directive does not provide any single decisive criterion for discerning whether the holder intends to discard a given substance or object, Member States are free, in the absence of Community provisions, to choose the modes of proof of the various matters defined in the directives which they are transposing, provided that the effectiveness of Community law is not thereby undermined (see *ARCO Chemie Nederland and Others*, paragraph 41, and *Niselli*, paragraph 34). Thus Member States may, for example, define different categories of waste, in particular to facilitate the organisation and control of their management of waste, provided that the obligations arising under the directive or other provisions of Community law relating to such waste are complied with and that the exclusion of any categories from the scope of legislation enacted in order to transpose obligations under the directive is in compliance with Article 2(1) of the directive (see, to that effect, Case C-62/03 *Commission* v *United Kingdom*, not published in the ECR, paragraph 12).

42 In the present case, it is common ground, first, that under paragraph 1 of the provision at issue, it is sufficient, by way of evidence that the holder of a substance or object is discarding, or is intending or required to discard, that substance or object, within the meaning of the first subparagraph of Article 1(a) of the Directive, that that substance or object be intended, directly or indirectly, for the disposal or recovery operations listed in Annexes B and C to Legislative Decree No 22/97; and, second, that Annexes B and C reproduce verbatim Annexes II A and II B to the Directive.

43 However, as stated in paragraph 36 of this judgment, the fact that a substance or object undergoes one of the disposal or recovery operations listed, respectively, in Annexes II A or II B to the Directive does not, by itself, mean that a substance or object involved in such an operation is to be classified as waste.

44 First, by defining the act of discarding a substance or object exclusively in terms of the carrying out of one of the disposal or recovery operations listed in Annexes B and C to Legislative Decree No 22/97, the interpretation imposed by paragraph 1 of the provision at issue makes the classification of a substance or object as 'waste' dependent upon an operation which cannot itself be classified as disposal or recovery unless it is applied to 'waste'. Accordingly, in reality, that interpretation does nothing to clarify the concept of waste. Thus, if that interpretation were to be applied, any substance or object involved in one of the types of operation listed in Annexes II A and II B to the Directive must be classified as waste. In consequence, that interpretation would lead to substances and objects being classified as waste which are not 'waste' within the meaning of the Directive (see, to that effect, *Niselli*, paragraphs 36 and 37).

45 Second, the interpretation set out in paragraph 42 of this judgment means that a substance or object that is discarded by the holder in a manner not specified in Annexes II A and II B to the Directive does not constitute waste, which means that that interpretation also narrows the meaning of the concept of waste as defined in Article 1(a) of the Directive. Thus, on that construction, a substance or object which is not subject to an elimination or recovery requirement, whose holder discards it by simple abandonment — without making it undergo such an operation — would not be classified as waste even though it would constitute 'waste' within the meaning of the Directive (see, to that effect, *Niselli*, paragraph 38).

46 In that regard, the argument of the Italian Republic set out in paragraph 24 of this judgment, according to which the abandoning of a substance or object is actually covered by paragraph 1(a) of the provision at issue, cannot be accepted. Even if that construction of paragraph 1(a) were to prevail under national law, the fact remains that, on account of its lack of clarity and precision in that regard, the provision at issue does not ensure the full implementation of the Directive.

47 It is also common ground that, according to the clarification set out in paragraph 2 of the provision at issue, it is sufficient in order for production or consumption residue to escape classification as waste that that residue is or may be re-used in any

production or consumption cycle, either without prior treatment and without harm to the environment, or after undergoing prior treatment if that treatment is not one of the recovery operations listed in Annex C to Legislative Decree No 22/97, which reproduces verbatim Annex II B to the Directive.

48 However, that situation does not comply with the requirements of the case-law set out in paragraphs 33 to 39 of this judgment. The effect is that production or consumption residues which correspond to the definition of waste set out in the first paragraph of Article 1(a) of the Directive are nevertheless not classified as such under Italian law.

49 In particular, as is clear from paragraphs 34 to 36 of this judgment, the fact that a substance is a production or consumption residue is evidence that it is waste and the mere fact that a substance is intended for re-use or capable of being re-used cannot be decisive as regards whether or not it is classified as waste.

50 Furthermore, the arguments of the Italian Republic set out in paragraph 25 of this judgment cannot be accepted. In view of the obligation, recalled in paragraph 33 of this judgment, to give the concept of waste a broad meaning and in the light of the requirements of the case-law expounded in paragraphs 34 to 39 of this judgment, goods, materials or raw materials resulting from a manufacturing process which is not designed to produce them may be regarded as by-products which the holder does not wish to discard only where their re-use (including, as the case may be, in order to meet the needs of economic operators other than the producer) is not merely a possibility, but a certainty, and where such re-use does not require any prior processing and forms an integral part of the process of production.

51 Lastly, as regards the observations made by the Italian Republic at the hearing regarding the fact that persons described as acting 'on the fringes of the law' operate in the waste management sector, it is sufficient to point out that that fact — even were it assumed to be established — cannot justify the failure by that Member State to respect its obligations under the Directive.

52 In the light of all the foregoing, the action brought by the Commission must be upheld.

53 It must therefore be held that the Italian Republic has failed to fulfil its obligations under Article 1(a) of the Directive, by adopting and maintaining in force Article 14 of Decree-Law No 138 of 8 July 2002 (now, after amendment, Law No 178 of 8 August 2002), which excludes from the scope of Legislative Decree No 22/97 the following: (i) substances, objects, or goods intended for waste disposal or recovery operations not expressly listed in Annexes B or C to Legislative Decree No 22/97; and (ii) substances or objects forming production residue which the holder intends or is required to discard, where they may be and are re-used in a production or consumption cycle without undergoing prior treatment and without harming the environment or, if they have undergone prior treatment, provided that that treatment is not one of the recovery operations listed in Annex C to that decree.

Costs

54 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for costs and the Italian Republic has been unsuccessful in its submissions, the latter must be ordered to pay the costs.

On those grounds, the Court (Third Chamber) hereby:

1. **Declares that the Italian Republic has failed to fulfil its obligations under Article 1(a) of Council Directive 75/442/EEC of 15 July 1975 on waste, as amended by Council Directive 91/156/EEC of 18 March 1991 and Commission Decision 96/350/EC of 24 May 1996, by adopting and maintaining in force Article 14 of Decree-Law No 138 of 8 July 2002 laying down urgent measures concerning taxation, privatisation and control of pharmaceutical expenditure and economic support in disadvantaged areas, now, after amendment, Law No 178 of 8 August 2002, which excludes from the scope of Legislative Decree No 22 of 5 February 1997 implementing Directives 91/156/EEC on waste, 91/689/EEC on hazardous waste and 94/62/EC on packaging and packaging waste the following: (i) substances, objects or goods intended for waste disposal or recovery operations not expressly listed in Annexes B or C to Legislative Decree No 22/97; and (ii) substances or objects forming production residue which the holder intends or is required to discard, where they may be and are re-used in a production or consumption cycle without undergoing prior treatment and without harming the environment, or, if they have undergone prior treatment, provided that that treatment is not one of the recovery operations listed in Annex C to Legislative Decree No 22/97;**

2. **Orders the Italian Republic to pay the costs.**

[Signatures]