

Case Law of the ECJ

Waste

Case Study

Justice and Environment 2011

Case Law of the ECJ

Waste

Case Study

Directive	Case reference	Parties	Judgement	
			Conclusion	Operational part of the judgment
Directives 75/442/EEC and 91/156/EEC - Meaning of 'waste', 'producer of waste' and 'holder of waste'- Soil infiltrated by leaked hydrocarbons - Independent operation of a service station belonging to a petroleum company	Case C-1/03, art. 1(a), (b) and (c) of Council Directive 75/442/EEC on waste as amended by Council Directive 91/156/EEC Reference for a preliminary ruling from the Cour d'apel de Bruxelles (Belgium)	Paul van de Walle, Daniel Laurent, Thierry Mersch, Texaco Belgium SA, Region de Bruxelles – Capitale, the Commission of the European Communities	Hydrocarbons which are unintentionally spilled and cause soil and groundwater contamination are waste within the meaning of 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. The same is true for soil contaminated by hydrocarbons, even if it has not been excavated. In circumstances such as those in the main proceedings, the	“Article 1(a) of Directive 75/442 defines waste as 'any substance or object in the categories set out in Annex I which the holder discards or intends ... to discard'. The annex clarifies and illustrates that definition by providing lists of substances and objects which can be classified as waste. However, the lists are only intended as guidance, and the classification of 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 InterEnvironnement Wallonie [1997] ECR I-7411, paragraph 26, and Case C-9/00 Palin Granit and Vehmassalon kansanterveystyön kuntayhtymän hallitus [2002] ECR I-3533, paragraph 22). 43 The fact that Annex I to Directive 75/442, entitled 'Categories of waste', refers in heading Q4 to 'materials spilled, lost or having undergone other mishap, including any materials, equipment, etc., contaminated as a result of the mishap' merely indicates that such materials may fall within the scope of 'waste'. It cannot suffice to

			<p>petroleum undertaking which supplied the service station can be considered to be the holder of that waste within the meaning of Article 1(c) of Directive 75/442 only if the leak from the service station's storage facilities which gave rise to the waste can be attributed to the conduct of that undertaking.</p>	<p>classify as waste hydrocarbons which are spilled by accident and which contaminate soil and groundwater.</p> <p>44 In those circumstances, it is necessary to consider whether that accidental spill of hydrocarbons is an act by which the holder 'discards' them. I - 7648 VAN DE WALLE AND OTHERS</p> <p>45 First, as the Court has held, the verb 'to discard' must be interpreted in the light of the aim of Directive 75/442, which, in the wording of the third recital in the preamble, is the protection of human health and the environment against harmful effects caused by the collection, transport, treatment, storage and tipping of waste, and that of Article 174(2) EC, which states that Community policy on the environment is to aim at a high level of protection and is to be based, in particular, on the precautionary principle and the principle that preventive action should be taken. The verb 'to discard', which determines the scope of 'waste', therefore cannot be interpreted restrictively (see to that effect Joined Cases C-418/97 and C-419/97 ARCO Chemie Nederland and Others [2000] ECR I-4475, paragraphs 36 to 40).</p> <p>46 Secondly, when the substance or object in question is a production residue, that is to say, a product which is not itself wanted for subsequent use and which the holder cannot</p>
--	--	--	---	--

			<p>economically re - use without prior processing, it must be considered to be a burden which the holder seeks to 'discard' (see to th at effect Palin Granit and Vehmassalon kansanterveystyön kuntayhtymän hallitus, cited above, paragraphs 32to 37).</p> <p>47 It is clear that accidentally spilled hydrocarbons which cause soil and groundwater contamination are not a product which can be re-used without processing. Their marketing is very uncertain and, even if it were possible, implies preliminary operations would be uneconomical for their holder. Those hydrocarbons are therefore substances which the holder did not intend to produce and which he 'discards', albeit involuntarily, at the time of the production or distribution operations which relate to them.</p> <p>48 Finally, Directive 75/442 would be made redundant in part if hydrocarbons which cause contamination were not considered waste on the sole ground that they were spilled by accident. Article 4 of the Directive provides, inter alia, that Member States are to take the measures necessary to ensure that waste is recovered or disposed of without endangering human health and 'without risk to water, air, soil and plants and animals' and are to 'prohibit the abandonment, dumping or uncontrolled disposal of waste'. Pursuant to Article 8 of the Directive, Member States are to take the measures necessary to</p>
--	--	--	--

				<p>ensure that any holder of waste has it handled by an operator responsible for its recovery or disposal or ensures those operations himself. Article 15 of the Directive designates the operator who must bear the cost of disposing of waste 'in accordance with the "polluter pays" principle'.</p> <p>49 If hydrocarbons which cause contamination are not considered to be waste on the ground that they were spilled by accident, their holder would be excluded from the obligations which Directive 75/442 requires Member States to impose on him, in contradiction to the prohibition on the abandonment, dumping or uncontrolled disposal of waste.</p> <p>50 It follows that the holder of hydrocarbons which are accidentally spilled and which contaminate soil and groundwater 'discards' those substances, which must as a result be classified as waste within the meaning of Directive 75/442.</p> <p>51 It should be pointed out that hydrocarbons spilled by accident are, moreover, considered to be hazardous waste under Council Directive 91/689/EEC of 12 December 1991 on hazardous waste (OJ 1991 L 377, p. 20) and Council Decision 94/904/EC of 22 December 1994 establishing a list of hazardous waste pursuant to Article 1(4) of Directive 91/689 (OJ 1994 L 356, p. 14). I - 7650 VAN DE WALLE AND OTHERS</p> <p>52. The same classification as 'waste' within the meaning of Directive 75/442 applies to soil</p>
--	--	--	--	--

			<p>contaminated as the result of an accidental spill of hydrocarbons. In that case, the hydrocarbons cannot be separated from the land which they have contaminated and cannot be recovered or disposed of unless that land is also subject to the necessary decontamination. That is the only interpretation which ensures compliance with the aims of protecting the natural environment and prohibiting the abandonment of waste pursued by the Directive. It is fully in accord with the aim of the Directive and heading Q4 of Annex I thereto, which, as pointed out, mentions 'any materials, equipment, etc., contaminated as a result of [materials spilled, lost or having undergone other mishap]' among the substances or objects which may be regarded as waste. The classification as waste in the case of land contaminated by hydrocarbons does indeed therefore depend on the obligation on the person who causes the accidental spill of those substances to discard them. It cannot result from the implementation of national laws governing the conditions of use, protection or decontamination of the land where the spill occurred.</p> <p>53 Since contaminated soil is considered to be waste by the mere fact of its accidental contamination by hydrocarbons, its classification as waste is not dependent on other operations being carried out which are the responsibilities of its owner or which the latter decides to</p>
--	--	--	---

			<p>undertake. The fact that soil is not excavated therefore has no bearing on its classification as waste.</p> <p>54 As regards whether, in the circumstances of the main action, the petroleum undertaking supplying the service station can be considered to be the producer or holder of waste within the meaning of Article 1(b) and (c) of the Directive, under the division of functions provided for by Article 234 EC it is for the national court to apply to the individual case before it the rules of Community law as interpreted by the Court (Case C-320/88 Shipping and Forwarding Enterprise Safe [1990] ECR I-285, paragraph 11). I - 7651</p> <p>55 Article 1(c) of Directive 75/442 provides that the holder is 'the producer of the waste or the natural or legal person who is in possession of it'. The Directive therefore defines 'holder' broadly, without specifying whether the obligation to dispose of or recover waste is as a general rule a matter for the producer or the possessor of the waste, that is to say, the owner or the holder.</p> <p>56 Article 8 of Directive 75/442 states that those obligations, which are the corollary to the prohibition on the abandonment, dumping or uncontrolled disposal of waste laid down in Article 4 of the Directive, are the responsibility of 'any holder of waste'.</p> <p>57 In addition, Article 15 of Directive 75/442 provides that, in accordance with the principle of</p>
--	--	--	---

				<p>polluter pays, the cost of disposing of waste must be borne by the holder who has waste handled by an operator responsible for disposing of it and/or previous holders or the producer of the product from which the waste came. The Directive therefore does not preclude the possibility that, in certain cases, the cost of disposing of waste is to be borne by one or several previous holders, that is to say, one or more natural or legal persons who are neither the producers nor the possessors of the waste.</p> <p>58 It follows from the provisions cited in the three preceding paragraphs that Directive 75/442 distinguishes between practical recovery or disposal operations, which it makes the responsibility of any 'holder of waste', whether producer or possessor, and the financial burden of those operations, which, in accordance with the principle of polluter pays, it imposes on the persons who cause the waste, whether they are holders or former holders of the waste or even producers of the product from which the waste came. I - 7652 VAN DE WALLE AND OTHERS</p> <p>59 The hydrocarbons spilled by accident as the result of a leak from a service station's storage facilities had been bought by that service station to meet its operating needs. They are therefore in the possession of the service stations manager. Moreover, it is the manager who, for the purpose of his operations, had them in stock when they</p>
--	--	--	--	--

				<p>became waste and who may therefore be considered to be the person who 'produced' them within the meaning of Article 1(b) of Directive 75/442. Under those conditions, since he is at once the possessor and the producer of that waste, the service station manager must be considered to be its holder within the meaning of Article 1(c) of Directive 75/442.</p> <p>60 Nevertheless, if in the main action, in the light of information which only the national court is in a position to assess, it appears that the poor condition of the service station's storage facilities and the leak of hydrocarbons can be attributed to a disregard of contractual obligations by the petroleum undertaking which supplies that service station, or to any actions which could render that undertaking liable, the activities of that undertaking could be considered to 'have produced waste' within the meaning of Article 1(b) of Directive 75/442 and it may accordingly be regarded as the holder of the waste.</p> <p>61 In the light of all the foregoing considerations, the answer to the question referred by the national court must be that hydrocarbons which are unintentionally spilled and cause soil and groundwater contamination are waste within the meaning of Article 1(a) of Directive 75/442. The same is true for soil contaminated by hydrocarbons, even if it has not been excavated. In circumstances such as those in the main</p>
--	--	--	--	--

				proceedings, the petroleum undertaking which supplied the service station can be considered to be the holder of that waste within the meaning of Article 1(c) of Directive 75/442 only if the leak from the service station's storage facilities which gave rise to the waste can be attributed to the conduct of that undertaking.”
--	--	--	--	--

<p>Council Directive 75/442/EEC of 15 July 1975 on waste, as amended by Council Directive 91/156/EEC of 18 March 1991 — Obligation to ensure that the establishments or undertakings responsible for the collection and transportation of waste are required to register with the competent authorities</p>	<p>C270/03, infringement of art. 12, transport and collection of waste</p>	<p>Applicant: Commission of European Communities, Defendant: Italian Republic</p>	<p>Declares that, by permitting undertakings, in accordance with Article 30(4) of Decree-Law No 22 of 5 February 1997 implementing Directive 91/156/EEC on waste, Directive 91/689/EEC on hazardous waste and Directive 94/62/EC on packaging and packaging waste, as amended by Article 1(19) of 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 Albonazionale delle imprese esercenti servizi di smaltimento rifiuti (national register of undertakings carrying out waste-disposal services) and I</p>	<p>The provisions of the directive must be interpreted in the light of its objective which, according to its third recital, is the protection of human health and the environment against harmful effects caused by the collection, transport, treatment, storage and tipping of waste, and Article 174(2) EC, which provides that Community policy on the environment is to aim at a high level of protection and is to be based, in particular, on the precautionary principle and the principle that preventive action should be taken (see, to that effect, Case C-9/00 Palin Granit and Vehmassalon kansanterveystyön kuntayhtymän hallitus [2002] ECR I-3533, paragraph 23). 20 In its original version, Article 10 of the directive provided that undertakings transporting waste were subject merely to 'supervision' by the competent authority whether that transport was carried out on their own behalf or on behalf of third parties. That provision was echoed in the seventh recital in the preamble to that directive, which stated that 'in order to ensure the protection of the environment, provision should be made ... for a supervisory system for undertakings which dispose of their own waste and for those which collect the waste of others ...'. 21 The objective of Directive 91/156 was, inter alia, to reinforce control by the public authorities. The 12th recital in the preamble thus states that,</p>
---	--	--	--	--

			<p>- 5259 — to transport their own hazardous waste in quantities not exceeding 30 kg and 30 l per day, without being required to be entered in that register, the Italian Republic has failed to fulfill its obligations under Article 12 of Council Directive 75/442/EEC of 15 July 1975 on waste, as amended by Council Directive 91/156/EEC of 18 March 1991;</p>	<p>'in order that waste can be monitored from its production to its final disposal, other undertakings involved with waste, such as waste collectors, carriers and brokers should also be subject to authorization or registration and appropriate inspection'. New provisions were inserted into Article 12 of the directive for that purpose. Those provisions specifically state that undertakings which transport waste, where not subject to authorisation, are required to be registered and that the undertakings subject to that obligation are those which carry out such transport 'on a professional basis'. Directive 91/156 thus replaced mere 'supervision', which no longer appears as such in the directive, with an obligation of registration.</p> <p>22 Since Directive 91/156 was intended to adopt a higher level of control by public authorities of the transport of waste than that under the original version of the directive, it would be contrary to that objective to interpret the term 'undertakings which ... transport waste on a professional basis' in Article 12 of the directive as excluding undertakings which, in the course of their business activity, transport waste on their own account. If that interpretation were upheld, those undertakings would escape all control of their transport of waste.</p> <p>23 Moreover, the Court has already held that the concept of 'transport of waste on a professional</p>
--	--	--	---	--

				<p>basis' used in Article 12 of the directive covers not only those who, in the course of their business as carriers, transport waste produced by others, but also those who, whilst not professional carriers, nevertheless in the course of their own business activity, transport waste which they have produced (the order in Caterino, paragraph 25).</p> <p>24 Contrary to the Italian Government's submission, the directive's objective of the monitoring of the waste cycle implies the monitoring of waste from the moment it is produced and, in particular, as Article 12 of the directive provides, the monitoring of the conditions in which it is collected and transported. Whilst, in certain circumstances, it is true that the producer of waste may collect or transport it himself and in fact discard that waste only once the collection or transport is completed, that fact has no bearing on the status as waste of the substances or objects collected or transported or, therefore, on that producer's obligation to register in respect of such an operation.</p> <p>25 Article 12 of the directive does not, however, cover all undertakings which, in the course of their business activity, transport waste which they have produced.</p> <p>26 First of all, the words 'on a professional basis' used in that article are not synonymous with the expressions 'in the course of their business activity' or 'as part of their business activity' which</p>
--	--	--	--	---

				<p>the Community legislature probably would have employed if it had intended to refer to all undertakings which, in the course of their business activity, transport waste which they have produced.</p> <p>27 Next, it is clear from the 12th recital in the preamble to Directive 91/156 that the new obligations of authorisation and registration laid down by that directive apply to 'undertakings involved with waste, such as waste collectors, carriers and brokers'. The use of the words 'involved with' and the indicative list of specialised professions in the waste sector indicate that Article 12 of the directive applies to undertakings which habitually collect or transport waste.</p> <p>28 Lastly, the requirement that the transport be 'on a professional basis' means that, even if Article 12 does not provide that the transport of waste must be the sole or even the principal activity of the undertakings concerned, it must be a normal and regular activity of those undertakings.</p> <p>29 It follows from the foregoing considerations that Article 12 of the directive imposes an obligation of registration on establishments or undertakings which, in the course of their activities, normally and regularly transport waste, whether that waste is produced by them or by others. Furthermore, there is no provision in the directive for any exceptions to that obligation,</p>
--	--	--	--	--

			<p>based on the type or quantity of waste.</p> <p>30 However, Article 30(4) of the decree-law imposes obligations to register which depend on whether or not the waste collected or transported is hazardous.</p> <p>31 In respect of non-hazardous waste, that provision imposes an obligation to be entered in the national register of undertakings carrying out waste-disposal services only on undertakings which collect and transport waste produced by others, thereby excluding undertakings which collect or transport their own waste.</p> <p>32 It is true that in respect of hazardous waste Article 30(4) of the decree-law provides that all undertakings which collect and transport such waste are subject to an obligation of registration. That provision contains no restriction dependent upon whether or not that collection and transport are carried out professionally and, therefore, in that respect has a wider scope than does Article 12 of the directive.</p> <p>33 However, that provision relieves from the obligation of registration which it imposes 'hazardous waste transported by its producer in quantities not exceeding 30 kg or 301 per day'; the directive makes no provision for such exceptions. Furthermore, the Italian Government has not explained the logic underpinning the setting of those minimum quantities.</p> <p>34 It follows from the foregoing that Article 30(4)</p>
--	--	--	---

				of the decree - law infringes Article 12 of the directive. In those circumstances, the Court finds that the Commission 's action is well founded
--	--	--	--	--

<p>Council Directive 75/442/EEC amended by Council Directive 91/156/EEC Concept of 'waste' - Excavated earth and rocks intended for re-use.</p>	<p>Case 194/05, commission vs Italy, Infringement of Article 1(a), National law excluding excavated earth and rocks intended for re-use from the scope of the directive</p>	<p>Applicant: Commission of the European Communities, Defendant: Italian Republic</p>	<p>As Article 10 of Law No 93 of 23 March 2001 concerning provisions on the environment and Article 1(17) and (19) of Law No 443 of 21 December 2001 delegating to the Government matters of infrastructure and strategic installations of production and of other action to boost production excluded from the scope of the national legislation relating to waste excavated earth and rocks intended for actual re-use for filling, backfilling, embanking or as aggregates, with the exception of those from contaminated and decontaminated sites with a concentration of pollutants above the acceptable limits laid down by the regulations in force,</p>	<p>By its argument, the Commission claims, in essence, that the provisions at issue are contrary to the directive, and particularly to Article 1(a) thereof, on the ground that they misconstrue the concept of waste' applicable by virtue of the directive, thereby excluding excavated earth and rocks intended for certain re-uses from the scope of the national legislation transposing the directives provisions relating to waste management</p> <p>31 Under Article 1(a) of the directive, "waste" shall mean any substance or object in the categories set out in Annex I [to the directive] which the holder discards or intends or is required to discard'.</p> <p>32 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).</p> <p>33 The term 'discard' must be interpreted in the light not only of the fundamental aim of the</p>
---	---	--	---	---

			<p>the Italian Republic has failed to fulfil its obligations under Council Directive 75/442/EEC of 15 July 1975 on waste, as amended by Council Directive 91/156/EEC of 18 March 1991; Orders the Italian Republic to pay the costs.</p>	<p>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).</p> <p>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</p>
--	--	--	--	---

				<p>Niselli, paragraph 43).</p> <p>35 Thus, the Court has stated that leftovers tone from a granite quarry, which is not the product primarily sought by its operator, is, in principle, waste (see, to that effect, Case C-9/00 Palin Granit and Vehmassalon kansanterveystyön kuntayhtymän hallitus [2002] ECR I-3533, 'Palin Granit', paragraphs 32 and 33).</p> <p>36 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).</p> <p>37 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</p>
--	--	--	--	---

			<p>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, Palin Granit, paragraph 29).</p> <p>38 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, maybe 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 Avesta Polarit 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).</p> <p>39 Accordingly, in addition to the criterion of</p>
--	--	--	---

			<p>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 <i>Palin Granit</i>, paragraph 37, and <i>Niselli</i>, paragraph 46).</p> <p>40 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, <i>Palin Granit</i>, paragraph 38, and <i>Avesta Polarit Chrome</i>, paragraph 39).</p> <p>41 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 <i>ARCO Chemie Nederland and Others</i>,</p>
--	--	--	---

			<p>paragraph 88; KVZ retec, paragraph 63; and the order in Case 0235/02 Saetti and Frediani [2004] ECR I-1005, paragraph 40).</p> <p>42 In the present case, it is common ground that the provisions at issue exclude excavated earth and rocks from the scope of the national legislation transposing the directive provided that those materials, first, are not contaminated within the meaning of those provisions and, second, are intended for actual re-use for filling, backfilling, embanking or as aggregates, which includes 'the filling of worked quarries and the tipping on another site, authorised for any reason whatsoever'.</p> <p>43 In that regard, as is clear from paragraphs 5 and 31 of this judgment, soil and stones' in the European Waste Catalogue must be regarded as being waste' within the meaning of the directive if their holder discards them or intends or is required to discard them.</p> <p>44 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,</p>
--	--	--	---

			<p>paragraph 34). Thus Member States may, for example, define different categories of waste, in particular to facilitate the organisation and control of waste management, 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, the judgment of 16 December 2004 in Case C-62/03 Commission v United Kingdom, not published in the ECR, paragraph 12).</p> <p>45 In essence, the Italian Republic contends that the materials covered by the provisions at issue may be regarded, in accordance with the case-law of the Court, not as excavation residue, but as a by - product which the holder, because of his clear intention that it be re-used, is not seeking to 'discard', within the meaning of Article 1(a) of the directive; and that, accordingly, those provisions do not limit the obligations laid down in the directive in respect of the management of waste.</p> <p>46 However, 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 set out in paragraphs 34 to 40 of this judgment, reasoning along the lines of the arguments put forward by</p>
--	--	--	--

			<p>the Italian Government, relating to by-products which the holder does not wish to discard, must be confined to situations where reuse of goods, materials or raw materials (including, as the case may be, in order to meet the needs of economic traders 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 or use.</p> <p>47 In this case, the provisions at issue, particularly Article 1(19) of Law No 443/2001, evidently envisage a wide range of situations, including cases where excavated earth or rocks are tipped on another site.</p> <p>48 In addition, it is possible, contrary to what is suggested, in essence, by the Italian Republic, that the actual re-use' referred to in the provisions at issue will take place only after a significant, or even open-ended, delay, thereby requiring long-term storage of the materials in question. As is clear from paragraph 40 of the present judgment, such operations are likely to constitute a burden to the older and are also potentially the cause of precisely the environmental pollution which the directive seeks to reduce.</p> <p>49 Moreover, as is clear in particular from paragraphs 36 and 37 of this judgment, the use to which a substance is put does not determine conclusively whether or not that substance is to</p>
--	--	--	---

			<p>be classified as waste. Consequently, the mere fact that the materials in question will be re-used does not support the inference that they do not constitute waste' within the meaning of the directive.</p> <p>50 What subsequently happens to an object or a substance is not in itself determinative of its nature as waste, which, in accordance with Article 1(a) of the directive, is defined in terms of the holder of that object or substance discarding it or intending or being required to discard it (see, to that effect, ARCO Chemie Nederland and Others, paragraph 64, and KVZ retec, paragraph 52).</p> <p>51 It is accordingly clear that the provisions at issue raise a presumption, in the situations to which they apply, that the excavated earth and rocks in question are byproducts which represent for their holder — by dint of his intention that they be reused — a benefit or an economic value, rather than a burden which he would seek to be rid of.</p> <p>52 However, although in some cases that may actually reflect the true position, there cannot be a general presumption that a holder of excavated earth and rocks should derive from the fact that they are intended for re-use an advantage over and above that of simply being able to discard them.</p> <p>53 Consequently, even assuming that it could be ensured that materials covered by the provisions</p>
--	--	--	--

				<p>at issue really are re -us ed for filling, backfilling, embanking or as aggregates — the Italian Republic not having pointed to any specific rule to that effect —, it must be held that those provisions result in the exclusion of residue which nevertheless meets the definition in Article 1(a) of the directive from being treated as waste in Italian law.</p> <p>54 Article 1(a) of the directive not only sets out the definition of the concept of waste' for the purposes of the directive, but also — in conjunction with Article 2(1) — defines the scope of the directive. Article 2(1) lists the forms of waste that are excluded from the scope of the directive, as well as those that may be excluded, and the circumstances in which that is possible, whereas in principle the directive covers all waste which corresponds to the definition set out in Article 1(a) thereof. Any provision of national law which limits in general terms the scope of the obligations arising under the directive, to a greater degree than is permitted under Article 2(1), is necessarily disregarding the scope of the directive (see, to that effect, Commission v United Kingdom, paragraph 11), thus undermining the effectiveness of Article 174 EC (see, to that effect, ARCO Chemie Nederland and Others, paragraph 42).</p> <p>55 In the present case, even assuming, as the Italian Republic argued at the hearing, that the</p>
--	--	--	--	--

				<p>operations referred to in the provisions at issue are also governed by the national legislation on the carrying out of public works, such as the construction of embankments and tunnels, it is sufficient to observe in that regard that that type of works and the materials used in them do not, as a rule, come within the exception from the directives scope under Article 2(1) thereof.</p> <p>56 Finally, as regards the argument put forward by that Member State that application of the waste regime would mean that waste-disposal undertakings or undertakings licensed to transport or collect waste would have to be involved in the works in question and that that might increase their costs considerably, the Commission rightly pointed out that this situation stems from the Italian legislation rather than from the directive. Subject to the requirements as to registration, or, as the case may be, of a permit, the holder of the waste may simply recover it or dispose of it himself in accordance with the provisions of the directive. In that regard, it should be added that the directive applies not only to disposal and recovery of waste by specialist undertakings, but also to disposal and recovery of waste by the undertaking which produced it, at the place of production (Inter-Environnement Wallonie, paragraph 29).</p> <p>57 In those circumstances, the Commissions action must be upheld.</p>
--	--	--	--	---

				<p>58 It must therefore be held that, in so far as the provisions at issue excluded from the scope of the national legislation relating to waste excavated earth and rocks intended for actual re-use for filling, backfilling, embanking or as aggregates, with the exception of those from contaminated and decontaminated sites with a concentration of pollutants above the acceptable limits laid down by the regulations in force, the Italian Republic has failed to fulfil its obligations under the directive.</p>
--	--	--	--	---

<p>Directive 2006/12/EC - Waste management - Management plan - Integrated and adequate network of disposal installations - Danger for human health or the environment - Force majeure - Civil disturbances - Organised crime</p>	<p>Case C-297/08, Infringement of Articles 4 and 5</p>	<p>European Commission, Italian Republic, <i>Interveniers</i> <i>in support of the</i> <i>defendant</i>: United Kingdom of Great Britain and Northern Ireland</p>	<p>By failing to adopt, for the region of Campania, all the measures necessary to ensure that waste is recovered and disposed of without endangering human health and without harming the environment and, in particular, by failing to establish an integrated and adequate network of disposal installations, the Italian Republic has failed to fulfil its obligations under Articles 4 and 5 of Directive 2006/12/EC of the European Parliament and of the Council of 5 April 2006 on waste;</p>	<p>Background to the dispute 11. The present action concerns the region of Campania, comprising 551 municipalities, including the city of Naples. The region is faced with problems in managing and disposing of its urban waste. 12. As early as 1994, according to the information provided by the Italian Republic in its statement in defence, a state of emergency was declared in Campania and a <i>Commissario delegato</i> was appointed, with the duties and powers normally delegated to other public bodies, whose remit was to implement rapidly the measures designed to overcome what was commonly known as ‘the waste crisis’. 13. An urban waste management plan was approved in 1997. It provided for a system of industrial installations for the recovery of waste through thermal treatment, which could be supplied through a system for the sorted collection of waste, organised at regional level in Campania. 14. By Ministerial Order No 2774 of 31 March 1998, the decision was taken to organise a tendering procedure in order to entrust waste treatment operations, for a period of 10 years, to private operators capable of constructing installations for the production of combustible materials derived from waste (‘CMW’), as well as installations for the incineration of waste or its</p>
--	--	---	--	---

			<p>recovery through thermal treatment.</p> <p>15. The procurement contracts in question were awarded in 2000 to Fibe SpA and Fibe Campania SpA, two companies belonging to the Impregilo group. Those companies had to build and manage seven CMW production plants and two thermal recovery plants, to be located at Acerra and Santa Maria La Fossa respectively. The municipalities in the region of Campania were required to have their waste treated by those companies.</p> <p>16. However, implementation of the plan ran into difficulties, first, because of opposition from some of the local inhabitants concerning the sites selected and, secondly, because of the low volume of waste collected and deposited with the regional service. Moreover, plant construction ran into delays, and flaws were detected in the design of the installations, with the result that waste accumulated to saturation point in the available landfills and storage areas because it could not be treated by the facilities in question.</p> <p>17. The Public Prosecutor's Office of Naples also opened an investigation to establish fraud in the award of public procurement contracts. The CMW production plants in Campania were placed in receivership, which meant that it was impossible to bring the equipment in question up to standard. Lastly, the contracts under which the administrative authorities were tied into a relationship with Fibe SpA and Fibe Campania SpA</p>
--	--	--	--

			<p>were rescinded, but efforts to make a fresh award of those contracts for the disposal of waste in Campania, by means of a tendering procedure, are reported to have met with failure on more than one occasion, chiefly because of the insufficient number of eligible tenders.</p> <p><i>Infringement of Article 5 of Directive 2006/12</i> Findings of the Court</p> <p>60. It is clear from the arguments put forward by the Commission during the pre-litigation procedure and from the observations lodged in the proceedings before the Court that, by its action, the Commission is raising generally the issue of waste disposal in the region of Campania and, more specifically, as emerges from its reply to the statement in intervention lodged by the United Kingdom, the issue of the disposal of urban waste. Consequently, notwithstanding the answer given by the Commission to a question put at the hearing, the Commission is not claiming that the Court should declare that the Italian Republic has failed to fulfill its obligations with respect to the specific category of hazardous waste, which is partly covered by Council Directive 91/689/EEC of 12 December 1991 on hazardous waste (OJ 1991 L 377, p. 20).</p> <p>61. Under Article 5(1) of Directive 2006/12, Member States are to take appropriate measures to establish an integrated and adequate network</p>
--	--	--	--

				<p>of waste disposal installations, so as to enable the Community as a whole to become self-sufficient in waste disposal and the Member States to move towards that aim individually. To that end, Member States must take into account geographical circumstances or the need for specialised installations for certain types of waste.</p> <p>62. For the purposes of establishing such a network, the Member States enjoy a measure of discretion as to the territorial basis which they consider appropriate if they are to achieve national self-sufficiency in terms of waste disposal capacity, and thus enable the Community itself to ensure disposal of its waste.</p> <p>63. As the United Kingdom rightly pointed out, the characteristics of certain categories of waste, such as hazardous waste, can be so specific that it may be appropriate to treat waste belonging to such a category all together, with a view to its disposal at one or more dedicated national installations, or even – as expressly provided for under Articles 5(1) and 7(3) of Directive 2006/12 – within the framework of cooperation with other Member States.</p> <p>64. The Court has nevertheless stated that one of the most important measures that the Member States must adopt as part of their obligation under Directive 2006/12 to establish waste management plans which may, in particular, provide for ‘appropriate measures to encourage</p>
--	--	--	--	--

			<p>rationalisation of the collection, sorting and treatment of waste’, is that provided for in Article 5(2) of that directive, under which the network established must enable waste to be disposed of in one of the nearest appropriate installations (see, to that effect, Case <i>C-480/06 Commission vGermany</i> [2009] ECR I-0000, paragraph 37).</p> <p>65. The Court has thus ruled that the criteria governing the location of waste disposal sites must be determined in the light of the objectives pursued by Directive 2006/12, which include the protection of health and the environment and the establishment of an integrated and adequate network of disposal installations, which must, in particular, enable waste to be disposed of in one of the nearest appropriate installations. Those location criteria should accordingly relate, inter alia, to the distance of such sites from inhabited areas where the waste is produced; the prohibition on establishing installations in the vicinity of sensitive areas; and the existence of adequate infrastructure for the shipment of waste, such as connections to transport networks (see, to that effect, Joined Cases <i>C-53/02 and C-217/02 Commune de Braine-le-Château and Others</i> [2004] ECR I-3251, paragraph 34).</p> <p>66. Regarding non-hazardous urban waste, which does not, as a rule, require specialised installations like those required for the treatment</p>
--	--	--	--

			<p>of hazardous waste, Member States must therefore endeavour to have a network which makes it possible to meet the need, in terms of waste disposal installations, as close as possible to the places where the waste is produced, although that does not alter the fact that it is also possible to organise such a network within the framework of inter-regional or even cross-border cooperation, where that is consistent with the principle of proximity.</p> <p>67. It follows that, as the Commission observed, where a Member State has specially opted, as part of one or more of its 'waste management plans' within the meaning of Article 7(1) of Directive 2006/12, to organise the equipping of its territory on a regional basis, it should be inferred from this that each region with a regional plan must, as a rule, ensure the treatment and disposal of its waste as close as possible to the place where it is produced. The principle that environmental damage should, as a matter of priority, be remedied at source – laid down in Article 191 TFEU as a basis for Community action in relation to the environment – entails that it is for each region, municipality or other local authority to take appropriate steps to ensure that its own waste is collected, treated and disposed of and that waste must accordingly be disposed of as close as possible to the place where it is produced, in order to limit as far as possible the</p>
--	--	--	---

				<p>transportation of waste (see Case C-155/91 <i>Commission v Council</i> [1993] ECR I-939, paragraph 13 and the case-law cited).</p> <p>68. Consequently, in such a national network as defined by a Member State, if one of the regions lacks, in telling measure and for a significant length of time, infrastructure sufficient to meet its waste disposal needs, it is legitimate to conclude that such serious deficiencies at regional level are likely to compromise the national network of waste disposal installations, which will then no longer be integrated and adequate, as required under Directive 2006/12, or capable of meeting the obligation to enable the Member State concerned to move individually towards the aim of self-sufficiency as defined in Article 5(1) of that directive.</p> <p>69. In the present case, it should be noted that – as the Commission observed – the Italian Republic itself opted for waste management at the level of the region of Campania as an ‘Optimal Territorial Ambit’. As is clear from the regional law of 1993 and the 1997 regional waste management plan, as amended by the 2007 plan, the decision was taken, with a view to achieving regional self-sufficiency, to require the municipalities of Campania to deliver the waste collected in their territory to the regional service, an obligation which can be justified, moreover, by the need to ensure that operations are maintained at the level</p>
--	--	--	--	---

			<p>of activity necessary for the treatment installations to remain viable and, in that way, to preserve a treatment capacity sufficient to enable the principle of self-sufficiency to be put into practice at national level (see Case C-324/99 <i>DaimlerChrysler</i> [2001] ECR I-9897, paragraph 62).</p> <p>Furthermore, since – according to the statements made by the Italian Republic – first, the production of urban waste in Campania accounts for 7% of urban waste production nationwide (that is to say, a not insignificant proportion) and, secondly, the population of that region represents approximately 9% of the national population, a major deficiency in Campania’s capacity to dispose of its waste is likely to compromise seriously the ability of the Italian Republic to move towards the aim of self-sufficiency at national level.</p> <p>71. In those circumstances, it is appropriate to consider whether, within the Italian national network of waste disposal installations, Campania has sufficient installations enabling urban waste to be disposed of near to the place where it is produced.</p> <p>72. In that regard, the Italian Republic has recognised that the installations in operation, whether landfills, incinerators or thermal recovery plants, were not sufficient in number to meet the waste disposal requirements of the region of</p>
--	--	--	--

				<p>Campania.</p> <p>73. The Italian Republic has in fact acknowledged that, on the expiry of the deadline set in the reasoned opinion, only one landfill was in operation for the entire region of Campania; the CMW production plants for Campania could not ensure the final disposal of waste; and the incinerators planned for Acerra and Santa Maria La Fossa were still not operational.</p> <p>74. As emerges from the regional waste management plan approved in 1997 and from subsequent plans adopted by the Italian authorities to deal with the waste crisis, those authorities considered, inter alia, that, in order to meet the urban waste disposal needs of Campania, other landfills would have to be brought on stream, such as those at Savignano Irpino and Sant’Arcangelo Trimonte; two more incinerators would have to be provided in addition to those at Acerra and Santa Maria La Fossa; and the CMW production plants would have to be made genuinely operational.</p> <p>75. Although Article 5 of Directive 2006/12 allows inter-regional cooperation in the management and disposal of waste, and even cooperation between Member States, the fact remains that, in the present case, even with the assistance of other Italian regions and the German authorities, it has not been possible to remedy the structural deficit in terms of the installations necessary for</p>
--	--	--	--	---

				<p>the disposal of the urban waste produced in Campania, as evidenced by the considerable quantities of waste which have accumulated along the public roads in the region.</p> <p>76. Moreover, the low rate of sorted waste collection in the region, as compared with the national and Community averages, merely serves to exacerbate the situation.</p> <p>77. The Italian Republic has contended that it is endeavouring to remedy the situation in Campania, informing the Court of the actual bringing on stream, subsequent to 2 May 2008, of the landfills at Savignano Irpino and Sant’Arcangelo Trimonte, and also of the measures provided for in the new plan of 23 May 2008, such as the establishment of four more landfills, the construction of two more incinerators and the establishment of thermal recovery facilities at Acerra and Salerno. Furthermore, the rate of sorted collection is definitely improving and daily disposal capacity in the region is higher than production, to the point where resolution of the ‘waste crisis’ can be expected.</p> <p>78. Although such measures show that certain initiatives have been undertaken to deal with the difficulties in Campania, the fact remains that, in so acting, the Italian Republic clearly acknowledges that, on the expiry of the deadline set in the reasoned opinion, the installations then</p>
--	--	--	--	--

				<p>existing and operational in Campania fell a long way short of being able to meet the actual needs of the region in terms of waste disposal.</p> <p>79. Moreover, and in any event, it should be borne in mind that the Court has held on numerous occasions that the question whether a Member State has failed to fulfill its obligations must be determined by reference to the situation obtaining in that Member State at the time of the deadline set in the reasoned opinion and that the Court cannot take account of any subsequent changes (see, <i>inter alia</i>, Case C-168/03 <i>Commission v Spain</i> [2004] ECR I-8227, paragraph 24, and Case C-23/05 <i>Commission v Luxembourg</i> [2005] ECR I-9535, paragraph 9).</p> <p>80. The Italian Republic further argues that it cannot be held responsible for the alleged failure to fulfill obligations, which is attributable, rather, to certain events which constitute <i>force majeure</i>, such as the opposition of the local inhabitants to the establishment of landfills in their municipalities, the presence of criminal activity in the region and the failure by public contractors to meet their contractual obligations to construct certain essential installations in the region.</p> <p>81. It should be stated in that regard that the procedure provided for in Article 258 TFEU presupposes an objective finding that a Member State has failed to fulfill its obligations under the</p>
--	--	--	--	---

			<p>Treaty or secondary legislation (see Case 301/81 <i>Commission v Belgium</i> [1983] ECR 467, paragraph 8, and Case C-508/03 <i>Commission v United Kingdom</i> [2006] ECR I-3969, paragraph 67).</p> <p>82. Where such a finding has been made, as in the present case, it is irrelevant whether the failure to fulfill obligations is the result of intention or negligence on the part of the Member State responsible, or of technical difficulties encountered by it (Case C-71/97 <i>Commission v Spain</i> [1998] ECR I-5991, paragraph 15).</p> <p>83. With regard to the local inhabitants' opposition to the establishment of certain disposal installations, it is settled case-law that a Member State may not plead internal situations, such as difficulties of implementation which emerge at the stage of putting a Community measure into effect, including difficulties relating to opposition on the part of certain individuals, in order to justify a failure to comply with obligations and time-limits laid down by Community law (see Case C-45/91 <i>Commission v Greece</i> [1992] ECR I-2509, paragraphs 20 and 21, and Case C-121/07 <i>Commission v France</i> [2008] ECR I-9159, paragraph 72).</p> <p>84. As regards the presence of criminal activity, or of persons described as operating 'on the fringes</p>
--	--	--	---

			<p>of the law', active in the waste management sector, it is sufficient to point out that that fact – even if it were assumed to be established – cannot justify the failure by that Member State to fulfil its obligations under Directive 2006/12 (Case C-263/05 <i>Commission v Italy</i>, paragraph 51).</p> <p>85. Likewise, with regard to the non-performance of contractual obligations by the undertakings entrusted with the construction of certain waste disposal infrastructures, it need only be stated that, although the notion of <i>force majeure</i> is not predicated on absolute impossibility, it nevertheless requires the non-performance of the act in question to be attributable to circumstances, beyond the control of the party claiming <i>force majeure</i>, which are abnormal and unforeseeable and the consequences of which could not have been avoided despite the exercise of all due diligence (<i>McNicholl and Others</i>, paragraph 11).</p> <p>86. A diligent authority should have taken the necessary precautions either to guard against the contractual non-performance in question in the region of Campania or to ensure that, despite those shortcomings, actual construction of the infrastructures necessary for waste disposal in the region would be completed on time.</p> <p>87. As for the complaint made by the Italian Republic against the Commission, criticising the fact that the Commission did not bring the</p>
--	--	--	---

			<p>present proceedings until years after the waste crisis had arisen and at the very time that Italy had adopted the measures enabling the crisis to be brought to an end, it should be borne in mind that the Court has consistently held that the rules laid down in Article 258 TFEU are to be applied without the Commission being required to comply with fixed time-limits (see, inter alia, Case C-96/89 <i>Commission v Netherlands</i> [1991] ECR I-2461, paragraph 15, and Case C-523/04 <i>Commission v Netherlands</i> [2007] ECR I-3267, paragraph 38). The Commission is thus entitled to decide, in its discretion, on what date it may be appropriate to bring an action and it is not for the Court to review the exercise of that discretion (Case C-422/92 <i>Commission v Germany</i> [1995] ECR I-1097, paragraph 18).</p> <p>88. In the light of the above, it must be held that, by failing to ensure that, for the purposes of regional waste management in Campania, that region has sufficient installations enabling it to dispose of its urban waste close to the place where that waste is produced, the Italian Republic has failed to meet its obligation to establish an integrated and adequate network of disposal installations enabling it, the Italian Republic, to move towards the aim of ensuring disposal of its own waste and, in consequence, has failed to fulfil its obligations under Article 5 of Directive</p>
--	--	--	--

				<p>2006/12.</p> <p><i>Infringement of Article 4 of Directive 2006/12</i> Findings of the Court</p> <p>96. As a preliminary point, it should be borne in mind that whilst Article 4(1) of Directive 2006/12 does not specify the actual content of the measures which must be taken in order to ensure that waste is disposed of without endangering human health and without harming the environment, it is none the less true that that provision is binding on the Member States as to the objective to be achieved, whilst leaving to the Member States a margin of discretion in assessing the need for such measures (Case C-365/97 <i>Commission v Italy</i> [1999] ECR I-7773, paragraph 67, and Case C-420/02 <i>Commission v Greece</i> [2004] ECR I-11175, paragraph 21).</p> <p>97. It follows that, in principle, it cannot be inferred directly from the fact that a situation is not in conformity with the objectives laid down in Article 4(1) of Directive 2006/12 that the Member State concerned has necessarily failed to fulfill its obligations under that provision, that is to say, to take the requisite measures to ensure that waste is disposed of without endangering human health and without harming the environment. However, if that situation persists and, in particular, if it leads to a significant deterioration in the</p>
--	--	--	--	--

				<p>environment over a protracted period without any action being taken by the competent authorities, this may be an indication that the Member States have exceeded the discretion conferred on them by that provision (Case C-365/97 <i>Commission v Italy</i>, paragraph 68, and Case C-420/02 <i>Commission v Greece</i>, paragraph 22).</p> <p>98. As for the territorial extent of the alleged infringement, the fact that, by the present action, the Commission is seeking a declaration that the Italian Republic has failed to fulfill its obligation to take the necessary measures only with regard to the region of Campania can have no bearing on any finding of such an infringement (Case C-365/97 <i>Commission v Italy</i>, paragraph 69).</p> <p>99. The consequences of non-compliance with the obligation under Article 4(1) of Directive 2006/12 are likely, given the very nature of that obligation, to endanger human health and harm the environment, even in a small part of the territory of a Member State (Case C-365/97 <i>Commission v Italy</i>, paragraph 70), as was also the position in the case which led to the judgment in Case C-45/91 <i>Commission v Greece</i>.</p> <p>100. It must therefore be determined whether the Commission has established to the requisite legal standard that, by the time that the deadline set in the reasoned opinion expired, the Italian Republic had failed, over a protracted period, to take the</p>
--	--	--	--	--

				<p>measures necessary to ensure that the waste produced in the region of Campania was recovered or disposed of without endangering human health and without using processes or methods which could harm the environment.</p> <p>101. Although, in proceedings brought under Article 258 TFEU for failure to fulfill an obligation, it is incumbent upon the Commission to prove the infringement alleged by providing the Court with the evidence necessary to enable it to establish that the obligation has not been fulfilled, without being able to rely on any presumption for those purposes (judgment of 22 January 2009 in Case C-150/07 <i>Commission v Portugal</i>, paragraph 65 and the case-law cited), account should be taken of the fact that, where it is a question of checking that the national provisions intended to ensure effective implementation of Directive 2006/12 are applied correctly in practice, the Commission, which does not have investigative powers of its own in this area, is largely reliant on the information provided by complainants, by public or private bodies, by the press or by the Member State concerned (see, to that effect, Case C-494/01 <i>Commission v Ireland</i> [2005] ECR I-3331, paragraph 43, and Case C-135/05 <i>Commission v Italy</i>, paragraph 28).</p> <p>102. It follows, inter alia, that, where the Commission has adduced sufficient evidence to establish certain circumstances in the territory of</p>
--	--	--	--	--

			<p>the defendant Member State, it is for that Member State to challenge in substance and in detail the data produced and the inferences drawn (see, to that effect, Case C-365/97 <i>Commission v Italy</i>, paragraphs 84 and 86, and judgment of 22 December 2008 in Case C-189/07 <i>Commission v Spain</i>, paragraph 82).</p> <p>103. It should be noted, first of all, that the Italian Republic does not dispute that, when the deadline set in the reasoned opinion expired, the waste littering the public roads totalled 55 000 tonnes, adding to the 110 000 tonnes to 120 000 tonnes of waste awaiting treatment at municipal storage sites. In any event, that information emerges from the memorandum of the <i>Commissario delegato</i> of 2 March 2008, appended to the reply of the Italian Republic to the reasoned opinion. Furthermore, according to the statements made by the Italian Republic, the local inhabitants, exasperated by such accumulation, have taken the initiative of igniting fires in the piles of refuse, which is harmful both for the environment and for their own health.</p> <p>104. It is therefore clear from the above that, in the region of Campania, the Italian Republic has not succeeded in complying with its obligation under Article 4(2) of Directive 2006/12 to take the necessary measures to prohibit the abandonment, dumping or uncontrolled disposal of waste.</p> <p>105. Next, it should be borne in mind that waste is</p>
--	--	--	--

			<p>matter of a special kind, with the result that accumulation of waste, even before it becomes a health hazard, constitutes a danger to the environment, regard being had in particular to the limited capacity of each region or locality for waste reception (Case <i>C-2/90 Commission v Belgium</i> [1992] ECR I-4431, paragraph 30).</p> <p>106. The accumulation, as described, of such large quantities of waste along public roads and in temporary storage areas – the situation in Campania at the time when the deadline set in the reasoned opinion expired – has therefore undoubtedly given rise to a ‘risk to water, air or soil, and to plants or animals’ within the meaning of Article 4(1)(a) of Directive 2006/12. Moreover, such quantities of waste inevitably cause ‘a nuisance through noise or odours’ within the meaning of Article 4(1)(b), especially when the waste remains uncovered in streets and along roads over a protracted period.</p> <p>107. Moreover, given the lack of availability of sufficient landfills, the presence of such quantities of waste outside appropriate, approved storage facilities is likely to affect ‘adversely ... the countryside or places of special interest’ within the meaning of Article 4(1)(c) of Directive 2006/12.</p> <p>108. Given the detailed evidence adduced by the Commission, including the various reports drawn</p>
--	--	--	---

				<p>up by the Italian authorities themselves and communicated to the European institutions, as well as the press clippings appended to its application, and in the light of the case-law referred to in paragraphs 80 and 81 of this judgment, the Italian Republic cannot simply maintain that the facts complained of have not been proved or that the tipping of waste in the streets, particularly in Naples, is outside its control.</p> <p>109 Furthermore, as the Commission rightly pointed out, the role of Article 4(1) of Directive 2006/12 is preventive, in that the Member States must make sure that operations for the disposal or recovery of waste do not endanger human health.</p> <p>110. The Italian Republic has indeed recognised the danger to human health posed by the situation in Campania, inter alia, in the reports and memoranda provided to the European institutions. In that regard, the recitals in the preamble to Decree Law No 90/08, notified by the Italian Republic to the Presidency of the European Union, expressly refer to ‘the gravity of the social, economic and environmental conditions resulting from the state of emergency [in waste management], which are liable to jeopardise seriously the fundamental rights of the inhabitants of the region of Campania, exposed ... to risks relating to hygiene, health and the</p>
--	--	--	--	---

				<p>environment’.</p> <p>111. It follows that the evidence relied on by the Italian Republic in the present proceedings in order to show that that situation has not had any consequences in practice or, in any event, has had only minor repercussions on human health, is not such as to affect the finding that the worrying situation of accumulation of waste along the public roads has exposed the health of the local inhabitants to certain danger, in breach of Article 4(1) of Directive 2006/12.</p> <p>112. The Commission’s complaint alleging infringement of Article 4 of Directive 2006/12 must therefore be held to be well founded.</p> <p>113. In the light of the above, it must be held that, by failing to adopt, for the region of Campania, all the measures necessary to ensure that waste is recovered and disposed of without endangering human health and without harming the environment and, in particular, by failing to establish an integrated and adequate network of disposal installations, the Italian Republic has failed to fulfill its obligations under Articles 4 and 5 of Directive 2006/12”.</p>
--	--	--	--	---

<p>Directives 2006/12/EC and 91/689/EEC - Hazardous waste, Obligation to draw up and adopt a hazardous-waste management plan - Obligation to establish an integrated and adequate network of disposal installations for hazardous waste - Directive 1999/31/EC - Landfill of waste - Disposal of hazardous waste</p>	<p>Case C-286/08, Breach of Articles 1(2) and 6 of Council Directive 91/689/EEC of 12 December 1991 on hazardous waste and Articles 5(1) and (2), 7(1), 4 and 8 of Directive 2006/12/EC of the European Parliament and of the Council of 5 April 2006 on waste Breach of Articles 3(1), 6 to 9, 13 and 14 of Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste</p>	<p>Applicant: Commission of the European Communities</p> <p>Defendant: Hellenic Republic</p>	<p>1. By failing to draw up and adopt within a reasonable period a hazardous-waste management plan that accords with the requirements of the relevant Community legislation, and by failing to establish an integrated and adequate network of disposal installations for hazardous waste characterised by the most appropriate methods in order to ensure a high level of protection for the environment and public health, and</p> <p>2. By failing to take all the necessary measures to ensure, as regards the management of hazardous waste, compliance with Articles 4 and 8 of Directive 2006/12/EC of the European Parliament and of the Council of 5 April</p>	<p>(Text of full judgment not available in English)</p>
--	---	--	---	---

			<p>2006 on waste and Articles 3(1), 6 to 9, 13 and 14 of Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste, the Hellenic Republic has failed to fulfill its obligations under, first, Articles 1(2) and 6 of Council Directive 91/689/EEC of 12 December 1991 on hazardous waste, read in conjunction with Articles 5(1) and (2) and 7(1) of Directive 2006/12, second, Article 1(2) of Directive 91/689, read in conjunction with the provisions of Articles 4 and 8 of Directive 2006/12, and, third, Articles 3(1), 6 to 9, 13 and 14 of Directive 1999/31.</p>	
--	--	--	---	--

<p>Directive 75/442/EEC - Decision 2000/532/EC - Possibility of mixing together items of waste covered by different codes - Concept of 'mixed packaging'</p>	<p>C+387/07, Reference for a preliminary ruling, Tribunale di Ancona - Interpretation of Council Directive 75/422/EEC of 15 July 1975 on waste (OJ 1975 L 194, p. 39) and of Commission Decision 2000/532/EC of 3 May 2000 replacing Decision 94/3/EC establishing a list of wastes pursuant to Article 1(a) of Council Directive 75/442/EEC 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) - Notion of temporary deposit - Right of the</p>	<p>Referring court Tribunale di Ancona Parties to the main proceedings Applicants: MI.VER Srl, Daniele Antonelli Defendant: Provincia di Macerata</p>	<p>Council Directive 75/442/EEC of 15 July 1975 on waste, as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council of 29 September 2003, and Commission Decision 2000/532/EC of 3 May 2000 replacing Decision 94/3/EC establishing a list of wastes pursuant to Article 1(a) of Council Directive 75/442/EEC on waste 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 do not preclude a producer of waste mixing together items of waste covered by different codes in the list annexed to Decision</p>	<p>“The questions referred</p> <p>Admissibility</p> <p>14. The Commission, in its written observations, questions the relevance of the questions referred to the resolution of the dispute in the main proceedings, since, firstly, Paragraph 15 of Legislative Decree No 22/97, breach of which constitutes the infringement giving rise to the main proceedings, deals with the transport of waste and, secondly, only Mr Antonelli and MI.VER, and not the producer of the waste at issue, have, according to the decision for reference, brought an action against the injunction relating to that infringement.</p> <p>15. It is to be observed in that regard that the presumption that questions referred by national courts for a preliminary ruling are relevant may be rebutted only in exceptional cases, where it is quite obvious that the interpretation which is sought of the provisions of European Union law referred to in the questions bears no relation to the actual facts of the main action (see, inter alia, Case C-415/93 Bosman [1995] ECR I-4921, paragraph 61, and Joined Cases C-222/05 to C-225/05 Weerd and Others [2007] ECR I-4233, paragraph 22).</p> <p>16. In the present case, although the decision for reference does not indicate the consequences in law which may follow, with regard to the</p>
--	--	--	---	--

	<p>producer to mix together items of waste covered by different codes in the European Waste Catalogue provided for in Decision 2000/532/EC</p>		<p>2000/532 during their temporary storage, pending collection, on the site where they are produced. However, the Member States are required to adopt measures requiring producers of waste to sort and store waste separately during its temporary storage, pending collection, on the site where it is produced, using, for that purpose, the codes from that list, if they consider such measures to be necessary to achieve the objectives laid down in the first paragraph of Article 4 of Directive 75/442/EEC, as amended by Regulation No 1882/2003. Since the national rules repeat the list of waste annexed to Decision</p>	<p>resolution of the dispute in the main proceedings, from the answers given to the questions referred, it is apparent from that decision and from the written and oral observations of the Provincia di Macerata that it has imposed an administrative penalty on both the producer and the transporter of the waste at issue on the view that they were jointly liable for the infringement alleged, which is contested by Mr Antonelli and MI.VER. Accordingly, it does not appear that the interpretation which is sought of Community law bears no relation to the actual facts of the main action, which, moreover, the Commission accepted at the hearing.</p> <p>17. Consequently, the two questions referred by the Tribunale di Ancona are admissible.</p> <p>Substance</p> <p>The first question</p> <p>18. By its first question, the referring court essentially asks whether Directive 75/442 and Decision 2000/532 are to be interpreted as meaning that a producer of waste is permitted to mix together items of waste covered by different codes in the list annexed to that decision during their temporary storage, pending collection, on the site where they are produced or, on the contrary, that as early as that stage the waste must be sorted and stored separately using those codes as guidance for that purpose.</p>
--	--	--	--	---

			<p>2000/532, code 15 01 06 corresponding to 'mixed packaging' may be used to cover waste consisting of packaging of various materials grouped together.</p>	<p>19. The Provincia di Macerata and the Italian Government take the view that the concept of temporary storage implies that the producer of waste must, in order to store it temporarily, sort it into categories in accordance with the codes from the list annexed to Decision 2000/532.</p> <p>20. They observe, essentially, that it follows from the case-law of the Court (Joined Cases C-175/98 and C-177/98 Lirussi and Bizzaro [1999] ECR I-6881, paragraph 54) that temporary storage, although preceding waste management proper and therefore not requiring authorisation, must be regulated by the Member States in such a way as to achieve the objectives of Directive 75/442 with regard to protection of human health and the environment. To accept that producers of waste can, without authorisation, mix waste covered by different codes could be hazardous and would limit its actual and full recovery, which would run contrary both to the objectives laid down by that directive and to the purpose of the codification laid down in Decision 2000/532.</p> <p>21. In that regard, it should be pointed out that temporary storage is mentioned only in Annexes II A and II B to that directive, listing waste disposal operations and waste recovery operations respectively. It is apparent from those annexes, points D 15 and R 13 thereof respectively, that temporary storage, pending collection, on the site where it is produced, is excluded from the list of</p>
--	--	--	---	---

				<p>operations classified as disposal operations or recovery operations in Directive 75/442. It must be defined, as the Court noted in paragraph 45 of the judgment in Lirussi and Bizzaro, as the operation preparatory to waste management within the meaning of Article 1(d) of that directive.</p> <p>22. Decision 2000/532, by which the list of wastes established pursuant to Article 1(a) of Directive 75/442 and Article 1(4) of Directive 91/689 was adopted, does not lay down in addition any measure relating to the temporary storage of waste, pending collection, on the site where it is produced.</p> <p>23. Accordingly, it must be held that neither Directive 75/442 nor Decision 2000/532 requires the Member States to adopt measures requiring producers of waste to sort and store waste separately, using, for that purpose, the codes from the list annexed to that decision during its temporary storage, pending collection, on the site where it is produced.</p> <p>24. However, in the judgment in Lirussi and Bizzaro, the Court held that the national competent authorities are required to ensure that temporary storage operations comply with the obligations resulting from Article 4 of Directive 75/442, which provides, in the first paragraph thereof, that Member States are to take the necessary measures to ensure that waste is</p>
--	--	--	--	--

			<p>recovered or disposed of without endangering human health and without using processes or methods which could harm the environment. As the Court held in paragraph 53 of that judgment, in so far as waste, even waste which is stored temporarily, can cause serious harm to the environment, the provisions of Article 4 of Directive 75/442, which are intended to implement the principle of precaution, also apply to temporary storage.</p> <p>25. However, as the Court has already held on several occasions, the first paragraph of Article 4 of Directive 75/442 does not specify the actual content of the measures which are to be taken to ensure that waste is recovered or disposed of without endangering human health and without using processes or methods which could harm the environment, but is binding on the Member States as to the objective to be achieved, whilst leaving to the Member States a margin of discretion in assessing the need for such measures (see, inter alia, Case C-365/97 Commission v Italy [1999] ECR I-7773, paragraph 67; Case C-420/02 Commission v Greece [2004] ECR I-11175, paragraph 21; and Case C-135/05 Commission v Italy [2007] ECR I-3475, paragraph 37).</p> <p>26. It follows that, although Directive 75/442 does not require Member States to adopt specific</p>
--	--	--	--

			<p>measures requiring producers of waste to sort and store waste separately using, for that purpose, the codes from the list annexed to that decision during its temporary storage, pending collection, on the site where it is produced, Member States are required to adopt such measures if they consider them necessary to achieve the objectives laid down in the first paragraph of Article 4 of that directive.</p> <p>27. In view of the foregoing considerations, the answer to the first question must be that Directive 75/442 and Decision 2000/532 do not preclude a producer of waste mixing together items of waste covered by different codes in the list annexed to that decision during their temporary storage, pending collection, on the site where they are produced. However, the Member States are required to adopt measures requiring producers of waste to sort and store waste separately during its temporary storage, pending collection, on the site where it is produced, using, for that purpose, the codes from that list, if they consider such measures to be necessary to achieve the objectives laid down in the first paragraph of Article 4 of that directive.</p> <p>The second question</p> <p>28. By its second question, the referring court asks whether, if the answer to the first question is in the affirmative, code 15 01 06 of the list annexed</p>
--	--	--	---

				<p>to Decision 2000/532 corresponding to 'mixed packaging' may be used to cover waste consisting of packaging of various materials grouped together, or whether it refers exclusively to packaging consisting of various materials or made up of separate components of different materials.</p> <p>29. As has been observed in paragraph 22 of this judgment, Decision 2000/532 does not contain any stipulation relating to the temporary storage of waste, pending collection, on the site where it is produced. It is merely designed to establish a waste nomenclature in accordance with Article 1(a) of Directive 75/442 and Article 1(4) of Directive 91/689 and does not create any obligation.</p> <p>30. Nevertheless, since that nomenclature is repeated in the Italian rules, it is necessary to answer the second question and to interpret the concept of 'mixed packaging' corresponding to code 15 01 06 of the list annexed to that decision in order to ensure a uniform interpretation of that concept, in the event that the referring court should find that it is applicable to the main proceedings, having regard, in particular, to the answer given to the first question (see to that effect, inter alia, Case C-217/05 Confederación Española de Empresarios de Estaciones de Servicio [2006] ECR I-11987, paragraph 20, and the case-law cited).</p> <p>31. In that regard, it is appropriate to observe that</p>
--	--	--	--	--

				<p>Decision 2000/532, since it merely establishes a waste nomenclature, does not define the concepts corresponding to the various codes of the list of waste annexed thereto. Conversely, Decision 2005/270 does give a certain number of definitions, including that of 'composite packaging', which is relevant inasmuch as Decision 2000/532 lists code 15 01 05 corresponding to that type of packaging. Composite packaging is thus defined in Article 2(1)(a) of Decision 2005/270 as 'packaging made of different materials which cannot be separated by hand, none exceeding a given percentage by weight'.</p> <p>32. Since that definition of composite packaging corresponds to what the referring court describes as packaging comprising 'separate components of different materials' and since different codes are allotted in the list annexed to Decision 2000/532 to that type of packaging and to mixed packaging, it follows therefrom that the concept of mixed packaging does not cover packaging comprising 'separate components of different materials', but does apply to waste packaging of various materials grouped together.</p> <p>33. Consequently, the answer to the second question must be that, since the national rules repeat the list of waste annexed to Decision 2000/532, code 15 01 06 corresponding to 'mixed packaging' may be used to cover waste consisting of packaging of various materials grouped</p>
--	--	--	--	--

				together.
--	--	--	--	-----------

<p>Directives 75/442/EEC and 91/689/EEC - 'Quantity of waste' - Exemption from permit requirement</p>	<p>C-103/02 action under Article 226 EC for failure to fulfil obligations</p>	<p>Applicant: Commission of the European Communities Defendant: Italian Republic</p>	<p>By failing to fix, in the Decree of 5 February 1998 relating to the identification of non-hazardous waste subject to simplified recovery procedures under Articles 31 and 33 of Legislative Decree No 22 of 5 February 1997, maximum quantities of waste by type of waste which may be recovered under the permit exemption scheme, the Italian Republic has failed to fulfill its obligations under Articles 10 and 11(1) of Council Directive 75/442/EEC of 15 July 1975 on waste, as amended by Council Directive 91/156/EEC of 18 March 1991; Declares that, by failing to define precisely the types of waste relating to technical standards</p>	<p>By its action, the Commission of the European Communities is seeking a declaration from the Court that, by adopting the Decree of 5 February 1998 relating to the identification of non-hazardous waste subject to simplified recovery procedures under Articles 31 and 33 of Legislative Decree No 22 of 5 February 1997, which:</p> <ul style="list-style-type: none"> — contrary to Article 10 and the second subparagraph of Article 11(1) of Council Directive 75/442/EEC of 15 July 1975 on waste (OJ 1975 L 194, p. 39), as amended by Council Directive 91/156/EEC of 18 March 1991 (OJ 1991 L 78, p. 32) ('Directive 75/442'), allows establishments and undertakings which recover non-hazardous waste to be exempt from the requirement for a permit, without that exemption being subject to the conditions: (1) relating to prior fixing of the maximum quantity of waste, and (2) referred to in Article 4 of Directive 75/442 concerning the quantities of waste treated by establishments which are exempt from the permit requirement, — contrary to the first indent of the second subparagraph of Article 11(1) of Directive 75/442, does not define precisely the types of waste covered by the exemption from the permit requirement and, consequently, in breach also of Article 3 of Council Directive 91/689/EEC of 12 December 1991 on hazardous waste (OJ 1991 L 377, p. 20), owing to the lack of clarity and precision in the decree in question, allows, in
---	---	---	---	---

			<p>5.9 and 7.8 of Annex 1 to that decree, the Italian Republic has failed to fulfill its obligations under Article 11(1) of Directive 75/442, as amended, and Article 3 of Council Directive 91/689/EEC of 12 December 1991 on hazardous waste;</p> <p>Dismisses the remainder of the action;</p>	<p>certain cases, establishments or undertakings which recover certain types of dangerous waste to be exempt from that requirement on the basis of the less stringent criteria laid down for nonhazardous waste, — contrary to Articles 9 and 11, read in the light of Article 1(e) and (f) of Directive 75/442 and Annexes II A and II B thereto, amended by Commission Decision 96/350/EC of 24 May 1996 (OJ 1996 L 135, p. 32), defines certain disposal activities as 'environmental recovery' activities, thereby allowing those establishments and undertakings which carry out disposal operations other than their own waste disposal at the place of production to be exempted from the permit requirement, as if they were carrying out recovery operations, the Italian Republic has failed to fulfil its obligations under Articles 1, 9, 10 and 11 of Directive 75/442 and Article 3 of Directive 91/689.</p> <p>The first plea: the maximum quantities of waste which may be exempt from the permit requirements. In order to ascertain whether the Italian Republic correctly applied Directive 75/442, it is appropriate to consider whether that directive requires the Member States to fix absolute maximum quantities of waste for recovery which may be the subject of an exemption from the permit requirement or whether the Member States may provide for relative quantities according to the treatment</p>
--	--	--	---	--

				<p>capacity of each installation. In that connection, it is appropriate to examine the actual wording of the second subparagraph of Article 11(1) of Directive 75/442.</p> <p>27 First, the wording of that provision shows that the exemption from the permit requirement is subject to two conditions being satisfied. Since each of the conditions is preceded by a dash and the two conditions are joined by the conjunction 'and', it is clear that the two conditions are cumulative and are not alternatives, contrary to the contention of the Italian Government.</p> <p>28 Next, it is appropriate to define the scope of the obligation to fix a quantity as required by the first condition, since Member States are bound by that condition as they are by the second condition.</p> <p>29 The first condition provides expressly for the adoption by the competent authorities of rules for each type of activity laying down 'the types and quantities of waste and the conditions under which' the activity may be exempted from the permit requirement.</p> <p>30 Although the words 'absolute maximum quantities' are not expressly used, it is clear from the actual wording of the provision that 'quantities' refers to an upper threshold applicable to each type of waste, beyond which recovery operations may not be exempted from the permit requirements but must have a permit.</p>
--	--	--	--	---

				<p>31 The overall scheme of Directive 75/442, moreover, militates in favour of that interpretation. That directive establishes an ordinary procedure which involves the requirement to obtain the permit referred to in Articles 9 and 10 thereof. By providing for an exemption from that requirement under certain conditions, Article 11 establish a simplified procedure. The latter procedure is an exception and must be as easy as possible to apply and monitor, which would not be the case if the quantities of waste could vary in relation to each installation.</p> <p>32 The Italian Government's argument that the Decree's provisions better serve the objective of environmental protection than those laid down in Directive 75/442 is not relevant.</p> <p>33 As the Court has previously held, the obligation to ensure the full effectiveness of a directive, in accordance with its objective, cannot be interpreted as meaning that the Member States are released from adopting transposing measures where they consider that their national provisions are better than the Community provisions concerned and that the national provisions are therefore more likely to ensure that the objective pursued by the directive is achieved. According to the Court 's case-law, the existence of national rules may render transposition by specific legislative or regulatory measures superfluous</p>
--	--	--	--	--

			<p>only if those rules actually ensure the full application of the directive by the national authorities (see, inter alia, Case C-194/01 Commission v Austria [2004] ECR I-4579, paragraph 39). Accordingly, it is not open to the Member States to derogate from the rules imposed by Directive 75/442 by replacing the maximum quantities by type of waste which may be recovered without a permit with relative quantities which vary in relation to the capacity of each recovery installation.</p> <p>34 It is, moreover, inaccurate to maintain, as the Italian Government does, that the Commission's interpretation runs counter to the objective of Directive 75/442 in that it would result in large-scale installations being able to recover only a low quantity of waste corresponding to the maximum quantities and their having to dispose of the rest. There is nothing to prevent those undertakings from recovering quantities of waste higher than those maximum quantities, provided they do so within the confines of the permit scheme.</p> <p>35 Accordingly, the Court finds that, by failing to fix in the Decree the maximum quantities of waste, by type of waste, which may be recovered under the permit exemption scheme, the Italian Republic has failed to fulfill its obligations under Articles 10 and 11(1) of Directive 75/442.</p> <p>The second plea: imprecise definition of the types</p>
--	--	--	---

				<p>of waste covered by exemption from the permit requirement. By its second plea, the Commission complains generally that the Italian Republic did not define precisely the types of non - hazardous waste intended for recovery under the simplified procedure. The technical standards relating to those types of waste are expressed in an extremely vague manner and the EWC codes are either omitted or incorrect. The Commission refers to three technical standards in support of its complaint.</p> <p>44 The Court finds that the Commission refers to only three specific cases and does not adduce any evidence allowing the Court to ascertain whether the plea is well founded in so far as it refers to all the technical standards contained in the Decree. The examination of the plea must, accordingly, be restricted to the three cases mentioned.</p> <p>45 Regarding technical standard 5.9, the Court notes that the Italian Government first indicated to the Commission, in response to the letter of formal notice and the reasoned opinion, that it was planning to include an EWC code and then, in its statement in defence, stated that the EWC codes had indeed been adopted pursuant to Decision 2000/532/EC.</p> <p>46 Although the Italian Government maintains that the EWC codes adopted by it are intended to reflect the codes provided for in Decision 2000/532, with which the Member States had to</p>
--	--	--	--	--

				<p>comply by 1 January 2002, that is, a date subsequent to the facts complained of, it is clear that the Italian Government has not denied that it should have adopted an EWC code for the waste in question before that date, in accordance with the provisions of Directive 75/442.</p> <p>47 The Court finds that since the Italian Republic had still not attributed an EWC code to technical standard 5.9 when the time - limit fixed in the reasoned opinion expired, the failure to fulfill obligations alleged by the Commission in respect of that technical standard is established.</p> <p>48 With respect to the Commission's complaint concerning technical standard 7.8, suffice it to note that the Italian Government indicated in its statement in defence that the EWC codes used were to be amended as soon as possible. It follows that the Italian Government has not contested the lack of conformity of the codes used with the requirements of Directive 75/442 and the Court finds that the failure to fulfill obligations alleged by the Commission has been shown in so far as regards that technical standard.</p> <p>49 The third case relates to technical standard 3.10. The Italian Government has not responded to the Commission's assertion that the batteries in question contained mercury. It merely stated that the description in the Decree of the technical characteristics of the product do not mention mercury which, in its view, justified the use of an</p>
--	--	--	--	---

				<p>EWC code corresponding to non - hazardous waste.</p> <p>50 The Court finds that, in so far as the batteries in question contained mercury, the Commission was right in considering that they were hazardous waste and that the appropriate EWC code was 160603, applicable to mercury dry cells, rather than code 160605, applicable to other batteries and accumulators and used for non – hazardous waste. Nevertheless, it was for the Commission to adduce evidence that the batteries in question contained mercury, which is not apparent from the documents produced for the Court. In the absence of such evidence, the Commission's plea concerning technical standard 3.10 must be rejected.</p> <p>51 In the light of the foregoing considerations, the Court finds that, by failing to define precisely the types of waste relating to technical standards 5.9 and 7.8 in Annex 1 to the Decree, the Italian Republic has failed to fulfill its obligations under Article 11(1) of Directive 75/442 and Article 3 of Directive 91/689.</p> <p>The third plea: definition of certain waste disposal activities as recovery Activities. The Court notes that it follows from the Commission's reply that the Commission is maintaining its complaint only as regards the use of waste and drilling sludge corresponding to technical standards 7.14 and</p>
--	--	--	--	--

				<p>7.15 of the Decree. The use of such waste is not, in the Commission's view, a recovery operation but rather a disposal operation.</p> <p>61 The Commission does not state the precise reason why it is maintaining its plea as regards that waste, but confines itself to indicating that it contains very high levels of hydrocarbons or diesel oil or oil which is slightly toxic. It thus seems to consider that the waste in question contains hazardous substances which preclude its being used for recovery purposes.</p> <p>62 The Court has held, however, that the hazardous or non - hazardous nature of the waste is not, of itself, a relevant criterion for assessing whether a waste treatment operation must be classified as 'recovery' within the meaning of Article 1(f) of Directive 75/442. The essential characteristic of a waste recovery operation is that its principal objective is that the waste serve a useful purpose in replacing other materials which would have had to be used for that purpose, thereby conserving natural resources (Case C-6/00 ASA [2002] ECR I-1961, paragraphs 68 and 69).</p> <p>63 It follows that the mere fact that the waste in question contains high quantities of hydrocarbons and diesel oil or oil which is slightly toxic does not preclude its being used for recovery purposes.</p> <p>64 Moreover, as the Advocate General stated in point 36 of his Opinion, the Commission has</p>
--	--	--	--	--

				<p>admitted that landfill covering may be considered to e a recovery operation inter alia for the purposes of technical standard 4.4. The activities referred to in technical standards 7.14 and 7.15 are described in a manner identical or almost identical to such operations.</p> <p>65 It must therefore be held that the Commission has not shown that the Italian Republic incorrectly classified waste disposal operations as waste recovery operations and the third plea must be rejected in its entirety</p>
--	--	--	--	---

<p>Directive 2006/12/EC - Directive 80/68/EEC, Failure of a Member State to fulfill its obligations - Environment - Management of illegally disposed of waste</p>	<p>C-37/09, Infringement of Articles 4 and 5 of Directive 2006/12/EC of the European Parliament and of the Council of 5 April 2006 on waste, which codified Directive 75/442/EEC on waste and Articles 3 and 5 of Council Directive 80/68/EEC of 17 December 1979 on the protection of groundwater against pollution caused by certain dangerous substances - Landfill of waste in disused quarries - 'dos Limas, dos Linos e dos Barreiras' quarries (Lourosa) - Lack of scrutiny</p>	<p><i>Applicant:</i> European Commission</p> <p><i>Defendant:</i> Republic of Portugal</p>	<p>By failing to adopt, all the measures necessary, within the framework of the management of waste illegally placed in the old quarries of Limas and Linos, situated in the commune of Lourosa, the Portuguese Republic has failed to fulfill its obligations under the terms of Articles 4 and 8 respectively of Directive 2006/12/EC of the European Parliament and of the Council of 5 April 2006 on waste, which codified Directive 75/442/EEC on waste and Articles 3 and 5 of Council Directive 80/68/EEC of 17 December 1979 on the protection of groundwater against pollution caused by certain dangerous</p>	<p>(Text of full judgment not available in English)</p>
---	--	--	---	---

			substances; 2. Dismisses the remainder of the action;	
--	--	--	--	--

Contact information:

name: Catalina Radulescu
organization: J&E
address: Str. Arcului nr. 19, Sector 2, cod 021032, București
tel/fax: 40 21 2120690/40 21 2120519
e-mail: info@justiceandenvironment.org
web: www.justiceandenvironment.org

The Work Plan of J&E has received funding from the European Union through its LIFE+ funding scheme. The sole responsibility for the present document lies with the author and the European Commission is not responsible for any use that may be made of the information contained therein.

