

2. Orders the Czech Republic to pay the costs.

(<sup>1</sup>) OJ C 92, 12.4.2008.

**Reference for a preliminary ruling from the Tribunale Amministrativo Regionale per la Sicilia (Italy) lodged on 21 August 2008 — ERG Raffinerie Mediterranee SpA and Others v Ministero dello Sviluppo Economico and Others**

**(Case C-378/08)**

(2008/C 301/26)

*Language of the case: Italian*

#### Referring court

Tribunale Amministrativo Regionale per la Sicilia

#### Parties to the main proceedings

*Applicants:* ERG Raffinerie Mediterranee SpA and Others

*Defendants:* Ministero dello Sviluppo Economico and Others

#### Questions referred

1. Do the 'polluter pays' principle (Article 174(2) (formerly Article 130r(2)) of the Treaty of the European Communities) and the provisions of Directive 2004/35/EC (<sup>1</sup>) of 21 April 2004, referred to above, preclude national legislation which allows the public authorities to require private undertakings — merely owing to the fact that they currently carry on their activities in an area which has been contaminated for a long time or borders on an area which is historically contaminated — to implement rehabilitation measures, irrespective of whether or not any preliminary investigation has been carried out to identify the party responsible for the pollution?
2. Do the 'polluter pays' principle (Article 174(2) (formerly Article 130r(2)) of the Treaty of the European Communities) and the provisions of Directive 2004/35/EC of 21 April 2004, referred to above, preclude national legislation which allows the public authorities to impute liability to make good the environmental damage in a particular form to the person who owns the property rights and/or carries on commercial activities on the contaminated site without having to assess in advance whether there is a causal link between the conduct of that person and the occurrence of the contamination, by virtue merely of that person's 'situation' (namely, that of being an operator whose activities are carried on inside the site)?
3. Do the provisions of Community law in Article 174(2) (formerly Article 130r(2)) of the Treaty of the European Communities) and Directive 2004/35/EC (<sup>2</sup>) of 21 April 2004 preclude national legislation which, overriding the 'polluter pays' principle, allows the public authorities to

impute liability to make good the compensation for the environmental damage in a particular form to the person who owns the property rights and/or operates an undertaking on the contaminated site, without having to assess in advance either whether there is a causal link between the conduct of that person and the occurrence of the contamination or the subjective requirement of intent or negligence?

4. Do the Community competition principles laid down in the Treaty establishing the European Community and Directive 2004/18/EC (<sup>3</sup>), Directive 93/97/EC and Directive 898/665/EC (<sup>4</sup>) [cited above] preclude national legislation which allows the public authorities to award to private persons (Società Sviluppo SpA and Sviluppo Italia Aree Produttive SpA) the activities of characterisation and of planning and performing cleaning up operations — or more correctly, the carrying out of public works — in areas owned by the State directly, without carrying out in advance the necessary public tendering procedures?

(<sup>1</sup>) OJ 2004 L 143, p. 56.

(<sup>2</sup>) OJ 2004 L 134, p. 114.

(<sup>3</sup>) OJ 2004 L 290, p. 1.

(<sup>4</sup>) OJ 2004 L 395, p. 33.

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#### Questions referred

1. Does the Community directive on compensation for environmental damage (Directive 2004/35/EC (<sup>1</sup>) of 21 April 2004 and, in particular, Article 7 and Annex II thereto) preclude national legislation which allows the authorities to require, as 'reasonable methods of remedying environmental damage', works on the environmental matrices (here, consisting of the construction of a physical barrier for the groundwater along the entire seafront) different from and supplementary to those selected in advance following special preliminary discussions with the parties, already approved, implemented or in the course of being implemented?