

JUDGMENT OF THE COURT (Sixth Chamber)  
25 June 1997 \*

In Joined Cases C-304/94, C-330/94, C-342/94 and C-224/95,

REFERENCES to the Court under Article 177 of the EC Treaty by the Pretura Circondariale di Terni (Cases C-304/94, C-330/94, C-342/94) and the Pretura Circondariale di Pescara (C-224/95) (Italy) for a preliminary ruling in the criminal proceedings before that court against

**Euro Tombesi and Adino Tombesi (C-304/94),**

**Roberto Santella (C-330/94),**

**Giovanni Muzi and Others (C-342/94),**

**Anselmo Savini (C-224/95),**

on the interpretation of Council Directive 91/156/EEC of 18 March 1991, amending Directive 75/442/EC on waste (OJ 1991 L 78, p. 32), of Council Directive 91/689/EEC of 12 December 1991 on hazardous waste (OJ 1991 L 377, p. 20), and of Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community (OJ 1993 L 30, p. 1),

\* Language of the case: Italian.

THE COURT (Sixth Chamber),

composed of: G. F. Mancini, President of the Chamber, P. J. G. Kapteyn and H. Ragnemalm (Rapporteur), Judges,

Advocate General: F. G. Jacobs,  
Registrar: L. Hewlett, Administrator,

after considering the written observations submitted on behalf of:

- Anselmo Savini, by Giovanni Simone, of the Chieti Bar,
  
- the Italian Government (C-304/94, C-330/94 and C-342/94), by Professor U. Leanza, Head of the Legal Service of the Ministry of Foreign Affairs, acting as Agent, assisted by Pier Giorgio Ferri, Avvocato dello Stato,
  
- the Danish Government (C-304/94, C-330/94 and C-342/94), by Peter Biering, Kontorchef, acting as Agent,
  
- The French Government (C-304/94, C-330/94 and C-342/94), by Edwige Belliard, Deputy Director, Directorate for Legal Affairs, Ministry of Foreign Affairs, and by Jean-Louis Falconi, Secretary for Foreign Affairs in the same Directorate, acting as Agents,
  
- the Netherlands Government (C-304/94, C-330/94, C-342/94 and C-224/95), by Johannes G. Lammers, acting Legal Adviser, acting as Agent,

- the United Kingdom Government (C-224/95), by John E. Collins, of the Treasury Solicitor's Department, acting as Agent, and Derrick Wyatt, QC,
  
- the Commission of the European Communities (C-304/94, C-330/94, C-342/94 and C-224/95), by Antonio Aresu and Maria Condou Durande, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Anselmo Savini, represented by Lord Kingsland, Barrister, and Andrew Wiseman, Solicitor, the Italian Government, represented by Maurizio Fiorilli, *Avvocato dello Stato*, the Danish Government, represented by Peter Biering, the Netherlands Government, represented by Johannes S. van den Oosterkamp, Assistant Legal Adviser in the Ministry of Foreign Affairs, acting as Agent, the United Kingdom Government, represented by Derrick Wyatt, QC, and by Stephanie Ridley, of the Treasury Solicitor's Department, acting as Agent, and the Commission, represented by Antonio Aresu and Maria Condou Durande, at the hearing on 27 June 1996,

after hearing the Opinion of the Advocate General at the sitting on 24 October 1996,

gives the following

### Judgment

- 1 By orders of 27 October (C-304/94), 14 November (C-342/94), 23 November (C-330/94) and 15 December 1994 (C-224/95), received at the Court Registry on 17 November (C-304/94), 12 December (C-330/94), 30 December (C-342/94) and 27 June 1995 (C-224/95), the Pretura Circondariale di Terni (C-304/94, C-330/94 and C-342/94) and the Pretura Circondariale di Pescara (C-224/95) referred to the

Court of Justice for a preliminary ruling under Article 177 of the EC Treaty a number of questions on the interpretation of Council Directive 91/156/EEC of 18 March 1991, amending Directive 75/442/EEC on waste (OJ 1991 L 78, p. 32), of Council Directive 91/689/EEC of 12 December 1991 on hazardous waste (OJ 1991 L 377, p. 20), and of Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community (OJ 1993 L 30, p. 1).

- 2 Those questions were raised in criminal proceedings against Euro and Adini Tombesi, Roberto Santella, Giovanni Muzi and Others, and Anselmo Savini, who are accused of transporting, discharging, disposing of or incinerating urban and special waste produced by third parties without first obtaining authorization from the competent Region.

### **The Community legislation on waste**

- 3 Council Directive 75/442/EEC of 15 July 1975 on waste (OJ 1975 L 194, p. 39) is intended to harmonize national legislation on the disposal of waste. That directive has been amended by Directive 91/156.
- 4 Directive 75/442, as amended, defines waste in Article 1(1) as 'any substance or object in the categories set out in Annex I which the holder discards or intends or is required to discard'.
- 5 The third recital in the preamble to Directive 91/156 states that common terminology and a definition of waste are needed in order to improve the efficiency of waste management in the Community.

- 6 Thus, in Decision 94/3/EC of 20 December 1993 establishing a list of wastes pursuant to Article 1(a) of Council Directive 75/442/EEC on waste (OJ 1994 L 5, p. 15) the Commission drew up a harmonized and non-exhaustive list of waste.
  
- 7 That list, commonly referred to as the European Waste Catalogue, applies to all waste, whether intended for disposal or recovery. However, the fact that a substance is mentioned on it does not mean that it is waste in all circumstances. An entry is only relevant when the definition of waste has been satisfied (see introductory notes 2 and 3 to the European Waste Catalogue).
  
- 8 Council Directive 78/319/EEC of 20 March 1978 on toxic and dangerous waste (OJ 1978 L 84, p. 43) was repealed with effect from 12 December 1993 by Directive 91/689. Council Directive 94/31/EC of 27 June 1994 amending Directive 91/689 (OJ 1994 L 168, p. 28) deferred the repeal of Directive 78/319 until 27 June 1995.
  
- 9 The fifth recital in the preamble to Directive 91/689 indicates that it is necessary, in order to improve the effectiveness of the management of hazardous waste in the Community, to use a precise and uniform definition of hazardous waste based on experience.
  
- 10 To that end, Article 1(3) of Directive 91/689 refers to the definition of waste given in Directive 75/442 and Article 1(4) particularizes the definition of hazardous waste. Council Decision 94/904/EC of 22 December 1994 establishing a list of hazardous waste pursuant to Article 1(4) of Council Directive 91/689/EEC on hazardous waste (OJ 1994 L 356, p. 14) supplements Directive 91/689 and also refers, in the annex thereto, to the definition of 'waste' in Article 1(a) of Directive 75/442.

- 11 Regulation No 259/93 repealed, as from the date of its entry into force, Council Directive 84/631/EEC of 6 December 1984 on the supervision and control within the European Community of the transfrontier shipment of hazardous waste (OJ 1984 L 326, p. 31). Pursuant to Article 44 of Regulation No 259/93, that regulation entered into force on the third day following its publication in the *Official Journal of the European Communities*, that is to say on 9 February 1993. It became applicable 15 months after that date, on 6 May 1994.
- 12 Commission Decision 94/774/EC of 24 November 1994 concerning the standard consignment note referred to in Regulation No 259/93 (OJ 1994 L 310, p. 70) provided for a standard consignment note, comprising a notification form and a movement/tracking form to be used for the notification and monitoring of transfers of waste provided for in Regulation No 259/93 and also serving as a certificate of disposal and recovery.

### The Italian legislation

- 13 Directives 75/442 and 78/319 were implemented in Italian law by Decree No 915 of the President of the Republic of 10 September 1982 (*Gazzetta Ufficiale della Repubblica Italiana* (GURI) No 343 of 15 December 1982, p. 9071, hereinafter 'DPR 915/82'). Article 2(1) of that decree defines 'waste' as meaning 'any substance or object deriving from human activity or natural cycles which is abandoned or destined to be abandoned'. The Decree distinguishes between urban, special and hazardous waste, which are subject to different rules. Article 24 et seq. lay down a series of penalties for infringement of the provisions of the Decree.
- 14 Decree-Law No 397 of 9 September 1988 (GURI No 213 of 10 September 1988, p. 3), converted into Law No 475 of 9 November 1988 (GURI No 264 of 10 November 1988, p. 3), lays down special rules concerning industrial waste, together with penalties for infringements (see Article 9 *octies*). That decree-law

introduced for residues from production processes capable of re-use as substitute raw materials ('secondary raw materials') arrangements which differed from those applicable to waste in general.

- 15 According to the orders for reference, the Corte Suprema di Cassazione has interpreted that decree-law as simply defining a legal framework, so that DPR 915/82 continues to apply until specific rules have been adopted. The Corte Suprema di Cassazione considered that that decree-law did not treat substitute raw materials as a specific category.
- 16 A series of decree-laws entitled 'Provisions concerning the re-use of residues deriving from production or consumption cycles in a production or combustion process and concerning the disposal of waste' have, however, been adopted as from November 1993 (Decree-Law No 443 of 9 November 1993 (*GURI* No 264 of 10 November 1993)) in order to complete that legal framework.
- 17 The continued renewal of the decree-laws may be explained in particular by the fact that under the Italian Constitution a decree-law, although immediately applicable, retroactively becomes entirely inoperative if Parliament does not convert it into law within 60 days of its publication. Parliament may however determine by statute the legal relationships that are to derive from decrees that have not been converted (Article 77(3) of the Italian Constitution).
- 18 In the cases before the national courts, the applicable decree-Laws were Decree-Law No 530 of 7 September 1994 (*GURI* No 210 of 8 September 1994, hereinafter 'DL No 530/94') in Cases C-304/94, C-330/94 and C-342/94 and Decree-Law No 619 of 7 November 1994 (*GURI* No 261 of 8 November 1994, hereinafter 'DL No 619/94') in Case C-224/95. At the time of the hearing before the Court of Justice, Decree-Law No 246 of 3 May 1996 (*GURI* No 106 of 8 May 1996, hereinafter 'DL No 246/96') was in force. Subsequently, Decree-Laws Nos 352 of 8 July 1996 (*GURI* No 158 of 8 July 1996) and 462 of 6 September 1996 (*GURI* No 210 of

7 September 1996) were adopted. Since neither of those decree-laws was converted into law, they were made effective by Law No 575 of 11 November 1996 (*GURI* No 265 of 12 November 1996).

19 Although their provisions differ in some respects, the content of the abovementioned decree-laws, so far as they are relevant here, is essentially the same.

20 The decree-laws draw a distinction between 'waste' and 'residues' and provide for simplified procedures for the collection, transport, treatment and re-use of residues as defined by decrees of the Minister of the Environment. For example, Decree-Law No 246 applies by virtue of Article 1 thereof to 'activities aimed at the re-use of residues derived from production or consumption cycles'. Article 2(1)(b) of the decree-law defines a 'residue' as a 'residual substance or material deriving from a production or consumption process and capable of re-use'.

21 Article 5 of DL 246/96 contains simplified rules for the treatment, storage and re-use of residues listed in Annexes 2 and 3 to Decree of the Minister of the Environment of 5 September 1994 (*Supplemento Ordinario* No 126 to *GURI* No 212 of 10 September 1994, hereinafter 'the DM of 5 September 1994') and to the Decree of the Minister of the Environment of 16 January 1995 (*Supplemento Ordinario* to *GURI* No 24 of 30 January 1995).

22 The abovementioned decree-laws exclude from their scope 'materials quoted with specific commodity characteristics in commodity exchanges or official lists drawn up by the Chambers of Commerce, Industry, Craft and Agriculture ... as set out in Annex 1 to the Decree of the Minister of the Environment of 5 September 1994' (see Article 3(3) of DL No 246/96). Annex 1 to the latter decree, cited above, lists the residues considered to be secondary raw materials.



- 23 By virtue of Article 8 of DL 246/96, operations involving the treatment, storage and re-use of residues deriving from production or consumption cycles not referred to in Article 5 remain subject to the authorization regime laid down by DPR 915/82.
- 24 Article 12 of DL No 246/96 replaces the criminal penalties imposed by DPR 915/82 with penalties adapted to the modified rules. In particular, Article 12(4) and (6) provide:

'(4) No penalty shall be imposed on any person who before 7 January 1995 committed an act constituting an offence under Decree No 915 of the President of the Republic ... in the exercise of activities classified as collection, transport, storage, treatment or pre-treatment, recovery or re-use of residues in the manner and in the cases provided for and in conformity with the provisions of the Decree of the Minister of the Environment of 26 January 1990, published in *Gazzetta Ufficiale* No 30 of 6 February 1990, or in conformity with regional rules.

...

(6) The provisions of Decree No 915 of the President of the Republic ... do not apply in so far as they regulate and punish activities which the present Decree regulates and classifies as being aimed at the re-use of residues. The penalties provided for by Decree No 915 of the President of the Republic ... apply where the residues are not actually and objectively destined for re-use.'

Cases C-304/94, C-330/94 and C-342/94

- 25 In Case C-304/94 Euro Tombesi and Adino Tombesi are charged *inter alia* under Article 25(11) of DPR No 915/82 with the offence of discharging without authorization marble rubble and debris from marble worked by Sotema, a firm of which they are the proprietors and legal representatives. They are also charged with failing to keep the required records of loading and unloading and with making false declarations.
- 26 In Case C-330/94 Roberto Santella is charged under Articles 16 and 26 of DPR No 915/82 with producing without authorization toxic and dangerous waste, consisting of pitch obtained from the emissions produced by electro-static filters used in cooking ovens, to be disposed of by burning.
- 27 Finally, in Case C-342/94 Giovanni Muzi and Others are charged with *inter alia* an offence contrary to Article 25(1), in conjunction with Article 6, of DPR No 915/82 concerning specific waste known as 'sansa' (olive oil residues).
- 28 Before the Pretura Circondariale di Terni, the defendants in the main proceedings claimed that the substances and objects involved were no longer regarded as waste under rules introduced by a later legislative measure, which meant that the conduct complained of no longer constituted an offence.
- 29 The Pretura Circondariale di Terni considered that the urgent adoption of DL No 530/94 was contrary to the applicable Community directives, in so far it removed an entire category of waste from the scope of DPR 915/82 and the Community legislation.

30 The Pretura Circondariale di Terni therefore stayed proceedings pending a preliminary ruling from the Court of Justice on the following questions:

1. Whether the definitions of "waste" and "waste destined for recovery" laid down in Council Directive 91/156/EEC of 18 March 1991 and Council Directive 91/689/EEC of 12 December 1991 and Regulation (EEC) No 259/93 of 1 February 1993 should at present continue to be understood and interpreted in the light of the previous case-law of the Court and whether at the same time those two definitions may in every case be regarded as including all materials, in so far as they are residual, derived from production or consumption cycles in a manufacturing or combustion process and, if so, whether those materials as well are to be regarded from the point of view of Community rules as being subject to the system established by the abovementioned directives;
2. Whether a deactivation process intended merely to render waste harmless may be included among the operations intended to make a residue re-usable and therefore as such falling outside the system laid down by the Community legislation on waste;
3. Whether landfill tipping in hollows or embankments may be regarded as the recovery of waste capable of being classified as residues not governed by EEC legislation on waste;
4. Whether waste incineration may be included among the recovery of materials simply because marketable residues are obtained therefrom and may consequently fall outside the system laid down by the Community legislation on waste and in particular outside the incineration rules;
5. Whether waste may be classified as a re-usable residue without its characteristics or purpose being defined to that end and may thus fall outside the scope of the EEC legislation on waste;

6. Whether waste which is merely ground without its characteristics being altered in any way may become a residue falling outside the EEC legislation on waste where the future reutilization of such ground residue has not been established.'

### Case C-224/95

- 31 In Case C-224/95 Anselmo Savini is charged under Article 25(1) of Presidential Decree No 915/82 with the offence of transporting, until 1 October 1991, without the authorization of the Region of Abruzzo special waste produced by Elios Srl (hereinafter 'Elios') and sold to SIA Srl (hereinafter 'SIA'), a company authorized by the Region of Marche to collect and transport such materials. Elios, which manufactures electro-mechanical assemblies and electrical machinery, sold its scrap, consisting of unsheathed copper left over from the manufacture of copper windings, fragments of cable, ferrous material, ferrous scrap and mixed scrap, to SIA.
  
- 32 Before the Pretore di Pescara Mr Savini claimed that, as a result of the adoption of DL No 619/94, which excluded from the scope of DPR 915/82 substances which had been transported, his conduct could not be penalized.
  
- 33 The Pretore di Pescara considers that the combined provisions of DL No 619/94 and the DM of 5 September 1994 remove all operations relating to the substances which they list from the scope of Italian legislation.

34 Entertaining doubts as to the compatibility of such exclusion with Community law, the Pretore di Pescara stayed proceedings pending a preliminary ruling from the Court of Justice on the following questions:

'(1) Does the EEC legislation provide for the exclusion from the definition of waste and the relevant rules relating to the protection of health [and] of the environment of substances and objects which are capable of economic reutilization?

(2) Does the concept of waste arising out of Directives 91/156/EEC and 91/689/EEC and Regulation (EEC) No 259/93 cover any substance which the addressee disposes of, has decided to dispose of or is under a duty to dispose of, regardless of the fact that the substance to be reutilized may be the subject of a legal transaction or quoted on public or private commercial lists?'

35 By order of the President of the Court of 26 January 1995, Cases C-304/94, C-330/94, C-342/94 were joined for the purposes of the written and oral procedure and the judgment. By order of 7 February 1996, those cases and Case C-224/95 were joined for the purposes of the written and oral procedure and the judgment.

### The admissibility of the preliminary questions

36 It must be noted at the outset that, although the Court may not, under Article 177 of the Treaty, decide upon the validity, in regard to Community law, of a provision of domestic law, as it would be possible for it to do under Article 169 of the EC Treaty (see, for example, Case 6/64 *Costa v ENEL* [1964] ECR 585), it nevertheless has jurisdiction to supply the national court with an interpretation of Community law on all such points as may enable that court to determine that issue of

compatibility for the purposes of the case before it (see, for example, Case 223/78 *Grosoli* [1979] ECR 2621, paragraph 3).

- 37 In this case, the Commission considers the last five questions submitted by the Pretore di Terni in Cases C-304/94, C-330/94 and C-342/94 to be inadmissible on the ground that the orders for reference do not explain their connection with the subject-matter of those cases.
- 38 However, the Court has consistently held that it is solely for the national courts before which actions are brought, and which must bear the responsibility for the subsequent judicial decision, to determine in the light of the special features of each case both the need for a preliminary ruling in order to enable them to deliver judgment and the relevance of the questions which they submit to the Court. Dismissal of a request from a national court is possible where it is clear that the interpretation of Community law or the consideration of the validity of a Community rule, requested by that court, has no bearing on the real situation or on the subject-matter of the case in the main proceedings (see in particular the judgments in Case C-67/91 *Asociación Española de Banca Privada and Others* [1992] ECR I-4785, paragraphs 25 and 26; Joined Cases C-332/92, C-333/92 and C-335/92 *Eurico Italia and Others* [1994] ECR 711, paragraph 17, and Case C-62/93 *BP Soupergaz* [1995] ECR I-1883, paragraph 10).
- 39 Such is not however the situation here since it is apparent from the documents before the Court that those questions are directly linked with the first question and with the subject-matter of the cases before the Pretura Circondariale di Terni.
- 40 Furthermore, whilst it seems that some of the events in the main proceedings pre-date the entry into force of Directives 91/156 and 91/689, the orders for reference contain an explanation of those events and the national courts have expressly referred in their questions to those Community measures. It is therefore appropriate to consider all the questions referred to the Court.

**Substance**

- 41 By their questions, which it is appropriate to consider together, the Preture Circondariali of Terni and Pescara seek to ascertain essentially whether the concept of 'waste' referred to in the Community rules must be taken to exclude substances or objects capable of economic re-use.
- 42 First, it must be borne in mind that, according to settled case-law (see, in particular, Case C-168/95 *Arcaro* [1996] ECR I-4705, paragraph 36), a directive which has not been transposed may not create obligations for an individual and a provision of a directive may not therefore be relied upon as such against such a person.
- 43 Moreover, it is clear from the orders for reference that, at the material time, the facts of the cases before the national courts attracted penalties under national law, and the decree-laws which made the penalties deriving from DPR 915/82 inapplicable to them entered into force only subsequently. In those circumstances, it is inappropriate to enquire into such consequences as might derive, for the application of Regulation No 259/93, from the principle that penalties must have a proper legal basis.
- 44 Those points having been noted, it should be borne in mind that Article 2(a) of Regulation No 259/93, forming part of the Title I ('Scope and definitions'), provides that, for the purposes of the regulation, 'waste' means the substances or objects defined in Article 1(a) of Directive 75/442.
- 45 According to Article 1(1) thereof, Regulation No 259/93 applies to shipments of waste within, into and out of the Community. Under Title III ('Shipments of waste within Member States') Article 13(1) makes clear that Title II (Shipments of

waste between Member States), Title VII (Common provisions) and Title VIII (Other provisions) do not apply to shipments within a Member State.

- 46 Accordingly, it must be concluded that, in order to ensure that the national systems for supervision and control of shipments of waste conform with minimum criteria, Article 2(a) in Title I of Regulation No 259/93, referring to Article 1(a) of Directive 75/442, as amended, laid down a common definition of the concept of waste which is of direct application, even to shipments within any Member State.
- 47 As regards the interpretation of the Community legislation on waste, it must be borne in mind that, according to settled case-law, the concept of waste within the meaning of Article 1 of Directive 75/442, in its original version, and Article 1 of Directive 78/319 was not to be understood as excluding substances and objects which were capable of economic reutilization. National legislation which defines waste as excluding substances and objects which are capable of economic reutilization is not compatible with Directive 75/442, in its original version, and Directive 78/319 (Case C-359/88 *Zanetti and Others* [1990] ECR I-1509, paragraphs 12 and 13, and Case C-422/92 *Commission v Germany* [1995] ECR I-1097, paragraph 22).
- 48 That interpretation is not affected either by Directive 91/156, which amended the first of those two directives, or by Directive 91/689, which repealed the second (see *Germany v Commission*, cited above, paragraph 23), or by Regulation No 259/93.
- 49 Thus, under Article 3(1) of Directive 75/442, as amended, the Member States are to take measures to encourage, first, the prevention or reduction of waste production and its harmfulness and, second, the recovery of waste by means of recycling, re-use or reclamation or any other process with a view to extracting secondary raw materials or the use of waste as a source of energy. The sixth recital in the



preamble to Directive 91/156 states that it is desirable to encourage the recycling of waste and the re-use of waste as raw materials and that it may be necessary to adopt specific rules for re-usable waste.

50 To that end, the system of supervision established by Directive 75/442, as amended, was reinforced by Directive 91/156. Pursuant to Article 8 of Directive 75/442, as amended, the Member States are to ensure that any holder of waste either recovers or disposes of it himself in accordance with the provisions of the directive or has it handled by a private or public collector or an undertaking which carried out the operations listed in Annex II A or B. Annex II A concerns disposal operations, whereas Annex IIB applies to operations which may lead to recovery and lists a series of processes such as use as a fuel or other means of generating energy, recycling or reclamation of materials and recovery of products.

51 According to Article 10 of Directive 75/442, as amended, any establishment or undertaking which carries out the operations referred to in Annex II B must obtain a permit. Moreover, under Article 12, establishments or undertakings which collect or transport waste on a professional basis or which arrange for the disposal or recovery of waste on behalf of others, where not subject to authorization, are to be registered with the competent authorities. Finally, pursuant to Article 13, they are to be subject to appropriate periodic inspections by the competent authorities.

52 It follows that the system of supervision and control established by Directive 75/442, as amended, is intended to cover all objects and substances discarded by their owners, even if they have a commercial value and are collected on a commercial basis for recycling, reclamation or re-use.

53 As the Advocate General points out in paragraphs 60 and 61 of his Opinion, a deactivation process intended merely to render waste harmless, landfill tipping in

hollows or embankments and waste incineration constitute disposal or recovery operations falling within the scope of the Community legislation. The fact that a substance is included in the category of re-usable residues without any details being given as to its characteristics or use is irrelevant in that regard. The same applies to the grinding of waste.

- 54 The answer to the questions referred to the Court must therefore be that the concept of 'waste' in Article 1 of Directive 75/442, as amended, referred to in Article 1(3) of Directive 91/689 and Article 2(a) of Regulation No 259/93 is not to be understood as excluding substances and objects which are capable of economic reutilization, even if the materials in question may be the subject of a transaction or quoted on public or private commercial lists. In particular, a deactivation process intended merely to render waste harmless, landfill tipping in hollows or embankments and waste incineration constitute disposal or recovery operations falling within the scope of the abovementioned Community rules. The fact that a substance is classified as a re-usable residue without its characteristics or purpose being defined is irrelevant in that regard. The same applies to the grinding of a waste substance.

## Costs

- 55 The costs incurred by the Italian, Danish, French, Netherlands and United Kingdom Governments and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Sixth Chamber),

in answer to the questions referred to it by the Pretura Circondariale di Terni and the Pretura Circondariale di Pescara by order of 27 October, 14 November, 23 November and 15 December 1994, hereby rules:

The concept of 'waste' in Article 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, referred to in Article 1(3) of Council Directive 91/689/EEC of 12 December 1991 on hazardous waste and Article 2(a) of Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community, is not to be understood as excluding substances and objects which are capable of economic reutilization, even if the materials in question may be the subject of a transaction or quoted on public or private commercial lists. In particular, a deactivation process intended merely to render waste harmless, landfill tipping in hollows or embankments and waste incineration constitute disposal or recovery operations falling within the scope of the abovementioned Community rules. The fact that a substance is classified as a re-usable residue without its characteristics or purpose being defined is irrelevant in that regard. The same applies to the grinding of a waste substance.

Mancini

Kapteyn

Ragnemalm

Delivered in open court in Luxembourg on 25 June 1997.

R. Grass

G. F. Mancini

Registrar

President of the Sixth Chamber