Operative part of the order

1. *The appeal is dismissed.*

2. *Mr Marcuccio is ordered to pay the costs of the appeal.*

(1) OJ C 313, 6.12.2008.

Order of the Court (Eighth Chamber) of 9 March 2010 (references for a preliminary ruling from the Tribunale Amministrativo Regionale della Sicilia — Italy) — Buzzi Unicem SpA and Others

(Joined Cases C-478/08 and C-479/08) (1)

(First subparagraph of Article 104(3) of the Rules of Procedure — 'Polluter pays' principle — Directive 2004/35/EC — Environmental liability — Applicability ratione temporis — Pollution occurring before the date laid down for implementation of that directive and continuing after that date — National legislation imposing liability on a number of undertakings for the costs of remedying the damage connected with such pollution — Requirement for fault or negligence — Requirement for a causal link — Remedial measures — Duty to consult the undertakings concerned — Annex II to the directive)

(2010/C 134/16)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale della Sicilia

Parties to the main proceedings

Applicants: Buzzi Unicem SpA, ISAB Energy srl, Raffinerie Mediterranee SpA (ERG) (C-478/08), Dow Italia Divisione Commerciale Srl (C-479/08)

Defendants: Ministero dello Sviluppo Economico, Ministero della Salute, Ministero Ambiente e Tutela del Territorio e del Mare, Ministero delle Infrastrutture, Ministero dei Trasporti, Presidenza del Consiglio dei Ministri, Ministero dell'Interno, Regione Siciliana, Assessorato Regionale Territorio ed Ambiente (Sicilia), Assessorato Regionale Industria (Sicilia), Prefettura di Siracusa, Istituto Superiore di Sanità, Commissario Delegato per Emergenza Rifiuti e Tutela Acque (Sicilia), Vice Commissario Delegato per Emergenza Rifiuti e Tutela Acque (Sicilia), Agenzia Protezione Ambiente e Servizi Tecnici (APAT), Agenzia Regionale Protezione Ambiente (ARPA Sicilia), Istituto Centrale Ricerca Scientifica e Tecnologica Applicata al Mare, Subcommissario per la Bonifica dei Siti contaminati, Provincia Regionale di Siracusa, Consorzio ASI Sicilia Orientale Zona Sud, Comune di Siracusa, Comune di Augusta, Comune di Melilli, Comune di Priolo Gargallo, Azienda Unità sanitaria locale N. 8, Sviluppo Italia Aree Produttive SpA, Sviluppo Italia SpA (C-478/08), Ministero Ambiente e Tutela del Territorio e del Mare, Ministero dello Sviluppo economico, Ministero della Salute, Regione siciliana, Commissario Delegato per Emergenza Rifiuti e Tutela Acque (Sicilia) (C-479/08)

Intervening parties: ENI Divisione Exploration and Production SpA, ENI SpA, Edison SpA

Re:

Reference for a preliminary ruling — Tribunale Amministrativo Regionale della Sicilia — Interpretation of Article 174 EC and of Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage (OJ 2004 L 143, p. 56) and of the 'polluter pays' principle — National legislation which allows the public authorities to require private undertakings to implement remedial measures, irrespective of whether or not any preliminary investigation has been carried out to identify the party responsible for the pollution

Operative part of the order

1. *In a situation entailing environmental pollution such as that at issue in the main proceedings:*

— *Where the conditions for the application ratione temporis and/or ratione materiæ of Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage are not met, such a situation is governed by national law, in compliance with the rules of the Treaty, and without prejudice to other secondary legislation;*

— *Directive 2004/35 does not preclude national legislation which allows the competent authority acting within the framework of the directive to operate on the presumption, also in cases involving diffuse pollution, that there is a causal link between operators and the pollution found on account of the fact that the operators' installations are located close to the polluted area. However, in accordance with the 'polluter pays' principle, in order for such a causal link thus to be presumed, that authority must have plausible evidence capable of justifying its presumption, such as the fact that the operator's installation is located close to the pollution found and that there is a correlation between the pollutants identified and the substances used by the operator in connection with his activities;*

— *Articles 3(1), 4(5) and 11(2) of Directive 2004/35 must be interpreted as meaning that, when deciding to impose measures for remedying environmental damage on operators whose activities fall within Annex III to the directive, the competent authority is not required to establish fault, negligence or intent on the part of operators whose activities are held to be responsible for the environmental damage. On the other hand, that authority must, first, carry out a prior investigation into the origin of the pollution found, and it has a discretion as to the procedures, means to be employed and length of such an investigation. Second, the competent authority is required to establish, in accordance with national rules on evidence, a causal link between the activities of the operators at whom the remedial measures are directed and the pollution;*

— *since the operators are required to take remedial measures only because they have contributed to pollution, or to the risk of pollution, the competent authority must as a rule determine the extent to which each of those operators has contributed to the pollution which it is sought to remedy, and take into account the respective contribution of those operators when it calculates the cost of the remedial actions which it charges to them, without prejudice to Article 9 of Directive 2004/35.*

2. *Articles 7 and 11(4) of Directive 2004/35, in conjunction with Annex II to the directive, must be interpreted as:*

— *permitting the competent authority to alter substantially measures for remedying environmental damage which were chosen at the conclusion of a procedure carried out on a consultative basis with the operators concerned and which have already been implemented or begun to be put into effect. However, in order to adopt such a decision, that authority:*

— *is required to give the operators on whom such measures are imposed the opportunity to be heard, except where the urgency of the environmental situation requires immediate action on the part of the competent authority;*

— *is also required to invite, inter alia, the persons on whose land those measures are to be carried out to submit their observations and to take them into account;*

— *must take account of the criteria set out in Section 1.3.1. of Annex II to Directive 2004/35 and state in its decision the grounds on which its choice is based, and, where appropriate, the grounds which justify the fact that there was no need for a detailed examination in the light of those criteria or that it was not possible to carry out such an examination due, for example, to the urgency of the environmental situation;*

— *in circumstances such as those in the main proceedings, Directive 2004/35 does not preclude national legislation which permits the competent authority to make the exercise by operators at whom environmental recovery measures are directed of the right to use their land subject to the condition that they carry out the works required by the authority, even though that land is not affected by those measures because it has already been decontaminated or has never been polluted. However, such a measure must be justified by the objective of preventing a deterioration of the environmental situation in the area in which those measures are implemented or, pursuant to the precautionary principle, by the objective of preventing the occurrence or resurgence of further environmental damage on the land belonging to the operators which is adjacent to the whole shoreline at which those remedial measures are directed.*

([1]) OJ C 19, 24.1.2009.

Order of the Court (Fifth Chamber) of 22 January 2010 — ecoblue AG v Office for Harmonisation in the Internal Market (Trade Marks and Designs), Banco Bilbao Vizcaya Argentaria SA

(Case C-23/09 P) ([1])

(Appeal — Community trade mark — Regulation (EC) No 40/94 — Article 8(1)(b) — Earlier mark BLUE — Word sign 'Ecoblue' — Likelihood of confusion — Similarity of the signs)

(2010/C 134/17)

Language of the case: English

Parties

Appellant: ecoblue AG (represented by: C. Osterrieth, Rechtsanwalt)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: D. Botis, acting as Agent), Banco Bilbao Vizcaya Argentaria SA