

Case C-378/08

Raffinerie Mediterranee (ERG) SpA and Others

v

Ministero dello Sviluppo economico and Others

(Reference for a preliminary ruling
from the Tribunale amministrativo regionale della Sicilia)

(‘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 — Public works contracts)

Opinion of Advocate General Kokott delivered on 22 October 2009 I - 1922

Judgment of the Court (Grand Chamber), 9 March 2010 I - 1969

Summary of the Judgment

Environment — Prevention and remedying of environmental damage — Environmental liability — Directive 2004/35 — “Polluter pays” principle

(European Parliament and Council Directive 2004/35, Arts 3(1), 4(5), 11(2) and 16(1))

Where, in a situation entailing environmental pollution, the conditions for the application *ratione temporis* and/or *ratione materiae* of Directive 2004/35 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.

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.

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.

Moreover, since Article 16(1) of Directive 2004/35, in the same way as Article 176 EC, expressly states that the directive is not to prevent Member States from maintaining or adopting more stringent measures in relation to the prevention and remedying of

environmental damage, a Member State may decide, inter alia, that operators engaged in activities other than those set out in Annex III to the directive can be held strictly liable for environmental damage, that is to say, as defined in Article 2(1)(a) to (c) of the directive, not only damage to protected species and habitats but also water damage and land damage.

(see paras 44, 57, 65, 68-70, operative part)