

**Operative part of the judgment**

1. A substance such as that at issue in the main proceedings, namely heavy fuel oil sold as a combustible fuel, does not constitute waste within the meaning of Council Directive 75/442/EEC of 15 July 1975 on waste, as amended by Commission Decision 96/350/EC of 24 May 1996, where it is exploited or marketed on economically advantageous terms and is capable of actually being used as a fuel without requiring prior processing.
2. Hydrocarbons accidentally spilled at sea following a shipwreck, mixed with water and sediment and drifting along the coast of a Member State until being washed up on that coast, constitute waste within the meaning of Article 1(a) of Directive 75/442, as amended by Decision 96/350, where they are no longer capable of being exploited or marketed without prior processing.
3. For the purposes of applying Article 15 of Directive 75/442, as amended by Decision 96/350, to the accidental spillage of hydrocarbons at sea causing pollution of the coastline of a Member State:

— the national court may regard the seller of those hydrocarbons and charterer of the ship carrying them as a producer of that waste within the meaning of Article 1(b) of Directive 75/442, as amended by Decision 96/350, and thereby as a 'previous holder' for the purposes of applying the first part of the second indent of Article 15 of that directive, if that court, in the light of the elements which it alone is in a position to assess, reaches the conclusion that that seller-charterer contributed to the risk that the pollution caused by the shipwreck would occur, in particular if he failed to take measures to prevent such an incident, such as measures concerning the choice of ship;

— if it happens that the cost of disposing of the waste produced by an accidental spillage of hydrocarbons at sea is not borne by the International Oil Pollution Compensation Fund, or cannot be borne because the ceiling for compensation for that accident has been reached, and that, in accordance with the limitations and/or exemptions of liability laid down, the national law of a Member State, including the law derived from international agreements, prevents that cost from being borne by the shipowner and/or the charterer, even though they are to be regarded as 'holders' within the meaning of Article 1(c) of Directive 75/442, as amended by Decision 96/350, such a national law will then, in order to ensure that Article 15 of that directive is correctly transposed, have to make provision for that cost to be borne by the producer of the product from which the waste thus spread came. In accordance with the 'polluter pays' principle, however, such a producer cannot be liable to bear that cost unless he has contributed by his conduct to the risk that the pollution caused by the shipwreck will occur.

(<sup>1</sup>) OJ C 129, 9.6.2007.

**Judgment of the Court (Third Chamber) of 19 June 2008 (reference for a preliminary ruling from the Raad van State van België (Belgium)) — Nationale Raad van Dierenkwekers en Liefhebbers VZW, Andibel VZW v Belgische Staat**

(Case C-219/07) (<sup>1</sup>)

**(Article 30 EC — Regulation (EC) No 338/97 — Protection of species of wild fauna and flora — Prohibition on holding mammals of certain species referred to by that regulation or not covered by it — Holding permitted in other Member States)**

(2008/C 209/15)

Language of the case: Dutch

**Referring court**

Raad van State van België

**Parties to the main proceedings**

Applicants: Nationale Raad van Dierenkwekers en Liefhebbers VZW, Andibel VZW

Defendant: Belgische Staat

**Re:**

Reference for a preliminary ruling — Raad van State van België (Belgium) — Interpretation of Article 30 EC and of Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein (OJ 1996 L 61, p. 1) — National legislation providing a list of species which may be held in the Member State concerned, whose effect is to rule out the holding of the species referred to in Annexes B, C or D to the regulation and of those not covered by the regulation — Holding authorised in other Member States whose legislation complies with the regulation

**Operative part of the judgment**

Articles 28 EC and 30 EC, read separately or in conjunction with Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein, do not preclude national legislation, such as that at issue in the main proceedings, under which a prohibition on importing, holding or trading in mammals belonging to species other than those expressly referred to in that legislation applies to species of mammals which are not included in Annex A to that regulation, if the protection of or compliance with the interests and requirements referred to in paragraphs 27 to 29 of this judgment cannot be secured just as effectively by measures which obstruct intra-Community trade to a lesser extent.

It is for the national court to determine:

- whether the drawing up of the national list of species of mammals which may be held and subsequent amendments to that list are based on objective and non-discriminatory criteria;
- whether a procedure enabling interested parties to have species of mammals included in that list is provided for, readily accessible and can be completed within a reasonable time, and whether, where there is a refusal to include a species, it being obligatory to state the reasons for that refusal, that refusal decision is open to challenge before the courts;
- whether applications to obtain the inclusion of a species of mammal in that list or to obtain individual derogations to hold specimens of species not included in that list may be refused by the competent administrative authorities only if the holding of specimens of the species concerned poses a genuine risk to the protection of the abovementioned interests and requirements; and
- whether conditions for the holding of specimens of mammals not referred to in that list, such as those set out in Article 3bis(2)(3)(b) and (6) of the Law of 14 August 1986 concerning the protection and welfare of animals, as amended by the Law of 4 May 1995, are objectively justified and do not go beyond what is necessary to achieve the objective pursued by the national legislation as a whole.

(<sup>1</sup>) OJ C 155, 7.7.2007.

**Judgment of the Court (Fourth Chamber) of 19 June 2008**  
**— Commission of the European Communities v French Republic**

(Case C-220/07) (<sup>1</sup>)

*(Failure of a Member State to fulfil its obligations — Directive 2002/22/EC — Electronic communications — Designation of the undertakings entrusted with the provision of universal service — Incorrect transposition)*

(2008/C 209/16)

Language of the case: French

**Parties**

*Applicant:* Commission of the European Communities (represented by: J.-P. Keppenne and M. Shotter, Agents)

*Defendant:* French Republic (represented by: G. de Bergues and B. Messmer, Agents)

**Re:**

Failure of a Member State to fulfil its obligations — Incorrect transposition [of Articles 8, 12 and 13] of Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services ('Universal Service Directive') (OJ 2002 L 108, p. 51) — Obligation to use an efficient, objective, transparent and non-discriminatory mechanism to designate undertakings entrusted with the provision of universal service — National legislation immediately excluding economic operators which are not capable of ensuring the provision of that service throughout the national territory

**Operative part of the judgment**

The Court:

1. Declares that, by transposing into national law in the way it did the provisions concerning the designation of the undertakings capable of guaranteeing the provision of universal service, the French Republic failed to fulfil its obligations under Articles 8(2), 12 and 13 and Annex IV of Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services ('Universal Service Directive').
2. Orders the French Republic to bear the costs.

(<sup>1</sup>) OJ C 211 of 8.9.2007.

**Judgment of the Court (Eighth Chamber) of 24 June 2008**  
**— Commission of the European Communities v Grand Duchy of Luxembourg**

(Case C-272/07) (<sup>1</sup>)

*(Public procurement — Directive 2004/18/EC — Coordination of procedures for the award of public works contracts, public supply contracts and public service contracts — Failure to implement within the prescribed time-limit)*

(2008/C 209/17)

Language of the case: French

**Parties**

*Applicant:* Commission of the European Communities (represented by: B. Stromsky and D. Kukovec, Agents.)

*Defendant:* Grand Duchy of Luxembourg (represented by: C. Schiltz, Agent)