

7. If the answer to Question 6 is in the affirmative, is European standard EN 795 to be interpreted as meaning that the anchor device referred to in Question 1 must be tested (by a Notified Body) under foreseeable conditions of use (such as external temperatures, weather conditions, ageing of the anchor device itself and/or of the materials by which it is attached, or the roof construction)?
8. If the answer to Question 7 is in the affirmative, must the tests be carried out in accordance with user restrictions (referred to in the instructions for use)?

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- (¹) Council Directive 89/106/EEC of 21 December 1988 on the approximation of laws, regulations and administrative provisions of the Member States relating to construction products (OJ 1989 L 40, p. 12).
- (²) Council Directive 89/686/EEC of 21 December 1989 on the approximation of the laws of the Member States relating to personal protective equipment (OJ 1989 L 399, p. 18).
- (³) Council Decision 93/465/EEC of 22 July 1993 concerning the modules for the various phases of the conformity assessment procedures and the rules for the affixing and use of the CE conformity marking, which are intended to be used in the technical harmonisation directives (OJ 1993 L 220, p. 23).

Action brought on 6 May 2008 — Commission of the European Communities v Ireland

(Case C-188/08)

(2008/C 197/11)

Language of the case: English

Parties

Applicant: Commission of the European Communities (represented by: S. Pardo Quintillán and D. Lawunmi, Agents)

Defendant: Ireland

The applicant claims that the Court should:

- Declare that in so far as domestic waste waters disposed of through septic tanks and other individual treatment systems in the countryside are not, for purposes of Article 2(1)(b) of Council Directive 75/442/EEC of 15 July 1975 on waste (¹) as amended by Council Directive 91/156/EEC of 18 March 1991 (²), covered by other Community or Irish legislation, Ireland has, by failing in respect of the said domestic waste

waters to fully and correctly transpose into its domestic legislation the requirements of Articles 4, 7, 8, 9, 10, 11, 12, 13 and 14 of the said Directive and under the Treaty establishing the European Community.

- order Ireland to pay the costs of this action.

Pleas in law and main arguments

The Commission maintains that in Ireland there is neither domestic legislation nor Community legislation which provides for the management in accordance with the Directive, of domestic waste waters disposed of through septic tanks and other individual treatment systems outside of larger agglomerations.

In the absence of other legislation, Ireland is obliged to transpose and apply the requirements of the Directive to such waste waters. However, Ireland has not transposed nor claimed to have transposed these requirements. Furthermore, it has not complied with those requirements in practice. More particularly, Ireland has not, for the waste waters in question:

- transposed the provisions of Article 4 of the Directive. Transposition of Article 4 is important because it sets out environmental objectives that should be pursued and respected in relation to other duties of the Directive. The Commission submits that there is also a failure to comply with Article 4 in practice in the Lough Leane catchment, this is borne out by the evidence it has adduced of the environmental harm resulting from a failure to control adequately septic tanks.
- transposed the provisions of Article 7 of the Directive. Article 7 is important because it *inter alia* provides for territory-wide forward planning of arrangements for disposal of waste at suitable sites in order to avoid environmental harm. Apart from failing to transpose Article 7 of the Directive, Ireland has in practice failed to put in place plans that satisfy the requirements of Article 7 in relation to septic tanks and other individual treatment systems.
- transposed the provisions of Article 8 of the Directive. Article 8 is important because it stipulates that waste is disposed of in accordance with the Directive. There is also a failure to comply with Article 8 in practice in Ireland, since Ireland does not ensure that domestic waste waters are disposed of in accordance with the Directive.
- transposed the provisions of Article 9 of the Directive. Article 9 is important since it provides for a formal prior approval with environmental safeguards of a waste disposal operation. Such controls as Ireland applies in practice to septic tanks and other individual treatment systems are not equivalent and there is therefore a failure in practice to comply with Article 9.

— transposed the provisions of Article 10 of the Directive. The Commission considers that the disposal of waste waters through septic tanks or other individual systems will almost always in practice amount to a disposal operation for purposes of the Directive. However, it is conceivable that, in some circumstances, an argument might be made for considering the treatment method to be a recovery operation. This might be the case, for example, for dry composting of domestic waste waters with a view to their subsequent use as a fertilizer. Accordingly, the Commission has included Article 10 in the present Application.

— transposed the provisions of Article 11 of the Directive. Ireland does not claim, for purposes of Article 11(3) or otherwise, to have transposed the provisions of Article 11 of the Directive, but in so far as it may purport to do so, the Commission would contend that such rules as it has put in place for septic tanks and other individual treatment systems do not amount to a transposition of Article 11(1) and (2) of the Directive. In particular, the rules applicable in Ireland do not ensure that the conditions imposed in Article 4 of the Directive are respected. Moreover, there is no system of registration of septic tanks and other individual treatment systems.

— transposed the provisions of Article 12 of the Directive. Article 12 is important in relation to septic tanks and other individual treatment systems in as much as, to operate effectively; such systems require periodic removal and disposal of sludges. To the extent that there are professional services involved in such removal and disposal, they are not addressed in Irish law and practice in accordance with the Directive.

— transposed the provisions of Article 13 of the Directive. Article 13 is important since, without proper maintenance, even well-sited and well-installed septic tanks and other individual treatment systems can malfunction and cause environmental harm. A system of inspections is therefore crucial. The evidence of the Lough Leane study shows that, apart from failing to transpose the requirements of Article 13 of the Directive, Ireland fails to respect those requirements in practice in relation to septic tanks and other individual treatment systems.

— transposed the provisions of Article 14 of the Directive. Article 14 of the Directive is important in terms of record-keeping that helps ensure that septic tanks and other individual treatment systems do not become overloaded and are properly maintained. The evidence of the Lough Leane study shows that, apart from failing to transpose the requirements of Article 14 of the Directive, Ireland fails to respect those requirements in practice in relation to septic tanks and other individual treatment systems.

**Reference for a preliminary ruling from the Korkein hallinto-oikeus (Finland) lodged on 8 May 2008 —
TeliaSonera Finland Oyj**

(Case C-192/08)

(2008/C 197/12)

Language of the case: Finnish

Referring court

Korkein hallinto-oikeus

Parties to the main proceedings

Applicant: TeliaSonera Finland Oyj

Defendants: Viestintävirasto, iMEZ Ab

Questions referred

1. Is Article 4(1) of Directive 2002/19/EC ⁽¹⁾ of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive), when read in conjunction with recitals 5, 6 and 8 in the preamble to that directive and with Article 8 and Article 5 thereof, to be interpreted as meaning that:

1 (a) national legislation may provide, as in Paragraph 39(1) of the Finnish Communications Market Law, that any telecommunications operator has an obligation to negotiate on interconnection with another telecommunications operator and, if so,

1 (b) a national regulatory authority can take the view that the obligation to negotiate has not been complied with where a telecommunications operator which does not have significant market power has offered another operator interconnection under conditions which the authority regards as wholly unilateral and likely to hinder the emergence of a competitive market at the retail level, where they have hindered in practice the second operator from offering its customers the opportunity to transmit multimedia messages to end-users subscribed to the telecommunications operator's network and, if so,

⁽¹⁾ OJ L 194, p. 39.

⁽²⁾ OJ L 78, p. 32.