

JUDGMENT OF THE COURT (Third Chamber)

18 December 2007^{*}

In Case C-195/05,

ACTION under Article 226 EC for failure to fulfil obligations, brought on 2 May 2005,

Commission of the European Communities, represented by M. Konstantinidis, acting as Agent, assisted by G. Bambara, avvocato, with an address for service in Luxembourg,

applicant,

v

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

defendant,

^{*} Language of the case: Italian.

THE COURT (Third Chamber),

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

Advocate General: J. Mazák,

Registrar: J. Swedenborg, Administrator,

having regard to the written procedure and further to the hearing on 17 January 2007,

after hearing the Opinion of the Advocate General at the sitting on 22 March 2007,

gives the following

Judgment

- 1 By its application, the Commission of the European Communities claims that the Court should declare that the Italian Republic has failed to fulfil its obligations under

Article 1(a) of Council Directive 75/442/EEC of 15 July 1975 on waste (OJ 1975 L 194, p. 39) as amended by Council Directive 91/156/EEC of 18 March 1991 (OJ 1991 L 78, p. 32) ('the Directive'), by:

- adopting operational instructions valid for the whole of the national territory, specified in particular in the circular of 28 June 1999 of the Minister for the Environment setting out explanatory guidance on the concept of waste ('the June 1999 circular') and in the communication of the Ministry of Health of 22 July 2002 containing guidelines on the health and hygiene requirements relating to the use for animal feed of materials and by-products deriving from the production and commercial cycle of the agro-food industry (GURI No 180 of 2 August 2002, and the corrigendum in GURI No 245 of 18 October 2002; 'the 2002 communication') the purpose of which was to exclude, from the scope of the legislation on waste, food scraps from the agro-food industry intended for the production of animal feed; and

- excluding, by means of Article 23 of Law No 179 of 31 July 2002 laying down provisions on environmental matters (GURI No 189 of 13 August 2002; 'Law No 179/2002'), from the scope of the legislation on waste, leftovers from the kitchen preparation of all types of solid food, cooked and uncooked, which have not entered the distribution system and are intended for shelters for pet animals.

Legal context

The Community legislation

- ² Points (a) and (c) of Article 1 of the Directive provide that, for the purposes of that directive:

- ‘(a) “waste” shall mean any substance or object in the categories set out in Annex I which the holder discards or intends or is required to discard.

The Commission, acting in accordance with the procedure laid down in Article 18, will draw up, not later than 1 April 1993, a list of wastes belonging to the categories listed in Annex I. This list will be periodically reviewed and, if necessary, revised by the same procedure;

...

- (c) “holder” shall mean the producer of the waste or the natural or legal person who is in possession of it’.

³ Points (e) and (f) of Article 1 of the Directive define the concepts of disposal and recovery of waste as any of the operations provided for, respectively, in Annexes II A and II B to the directive.

⁴ Article 2(1)(b) of the Directive lists wastes which are excluded from the scope of the Directive ‘where they are already covered by other legislation’.

- 5 Annex I to the Directive, entitled 'Categories of waste', specifies inter alia categories Q 14, 'Products for which the holder has no further use (e.g. agricultural, household, office, commercial and shop discards, etc.)', and Q 16, 'Any materials, substances or products which are not contained in the above categories'.
- 6 The Commission adopted Decision 94/3/EC of 20 December 1993 establishing a list of wastes pursuant to Article 1(a) of Directive 75/442 (OJ 1994 L 5, p. 15). That list was updated by Commission Decision 2000/532/EC of 3 May 2000 replacing Decision 94/3 and Council Decision 94/904/EC establishing a list of hazardous waste pursuant to Article 1(4) of Council Directive 91/689/EEC on hazardous waste (OJ 2000 L 226, p. 3). The waste list established by Decision 2000/532 has been amended on a number of occasions, most recently by Council Decision 2001/573/EC of 23 July 2001 (OJ 2001 L 203, p. 18). The list classifies wastes according to their source. Chapter 02 of the list is titled 'Wastes from agriculture, horticulture, aquaculture, forestry, hunting and fishing, food preparation and processing'.

National legislation

- 7 Article 6(1)(a) of Legislative Decree No 22 of 5 February 1997 on the implementation of Directives 91/156/EEC on waste, 91/689/EEC on hazardous

waste and 94/62/EC on packaging and packaging waste (GURI No 38 of 15 February 1997, Ordinary Supplement; 'Legislative Decree No 22/97') is worded as follows:

'For the purposes of this Decree:

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

...'

- 8 Article 8(1) of Legislative Decree No 22/97 excludes certain substances or certain materials from the scope of the decree, in so far as they are covered by specific legislation, including, under point (c) of that provision, 'carcasses and the following agricultural wastes: faecal matter and other non-hazardous natural substances used in agriculture'.
- 9 Article 23(1)(b) of Law No 179/2002 inserted in Article 8(1) of Legislative Decree No 22/97 a new point (c-a), under which that decree does not apply to 'residue and surplus deriving from the preparation in kitchens of solid foods of any type, cooked or uncooked, which have not entered the distribution system, intended for shelters for pet animals as referred to in Law No 281 of 14 August 1991 as subsequently amended, in compliance with the legislation in force'.

- 10 The June 1999 circular elaborates upon the term ‘waste’ contained in Article 6 of Legislative Decree No 22/97 and provides in point (b) of its concluding paragraph that:

‘materials, substances and objects deriving from production or pre-consumption cycles which the holder does not discard, which he is not required to discard and which he does not intend to discard and which, consequently, the holder does not consign to waste collection or transport systems or to waste management systems for the purposes of recovery or disposal, are subject to the rules on raw materials, and not to the rules on waste, provided that they have the characteristics of secondary raw materials as referred to in the Ministerial Decree of 5 February 1998 [on the identification of non-hazardous waste which may, under Articles 31 and 33 of Legislative Decree No 22/97, be treated in accordance with the simplified recovery procedure] of 5 February 1998 [GURI No 88 of 16 April 1998, Ordinary Supplement] and are directly intended in an objective and genuine manner for use in a production cycle’.

- 11 The 2002 communication is worded as follows:

‘...

Provided that health and hygiene requirements are met, materials and by-products deriving from operations in the agro-food industry are “raw materials for animal feed” where the producer wishes to use them in the zootechnic food cycle.

In such cases, those materials are not subject to the legislation on waste, but to the provisions on the production and marketing of animal feed and, in the case of products of animal origin or containing ingredients of animal origin, to the relevant health legislation in force ...

...

In the absence of the documentary evidence specified [in the preceding paragraph] as to their actual intended use for animal feed, the materials and by-products deriving from the production and commercial cycle of the agro-food industry must be subject to the legal regime on waste.

...

Pre-litigation procedure

¹² By letters of 11 and 19 June, 28 August and 6 November 2001 and 10 April 2002, the Italian authorities replied to a letter of formal notice of 22 October 1999 and to an initial reasoned opinion of 11 April 2001, in both of which the Commission had maintained that, by adopting binding operational instructions on the application of the Italian legislation on waste which excluded from its scope certain food residues and surpluses from the agro-food industry, canteens and restaurants, intended for the feeding of animals, the Italian Republic was infringing the Directive.

¹³ In the light of the information forwarded by the Italian authorities, the Commission formed the view that if the Italian legislation were to be adapted to meet the requirements of the reasoned opinion substantial amendments would be required. For that reason, the Commission sent an additional letter of formal notice to the Italian authorities on 19 December 2002, in response to which the latter stated their position by letter of 13 February 2003.

- 14 On 11 July 2003, the Commission delivered an additional reasoned opinion, calling upon the Italian Republic to comply with that opinion within two months of the date of receipt.
- 15 Since, by letter of 4 November 2003, the Italian authorities continued to challenge the validity of the Commission's argument, the Commission decided to bring the present action.

The action

Arguments of the parties

- 16 By its action, the Commission claims, in essence, that the national legislation at issue goes beyond the guidance to be inferred from the case-law of the Court as to the circumstances in which material deriving from a manufacturing process which is not primarily intended to produce it should not be regarded as waste.

Food scraps from the agro-food industry intended for the production of animal feed

- 17 The Commission submits that the effect of the operational instructions set out in the 1999 circular and the 2002 communication is to exclude, from the national rules on the management of waste, food scraps used in the production of animal feed,

subject to compliance with specific standards of health and hygiene. According to those operational instructions, residue from the agro-food industry need only be intended for the production of animal feed as evidenced by the manifest will of the holder in order to be permanently excluded from the rules on waste.

18 According to the Commission, however, the fact that certain production residue can be re-used without prior processing cannot be regarded as conclusively ruling out the possibility that the holder of that residue is discarding it, or intending or being required to discard it, within the meaning of the Directive.

19 The Commission acknowledges that the Court has recognised, albeit solely in respect of by-products, that if the holder derives a financial advantage from the by-product, it can be concluded that he is not 'discard[ing]' that by-product within the meaning of Article 1(a) of the Directive. However, the Commission goes on to argue that, since the concept of waste must be given a wide meaning, any exclusion from the scope of the Directive can be allowed only if certain conditions are met, in which case it is legitimate to conclude that re-use is not merely a possibility but a certainty, and that it is going to take place without prior processing and as an integral part of the production process.

20 According to the Commission, it is also necessary to assess the degree of probability that a material is going to be re-used and, above all, to determine whether it is going to be re-used within the same production process as that from which it has come. Contrary to the contention of the Italian Republic, if food wastes are in fact intended to be used as animal feed, it cannot be possible that only a single production process is involved. The mere fact that those wastes are to be transferred by the operator who has produced them to the operator who will use them pre-supposes a series of operations (storage, processing and transport) which it is precisely the aim of the Directive to control.

- 21 The Italian Republic contends that the materials and the by-products coming from the production processes of the agro-food industry are 'raw materials for animal feed', within the meaning of the 2002 communication, where their producer intends them to be used in the zootechnic food cycle, provided that certain health and hygiene requirements are complied with. In conjunction with the fact that re-use of those by-products is a certainty, such an intention on the part of the producer is proof that the holder does not have any intention of 'discard[ing]' the material in question, within the meaning of Article 1(a) of the Directive.
- 22 In the opinion of the Italian Republic, the exception provided for in the operational instructions in no way means that food scraps from the agro-food industry are automatically excluded from the national rules on waste, since that exclusion is in reality conditional not only upon a clear intention on the part of the holder of those scraps that they are to be used in the animal feed production cycle, but also upon the certainty that those scraps are going to be re-used.
- 23 In such cases, according to the Italian Republic, the scraps in question are subject not to the legislation on waste, but to the provisions relating to the production and marketing of animal feed, such as Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (OJ 2002 L 31, p. 1), and, as regards by-products of animal origin, Regulation (EC) No 1774/2002 of the European Parliament and of the Council of 3 October 2002 laying down health rules concerning animal by-products not intended for human consumption (OJ 2002 L 273, p. 1).
- 24 Also applicable, according to the Italian Republic, are the hazard analysis and critical control points ('the HACCP provisions') laid down in:

- Regulation (EC) No 852/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs (OJ 2004 L 139, p. 1); Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin (OJ 2004 L 139, p. 55); and Regulation (EC) No 854/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption (OJ 2004 L 139, p. 206);

- Regulation (EC) No 183/2005 of the European Parliament and of the Council of 12 January 2005 laying down requirements for feed hygiene (OJ 2005 L 35, p. 1); and

- Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules (OJ 2004 L 165, p. 1).

²⁵ According to the Italian Republic, those regulations on food and animal feed, and the related provisions of national law share the aim of the Directive, which is to control storage, processing and transport operations; and, while ensuring appropriate health protection, they also protect the environment.

²⁶ Thus, the controls carried out within the food chain, which are designed especially to ensure that products and raw materials intended for animal feed can be traced all the way from the unit of production, are such that the chain can properly be regarded as constituting one and the same production process. The Italian Republic

also makes the point that in Italy activities relating to the agro-food sector and to the animal feed sector require an authorisation which is issued against presentation of the appropriate documents certifying that the conditions laid down are satisfied, not only by the applicants for such authorisation, but also by the related transport facilities and the means of transport.

27 The Italian Republic maintains that the Commission seeks to favour the rules on waste — which are of general, but residual, application — over the substantive and specific rules governing the food industry.

28 Moreover, according to the Italian Republic, the Commission's approach would ultimately prevent the use of food by-products for the manufacturing of animal feed, since it is not possible under the Italian legislation on foodstuffs for those by-products, which would have to be classified as waste and consequently transported in a vehicle licensed to carry waste, to be delivered to any animal feed undertaking. Thus, the Commission's interpretation would increase the production and disposal of food waste by preventing its re-use as feed.

Residues and surplus from the kitchen preparation of food, intended for shelters for pet animals

29 The Commission claims that Article 23 of Law No 179/2002 has the effect of excluding from the scope of Legislative Decree No 22/97 'residues and surpluses from the preparation in kitchens of solid foods of any type, cooked or uncooked, which have not entered the distribution system, intended for shelter facilities for pet animals'. According to the Commission, it cannot be maintained that the holder of such residue does not intend to discard it and, what is more, the correctness of that view is confirmed by the very fact that such residue is mentioned in Article 8 of that Legislative Decree.

- 30 The Italian Republic contends that, in the context also of the rules covered by the second part of the Commission's action, the holder must demonstrate his intention not to discard the food residue or food surplus by making it clear that they are actually destined for officially authorised shelters for pet animals. Besides, in reality it is always food surplus that is concerned by the exclusion from the rules on waste, not production 'residues'. The adoption of legislation which clarifies that point is said to be under way.

Findings of the Court

- 31 It is common ground that the Italian rules at issue in the present action exclude, first, food scraps from the agro-food industry and, secondly, the residue or surplus from the kitchen preparation of food which has not entered the distribution system (collectively, 'the materials in question') from the scope of the national rules transposing the Directive, where those materials are intended either for the production of animal feed or, directly, as food for animals accommodated in shelters for pet animals.
- 32 By the two parts of its action, which it is appropriate to examine together, the Commission submits, in essence, that those rules misconstrue the concept of waste, as defined in Article 1(a) of the Directive, by establishing an exception to the national legislation on waste which is overly general and which has the effect of automatically, and incorrectly, excluding the materials in question from the scope of provisions on the management of waste which have their origin in the Directive.

- 33 The response of the Italian Republic is in essence that, where the conditions for application of the rules at issue are satisfied, the materials in question do not fall under the definition of 'waste' laid down in the Directive, as interpreted by the Court.
- 34 The first paragraph of Article 1(a) of the Directive defines waste as 'any substance or object in the categories set out in Annex I [to that directive] which the holder discards or intends ... to discard'. The annex referred to clarifies and illustrates that definition by providing a list of categories of substances and objects which may be classified as 'waste'. That list is intended only as guidance, however, and the classification of a substance or object as waste is to be inferred primarily from the holder's actions and the meaning of the term 'discard' (see, to that effect, Case C-129/96 *Inter-Environnement Wallonie* [1997] ECR I-7411, paragraph 26; Case C-1/03 *Van de Walle and Others* [2004] ECR I-7613, paragraph 42; and Case C-252/05 *Thames Water Utilities* [2007] ECR I-3883, paragraph 24).
- 35 The term 'discard' must be interpreted in the light not only of the fundamental aim of the Directive, which, according to the third recital in the preamble thereto, is 'the protection of human health and the environment against harmful effects caused by the collection, transport, treatment, storage and tipping of waste', but also of Article 174(2) EC. The latter provision states that 'Community policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Community. It shall be based on the precautionary principle and on the principles that preventive action should be taken ...'. It follows that the term 'discard' — and, accordingly, the concept of 'waste', within the meaning of Article 1(a) of the Directive — cannot be interpreted restrictively (see, to that effect, *inter alia*, Joined Cases C-418/97 and C-419/97 *ARCO Chemie Nederland and Others* [2000] ECR I-4475, paragraphs 36 to 40, and *Thames Water Utilities*, paragraph 27).

36 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 Case C-457/02 *Niselli* [2004] ECR I-10853, paragraph 43).

37 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).

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

39 However, it is also clear from the case-law of the Court that, in certain situations, goods, materials or raw materials resulting from an extraction or manufacturing

process, the primary aim of which is not their production, may be regarded not as residue, but as by-products which their holder does not seek to 'discard', within the meaning of Article 1(a) of the Directive, but which he intends to exploit or market on terms advantageous to himself in a subsequent process — including, as the case may be, in order to meet the needs of economic operators other than the producer of those substances — provided that such re-use is a certainty, does not require any further processing prior to re-use and forms an integral part of the process of production or use (see, to that effect, *Palin Granit*, paragraphs 34 to 36; Case C-114/01 *AvestaPolarit Chrome* [2003] ECR I-8725, paragraphs 33 to 38; *Niselli*, paragraph 47; and also Case C-416/02 *Commission v Spain* [2005] ECR I-7487, paragraphs 87 and 90, and Case C-121/03 *Commission v Spain* [2005] ECR I-7569, paragraphs 58 and 61).

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

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

- 42 Whether a substance is in fact 'waste' within the meaning of the Directive must be determined in the light of all the circumstances, account being taken of the aim of the Directive and the need to ensure that its effectiveness is not undermined (see *ARCO Chemie Nederland and Others*, paragraph 88; *KVZ rettec*, paragraph 63; and the order in Case C-235/02 *Saetti and Frediani* [2004] ECR I-1005, paragraph 40).
- 43 Since the Directive does not provide any single decisive criterion for discerning whether the holder intends to discard a given substance or object, Member States are free, in the absence of Community provisions, to choose the modes of proof of the various matters defined in the directives which they are transposing, provided that the effectiveness of Community law is not thereby undermined (see *ARCO Chemie Nederland and Others*, paragraph 41, and *Niselli*, paragraph 34). Thus Member States may, for example, define different categories of waste, in particular to facilitate the organisation and control of their management of waste, provided that the obligations arising under the Directive or other provisions of Community law relating to such waste are complied with and that the exclusion of any categories from the scope of legislation enacted in order to transpose obligations under the Directive is in compliance with Article 2(1) of the Directive (see, to that effect, Case C-62/03 *Commission v United Kingdom*, not published in the ECR, paragraph 12).
- 44 In the present case, the Italian Republic considers in essence that, since the exceptions provided for in the rules at issue are conditional not only on a clear intention on the part of the holder of the materials in question that they be intended for animal feed, but also on the certainty of their re-use, the case-law referred to in paragraphs 39 and 40 of this judgment applies, from which it follows that those materials may be regarded not as production residues, but as by-products which the holder, because of his clear intention that they be re-used, is not seeking to 'discard' within the meaning of Article 1(a) of the Directive. In addition, in such circumstances, other rules, in particular those relating to food safety, apply. The latter rules are also designed to control the storage, processing and transportation of the materials in question and are capable, while promoting health protection, of protecting the environment in a manner comparable to that of the Directive.

- 45 It should be pointed out at the outset that the list of categories of waste set out in Annex I to the Directive, as well as the disposal and recovery operations listed in Annexes II A and II B thereto, show that there is no type of residue or other substance resulting from the production process which is in principle excluded from the concept of waste (see *Inter-Environnement Wallonie*, paragraph 28).
- 46 Furthermore, in view of the obligation, recalled in paragraph 35 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 36 to 41 of this judgment, reasoning along the lines of the arguments put forward by the Italian government, relating to by-products which the holder does not wish to discard, must be confined to situations where re-use of goods, materials or raw materials (including, as the case may be, in order to meet the needs of economic operators other than the producer) is not merely a possibility, but a certainty, and where such re-use does not require any prior processing and forms an integral part of the process of production or use.
- 47 However, it is clear from the explanations of the Italian Republic set out in paragraph 21 of this judgment that the rules at issue allow the materials in question to be excluded from the scope of the national legislation on waste even where those materials are to undergo the processing provided for under the Community or national legislation in force.
- 48 Moreover, even if it were possible to know with certainty that the materials in question are genuinely re-used for animal feed (since the mere intention that they are to be so used, even if certified in writing in advance, falls short of their actually being used for that purpose), it is clear in particular from paragraphs 36 and 37 of this judgment that the use to which a substance is put does not determine conclusively whether or not that substance is to 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.

- 49 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).
- 50 It is accordingly clear that the rules at issue raise a presumption, in the situations to which they apply, that the materials in question are by-products which represent for their holder — by dint of his intention that they be re-used — a benefit or an economic value, rather than a burden which he would seek to be rid of.
- 51 However, although in some cases that may actually reflect the true position, there cannot be a general presumption that a holder of the materials in question 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.
- 52 Consequently, it must be concluded that the effect of those rules is that residue which corresponds to the definition of waste set out in Article 1(a) of the Directive is nevertheless not classified as such under Italian law.
- 53 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).

54 As regards the Community and national legislation referred to in paragraphs 23 to 25 of this judgment, on which the Italian Republic relies in contending, in essence, that in the light of the Community and national legislation on safety requirements for foodstuffs and animal feed, taken overall, it is impossible to classify the materials in question as waste, it is sufficient to point out that those materials cannot as a general rule be identified with the substances and objects listed in Article 2(1) of the Directive and, accordingly, they do not fall within the exceptions to the application of the Directive provided for in that provision. It should also be pointed out there is nothing in the Directive to suggest that it does not apply to disposal or recovery operations forming part of an industrial production process where those operations do not appear to constitute a danger to human health or the environment (*Inter-Environnement Wallonie*, paragraph 30).

55 Furthermore, contrary to the contention of the Italian Republic, it cannot be accepted that the Directive is of residual application by comparison with the Community and national legislation on food safety. Even though the aims of certain provisions of the Community and national legislation on food safety may, in some cases, overlap in part with the aims of the Directive, they remain quite distinct. Moreover, apart from the circumstances expressly specified in Article 2(1) of the Directive, there is nothing in that provision to suggest that the Directive does not apply in tandem with other legislation.

56 Lastly, as regards the argument of the Italian Republic that application of the Directive would prevent the re-use of food residue for animal feed because that residue will have to be transported in vehicles authorised for the transport of waste which do not meet essential hygiene requirements, the Commission correctly states that the cause of that situation is to be found in the Italian legislation, and not in the Directive.

57 The action of the Commission must therefore be upheld.

58 Accordingly, it must be held that the Italian Republic has failed to fulfil its obligations under Article 1(a) of the Directive, by:

- adopting operational instructions valid for the whole of the national territory, set out in particular in the 1999 circular and the 2002 communication, which exclude food scraps from the agro-food industry, intended for the production of animal feed, from the scope of the legislation on waste; and
- excluding, by means of Article 23 of Law No 179/2002, from the scope of the legislation on waste leftovers from the kitchen preparation of solid foods of all types, cooked or uncooked, which have not entered the distribution chain and are intended for shelters for pet animals.

Costs

- ⁵⁹ Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has requested that the Italian Republic be ordered to pay the costs and since the latter has been unsuccessful, the Italian Republic must be ordered to pay the costs.

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

- 1. Declares that the Italian Republic has failed to fulfil its obligations under Article 1(a) of Council Directive 75/442/EEC of 15 July 1975 on waste as amended by Council Directive 91/156/EEC of 18 March 1991, by:**
 - adopting operational instructions valid for the whole of the national territory, specified in particular in the circular of 28 June 1999 of the Minister for the Environment setting out explanatory guidance on the concept of waste and in the communication of the Ministry of Health of 22 July 2002 containing guidelines on the health and hygiene requirements relating to the use for animal feed of materials and by-products deriving from the production and commercial cycle of the agro-food industry, the purpose of which was to exclude, from the scope of the legislation on waste, food scraps from the agro-food industry intended for the production of animal feed; and**
 - excluding, by means of Article 23 of Law No 179 of 31 July 2002 laying down provisions on environmental matters, from the scope of the legislation on waste leftovers from the kitchen preparation of all types**

of solid food, cooked and uncooked, which have not entered the distribution system and are intended for shelters for pet animals;

2. Orders the Italian Republic to pay the costs.

[Signatures]