OPINION OF ADVOCATE GENERAL KOKOTT

delivered on 23 April 2009 [1]

I — Introduction

1. In the present case it must be clarified to what extent the 'polluter pays' principle under the law on waste restricts the discretion enjoyed by the Member States when laying down rules governing how the costs of disposing of urban waste are to be allocated. Several hotels contest the waste disposal costs charged to them. They claim that those costs are not commensurate with the amount of waste they produce.

II — Legal framework

A — *The Waste Framework Directive*

2. The 'polluter pays' principle under the law on waste is laid down in Article 15 of Directive 2006/12/EC of the European Parliament and of the Council of 5 April 2006 on waste [2] ('the Waste Framework Directive'):

'In accordance with the "polluter pays" principle, the cost of disposing of waste must be borne by:

(a) the holder who has waste handled by a waste collector or by an undertaking as referred to in Article 9; and/or

(b) the previous holders or the producer of the product from which the waste came.'

1 — Original language: German.

2 — OJ 2006 L 114, p. 9.

3. That provision is identical to Article 15 of Council Directive 75/442/EEC of 15 July 1975 on waste [3] which, together with the amendments thereto, was codified by Directive 2006/12. Article 20 governs the transition from the old to the new directive:

'Directive 75/442/EEC is hereby repealed, without prejudice to Member States' obligations relating to the time-limits for transposition into national law set out in Annex III, Part B.

References made to the repealed Directive shall be construed as being made to this Directive and should be read in accordance with the correlation table in Annex IV.'

4. Annex III, Part B, sets out the time-limits for the transposition of Directive 75/442 and the directives amending it.

5. Directive 2006/12 entered into force, as laid down in Article 21, on the 20th day following its publication, that is to say on 17 May 2006.

6. Since then, Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives [4] has been adopted. It repeals the Waste Framework Directive with effect from 12 December 2010. Article 14 of Directive 2008/98 contains a similar provision on the costs of waste disposal, but which does not encompass all the previous holders of the product from which the waste came.

B — *Italian law*

7. The order for reference describes the relevant Italian legal situation essentially as follows.

8. The law which has applied up to now, namely Article 58 et seq. of Legislative Decree No 507/1993, [5] provides that the municipalities are to introduce an annual tax for the disposal service for solid urban waste. The basis for the taxation is occupation or possession of premises and open land in the

3 — OJ 1975 L 194, p. 39, last amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council of 29 September 2003 adapting to Council Decision 1999/468/EC the provisions relating to committees which assist the Commission in the exercise of its implementing powers laid down in instruments subject to the procedure referred to in Article 251 of the EC Treaty (OJ 2003 L 284, p. 1).

4 — OJ 2008 L 312, p. 3.

5 — GURI No 288, 9 December 1993, supplemento ordinario No 108, evidently amended several times subsequently.

municipal territory. The amount of the tax is proportionate to the taxable areas and to the waste productivity coefficients estimated on the basis of the use of the property.

9. These rules are to be replaced by a tariff regime the bases for which were initially laid down in Article 49 of Legislative Decree No 22/1997 [6] and are now regulated in Article 238 of Legislative Decree No 152/2006. [7] The details of the regime are laid down in Presidential Decree No 158/1999. [8] In particular, the charge under the regime consists of a fixed amount to cover the main costs of the service, which is calculated on the basis of the area of the property occupied or possessed, and a variable amount which is based on the volume of waste collected.

10. However, the application of the tariff regime has been repeatedly postponed, in particular by Article 1(184) of Law No 296/2006.

6 — GURI No 38, 15 February 1997, supplemento ordinario No 33.
7 — GURI No 88, 14 April 2006, supplemento ordinario No 96.
8 — GURI No 129, 4 June 1999, supplemento ordinario No 107.

III — Facts and reference for a preliminary ruling

11. In the main proceedings, various hotels in the municipality of Casoria, Naples, contest the assessment of the tax which they must pay for the disposal of waste. In 2006 the tax was eight times higher, and in 2007 nine times higher, than the tax for comparable private residential property.

12. The applicants complain that the tax set for hotels is disproportionately high compared with the tax on residential property and is calculated according to revenue-earning capacity rather than waste-producing capacity, without taking into consideration room occupancy rates, the presence or absence of restaurant services, the seasonal nature of the business or the areas used for services and not occupied.

13. The Tribunale amministrativo regionale della Campania (Regional Administrative Court of Campania) therefore referred the following question to the Court of Justice for a preliminary ruling:

'Are the national provisions contained in Article 58 et seq. of Legislative Decree No [507/1993] and the transitional provisions maintaining them in force, by virtue of Article 11 of Presidential Decree

No [158/1999], as subsequently amended, and Article 1(184) of Law No [296/2006], so ensuring the continuation of a system, fiscal in nature, designed to cover the costs of the waste disposal service and postponing the introduction of a tariff regime in which the cost of the service is borne by the persons producing and delivering the waste, compatible with the abovementioned Article 15 of the [Waste Framework Directive] and the "polluter pays" principle referred to?'

14. The Municipality of Casoria, the Italian Republic and the Commission of the European Communities submitted written observations. There was no oral procedure.

IV — Legal assessment

A — *Admissibility and interpretation of the reference*

15. As the Municipality of Casoria and the Italian Government rightly point out, within the framework of proceedings under Article 234 of the Treaty, the Court does not have jurisdiction to give a ruling on the compatibility of a national measure with Community law. However, it does have jurisdiction to supply the national court with a ruling on the interpretation of Community law so as to enable that court to determine whether such compatibility exists with a view to deciding the case before it. [9]

16. The reference for a preliminary ruling at first sight raises the question whether the 'polluter pays' principle precludes the collection of waste disposal costs in the form of a tax. The court asks whether a system which is fiscal in nature (*sistema di carattere fiscale*) must be replaced by a tariff regime (*sistema tariffario*).

17. It is not necessary, however, to clarify how Italian law defines those systems in detail. Rather, the main proceedings essentially raise the question to what extent a waste producer may demand that the payments required from him for waste disposal correspond to the waste collected from him and not to his undertaking's economic revenue-earning capacity.

18. This is also the difference between the two cost regimes which is relevant here: the new Italian waste tariff regime, which in the

9 — See, for example, Case C-134/95 *USSL No 47 di Biella* [1997] ECR I-195, paragraph 17; Joined Cases C-37/96 and C-38/96 *Sodiprem and Others* [1998] ECR I-2039, paragraph 22; Case C-9/99 *Échirolles Distribution* [2000] ECR I-8207, paragraphs 15 and 16; Case C-60/05 *WWF Italia and Others* [2006] ECR I-5083, paragraph 18; and Case C-439/06 *citiworks* [2008] ECR I-3913, paragraph 21.

main proceedings has not yet been applied, assesses the amount of the payment more explicitly on the basis of the waste collected than the rules on waste tax which are applicable.

19. The reference for a preliminary ruling must therefore be construed as seeking to ascertain whether Article 15 of the Waste Framework Directive precludes legislation under which payments for waste disposal are assessed on the basis of the area used and the economic revenue-earning capacity of the waste producer, and not according to the waste actually produced.

20. As the meaning of the question referred is therefore sufficiently clear, the reference is likewise not inadmissible on the ground that it is inadequately reasoned, contrary to the view taken by Italy. [10]

10 — See Case C-295/05 *Asemfo* [2007] ECR I-2999, paragraph 32 et seq.; Case C-467/05 *Dell'Orto* [2007] ECR I-5557, paragraph 41 et seq.; and Case C-345/06 *Heinrich* [2009] ECR I-1659, paragraph 30 et seq.

B — *Temporal applicability of the Waste Framework Directive*

21. The Municipality of Casoria takes the view that the Waste Framework Directive is not applicable to the cases in the main proceedings, which concern the years 2006 and 2007. It argues that the time-limit for transposition ran until 2008.

22. However, there is no time-limit for the transposition of the Waste Framework Directive: under the first paragraph of Article 20 of the Waste Framework Directive, Directive 75/442 is repealed and the second paragraph makes it clear that the provisions of Directive 2006/12 apply instead in accordance with the correlation table in Annex IV.

23. This did not alter the legal situation, however. Rather, it is merely an editorial clarification of the provisions which are globally applicable. [11] The new Waste Framework Directive thus formally replaces the previously valid provisions upon its entry into force and is therefore applicable.

11 — See the first recital in the preamble to the Waste Framework Directive.

24. It is not necessary to determine here whether the question of the applicable rules would be assessed differently if there had objectively been an amendment of the replaced directive. The 'polluter pays' principle under the law on waste, which is at issue, was not substantively affected in any event.

C — *Article 15 of the Waste Framework Directive*

25. Article 15 of the Waste Framework Directive lays down rules governing responsibility for the costs of disposing of waste. Under Article 15(a) it is, in accordance with the 'polluter pays' principle, the responsibility of the holder who has waste handled by a waste collector or by a disposal undertaking. In addition, Article 15(b) specifies the previous holders or the producer of the product from which the waste came.

26. In accordance with Article 249 EC, while the Member States have the choice of form and methods, they are bound as to the result to be achieved by the directive, in particular in terms of the allocation of the cost of disposing of waste. They are therefore obliged, according to the judgment in *Commune de Mesquer*, to ensure that their national law allows that cost to be allocated either to the previous holders or to the producer of the product from which the waste came. [12]

27. Article 15 of the Waste Framework Directive therefore, first of all, allows a certain margin of discretion when it is being determined who is to bear the costs of disposing of waste. The group of those who may be liable to pay the costs is limited by the wording of the provision, but not laid down definitively. Secondly, there is a margin of discretion in the choice of form and methods of transposition.

28. In the present case, the only possibility is the waste holder who has waste handled by a waste collector or a disposal undertaking. It is of no apparent relevance in the present context to what extent, for example, the producer of products which become waste may also be required to pay the costs. [13]

29. It is uncertain, however, whether the guiding principle of Article 15 of the Waste Framework Directive, the 'polluter pays' principle, permits the payments for waste disposal to be calculated on the basis of the area used and the economic revenue-earning capacity of the waste producer, and not according to the waste actually produced.

12 — Case C-188/07 [2008] ECR I-4501, paragraph 80.
13 — See my Opinion in *Commune de Mesquer* (cited in footnote 12), point 122 et seq.

1. The essence of the 'polluter pays' principle

30. Under Article 174(2) EC, the 'polluter pays' principle is one of the principles of Community policy on the environment. According to that principle, the person who has caused pollution must bear the costs of eliminating it.

31. The 'polluter pays' principle is important in terms of environmental protection above all because it gives polluters an incentive to avoid polluting the environment. [14] Where, as in Article 15 of the Waste Framework Directive, it is implemented not as a prohibition on behaviour which pollutes the environment, but in the form of a cost regime, the polluter is able to decide whether he will cease or reduce the pollution or whether instead he will bear the cost of removing it. [15]

32. The 'polluter pays' principle also has the aim of fair allocation of the costs of environmental pollution. The costs are not imposed on others, in particular the public, or simply ignored, but assigned to the person who is responsible for the pollution. [16] The Court has therefore regarded the 'polluter pays' principle as a reflection of the principle of proportionality. [17] It would be inappropriate to impose the costs of disposing of waste on someone who has not produced the waste.

33. As a cost allocation principle, the 'polluter pays' principle is also a specific expression of the principle of equal treatment or non-discrimination. That principle requires that comparable situations must not be treated differently and that different situations must not be treated in the same way unless such treatment is objectively justified. [18] Under the 'polluter pays' principle, the relevant criterion for comparability and any justification of payment obligations in respect of disposal of waste is a causal contribution. Thus construed, that principle also ensures fair competition if it is applied consistently and uniformly to undertakings. [19]

14 — See point 1 of the annex to Council Recommendation 75/436/Euratom, ECSC, EEC of 3 March 1975 regarding cost allocation and action by public authorities on environmental matters (OJ 175 L 194, p. 1).

15 — See point 4(b) of the annex to Recommendation 75/436 (cited in footnote 14).

16 — Opinion of Advocate General Jacobs in Case C-126/01 *GEMO* [2003] ECR I-13769, point 60. See also point 2 of the annex to Recommendation 75/436 (cited in footnote 14).

17 — Case C-293/97 *Standley and Others* [1999] ECR I-2603, paragraph 52.

18 — Case C-292/97 *Karlsson and Others* [2000] ECR I-2737, paragraph 39; Case C-344/04 *IATA and ELFAA* [2006] ECR I-403, paragraph 95; Case C-300/04 *Eman and Sevinger* [2006] ECR I-8055, paragraph 57; and Case C-227/04 P *Lindorfer* v *Council* [2007] ECR I-6767, paragraph 63.

19 — Case C-444/00 *Mayer Parry Recycling* [2003] ECR I-6163, paragraph 79. See also point 1 of the annex to Recommendation 75/436 (cited in footnote 14).

34. The Court therefore considers, on the one hand, that it would be incompatible with the 'polluter pays' principle if the persons who have contributed to the creation of waste could escape their financial obligations as provided for in the Waste Framework Directive, [20] whilst, on the other, burdens should not be imposed on anyone for the elimination of pollution to which he has not contributed. [21] The Court originally made this last finding with reference to water pollution, but it may be applied to the disposal of waste.

35. I have inferred from this that a person cannot bear the cost of disposing of waste which comes from others. [22] Those other waste producers would then be released from their obligations under the 'polluter pays' principle.

36. In the light of the foregoing, the 'polluter pays' principle might thus be construed as a precise system of cost allocation, similar, for example, to the criterion of causality in the law on non-contractual liability. [23]

20 — *Commune de Mesquer* (cited in footnote 12), paragraph 72.
21 — *Standley and Others* (cited in footnote 17), paragraph 51.
22 — See my Opinion in *Commune de Mesquer* (cited in footnote 12), point 120.
23 — That was the situation underlying the judgments in Case C-1/03 *Van de Walle and Others* [2004] ECR I-7613, paragraph 54 et seq., and *Commune de Mesquer* (cited in footnote 12), paragraph 69 et seq. Those cases concerned the imposition of the costs of pollution-related accidents on certain polluters.

2. The cost regime for the disposal of urban waste

37. At first sight, the 'polluter pays' principle would appear to preclude the contested regime governing the cost of waste disposal because the amount of the tax does not necessarily correspond to the expenditure on collecting and disposing of the waste produced by the person liable for payment. In order to operate a cost regime for the disposal of urban waste which reflects the quantity of waste precisely, the waste collected and the costs incurred would have to be recorded and allocated to the waste producer. The incentive to avoid waste would be relatively strong because any reduction in the quantity of waste would cut costs.

38. However, it is questionable whether the model of precise cost accounting must be applied to the disposal of urban waste.

39. Urban waste is a predictable consequence of our present lifestyle. It is mainly produced by a large number of end consumers and fairly small undertakings. The cost arising in each individual case is typically limited. Urban waste disposal therefore has the nature of a 'mass business'. This alone could justify not applying precise cost accounting, but allocating costs by means of a global regime.

40. In addition, greater expenditure is incurred through precise accounting. Obviously the expenditure on the allocation of costs is relatively low if, for example, only rubbish bags are collected on the roadside and each resident pays a standard charge for that service. More precise monitoring of the quantity of waste would in all likelihood require additional investment and give rise to higher operating costs.

41. Slightly more expensive systems are based broadly on volumes of waste, for example providing special rubbish bags or standardised rubbish bins for a charge. Even more refined systems weigh the waste produced on collection and take this into account in calculating charges.

42. Account might even be taken of the composition of the waste. However, this would further increase expenditure, for example as a result of special measuring instruments or a visual inspection of the waste. In particular, the intensive study of the composition of household waste would also encroach on the privacy of the waste producer, since waste allows inferences to be drawn as regards personal lifestyle.

43. Additional difficulties in precisely allocating the cost of waste disposal arise in the case of buildings or complexes with a number of households. Whilst individual family houses have the waste from just one household taken for public collection, waste from flats is typically collected together. Individual accounting for the quantity of waste would require further property management measures.

44. As the Commission rightly argues, it must also be borne in mind in this connection that a strong incentive to reduce the amount of waste collected may also lead to illegal disposal. Waste producers could be tempted to dispose of their waste as freeloaders using the collection systems of others (for example their neighbours' rubbish bins or public waste containers) or, in the worst case, through fly tipping. [24]

45. Lastly, it must be taken into consideration that the disposal of urban waste requires the provision of a collection and waste disposal scheme.

24 — This risk does not exist in the same form in the case of pollution-related accidents, such as those in *Van de Walle and Others* (cited in footnote 23) and *Commune de Mesquer* (cited in footnote 12).

46. Even if the waste producers exceptionally recover waste themselves, for example by composting, they essentially have neither an interest in disposing of all their waste properly themselves nor the capacity to do so. In many agglomerations, furthermore, household waste is generated in large volumes. There would be a risk of considerable environmental problems if it were not collected regularly and recovered or disposed of quickly and appropriately.

47. Article 5 of the Waste Framework Directive therefore requires the Member States to establish (and maintain) an integrated and adequate network of disposal installations, taking account of the best available technology not involving excessive costs. Such a network is adequate if it offers sufficient capacity to accommodate the expected volumes of waste.

48. This also entails the need to set up a waste collection system. The Waste Framework Directive does not expressly require such a scheme to be set up, but, as a rule, it is probably necessary in practice.

49. The cost of establishing and maintaining waste disposal installations and collection systems does not depend directly on the volumes of waste that actually arise. In particular, if the quantity of waste falls sharply, but the installations already established must continue to be financed, the cost may even, to a large extent, be decoupled from the quantity of waste.

50. Such a system is also advantageous to individuals who produce only little or even no waste which must be disposed of. They can be sure that they will be able to use the system for any waste which they do exceptionally generate. Such an option may in itself perhaps justify some contribution to costs. Cost regimes based on quantities of waste actually produced often therefore provide for a standing charge as payment for access to the waste disposal scheme. Similar financing models are also used for other network services, although there too tariffs without standing charges are not ruled out.

51. In summary, it must therefore be stated that there may perfectly well be reasons not to base the cost regime for the disposal of urban waste on precise accounting of the costs generated by the individual waste producer.

3. Flexibility in the application of the 'polluter pays' principle

52. However, it must be asked whether the 'polluter pays' principle applicable under Article 15 of the Waste Framework Directive allows those reasons to be taken into consideration.

53. The Court has signalled that there is some flexibility in the implementation of the 'polluter pays' principle. It has linked the obligation to bear costs partially not to causation, but to the fact that the polluter has *contributed* to the creation of waste or pollution. [25]

54. It is consistent with this not to require precise cost accounting, but to take as a basis membership of a group which is collectively responsible for the environmental pollution. This is clearly in keeping with the 'polluter pays' principle if it has been established that all members of the group contributed to the pollution, but the respective individual contributions and the costs to be apportioned thereto cannot be clearly determined. In the same way it can be an expression of collective responsibility jointly to cover a risk affecting all the members of the group, as the Court has recognised, for example, in the case of oil spills at sea. [26]

55. In my view, the legal basis for a more flexible implementation of the 'polluter pays' principle lies in the principle of proportionality. That principle is one of the general principles of Community law [27] which the Member States must observe in implementing and applying Community law. [28]

56. Under the principle of proportionality, a measure may not exceed the limits of what is appropriate and necessary in order to attain

25 — *Standley and Others* (cited in footnote 17) and *Commune de Mesquer* (cited in footnote 12).

26 — *Commune de Mesquer* (cited in footnote 12), paragraph 81.

27 — Case 25/70 *Köster, Berodt & Co.* [1970] ECR 1161, paragraphs 21 and 22; Case 137/85 *Maizena and Others* [1987] ECR 4587, paragraph 15; Case C-331/88 *Fedesa and Others* [1990] ECR I-4023, paragraph 13; Case C-310/04 *Spain* v *Council* [2006] ECR I-7285, paragraph 97; and Joined Cases C-37/06 and C-58/06 *Viamex Agrar Handel* [2008] ECR I-69, paragraph 33.

28 — Case C-2/92 *Bostock* [1994] ECR I-955, paragraph 16; Case C-107/97 *Rombi and Arkopharma* [2000] ECR I-3367, paragraph 65; Case C-101/01 *Lindqvist* [2003] ECR I-12971, paragraph 87; Case C-540/03 *Parliament* v *Council* [2006] ECR I-5769, paragraph 105; and Case C-305/05 *Ordre des barreaux francophones et germanophone and Others* [2007] ECR I-5305, paragraph 28. With regard to the need for domestic rules implementing or supplementing the Sixth VAT Directive to comply with the principle of proportionality, see inter alia Joined Cases C-286/94, C-340/95, C-401/95 and C-47/96 *Molenheide and Others* [1997] ECR I-7281, paragraph 48, and C-25/07 *Sosnowska* [2008] ECR I-5129, paragraph 23.

the objectives legitimately pursued by it; when there is a choice between several appropriate measures recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued. [29]

57. In implementing the 'polluter pays' principle, the Member States must in particular assess the advantages and disadvantages of the different regulatory options. In this connection, they can and must take account of the abovementioned considerations. The outcome of that assessment depends largely on local circumstances, such as geographical conditions, the type of settlement, the state of development of the existing waste collection and disposal system or the assessment of the risk of illegal waste disposal. It will also be important whether a more precise calculation of the individual costs can in practice be expected to lead to sufficiently appreciable differences in the cost burden or whether the individual waste producers have to pay just as much as before, despite expensive waste monitoring, or even more, on account of higher monitoring costs.

58. The assessment therefore calls for complex decisions based on prognoses. In this regard, in principle the Member States enjoy a wide margin of assessment and action (discretion). [30] However, Italy and the Municipality of Casoria are incorrect in their view that Article 15 of the Waste Framework Directive is too imprecise for individuals to be able to rely on an infringement of that provision. The broad discretion enjoyed by the Member States admittedly means that such an infringement is unlikely, but, if the competent authorities exceed the discretion available to them, individuals may rely on that infringement of Community law.

59. The substantive test for finding an infringement is whether the competent authorities manifestly fail to comply with the requirements of the 'polluter pays' principle. A complex assessment can be called into question as a rule only if no reasonable basis is evident. [31] However, since the implementation of the 'polluter pays' principle is at issue, not any reasonable consideration is sufficient, but the relevant factor is whether there is a reasonable link to the causal contribution of the waste producer.

29 — See, to this effect, *Köster, Berodt & Co.*, paragraphs 28 and 32, *Fedesa and Others*, paragraph 13, and *Viamex Agrar Handel*, paragraph 35 (all cited in footnote 27); Case 265/87 *Schräder HS Kraftfutter* [1989] ECR 2237, paragraph 21; and Case C-189/01 *Jippes and Others* [2001] ECR I-5689, paragraph 81.

30 — See to this effect, for example, Case C-77/02 *Steinicke* [2003] ECR I-9027, paragraph 61, and Case C-144/04 *Mangold* [2005] ECR I-9981, paragraph 63, both concerning objectives pursued in the field of employment, and my Opinion in *Commune de Mesquer* (cited in footnote 12), point 125.

31 — With regard to complex assessments by the Community legislature, see my Opinion of 10 March 2009 in Case C-558/07 *S.P.C.M. and Others* which is pending before the Court, point 77, with further references.

60. The contested Italian cost regime must be assessed on that basis.

4. Use of an area as an allocation factor

61. Under the applicable Italian law, the amount of the contribution to costs is based first on the size of the premises and open land used and secondly on a waste productivity coefficient estimated according to the use of the property.

62. Neither factor gives any obvious cause for objection per se. The size of the area used and the type of use in principle allow plausible assumptions to be made as to the expected waste volumes, in particular if corresponding empirical values are available.

63. While the factors lead to a standardised cost regime which does not take account of the actual quantity of waste, the competent national authorities may nevertheless conclude, after assessing the advantages and disadvantages of a more precise allocation of costs, that this system is preferable.

5. Consideration of revenue-earning capacity

64. However, it is still not clear that there can be no objection to the contribution made to costs by the applicant hotels. The contribution is based crucially on the coefficient estimated according to the use of the property. In 2006 this was eight times higher, and in 2007 nine times higher, than the coefficient for private residential property. With regard to the basis for this estimate, the referring court merely stated that the applicant hotels claimed in the national proceedings that it was based not on their waste-producing capacity, but on their revenue-earning capacity.

65. The revenue-earning capacity of a waste producer has no direct connection with the amount of waste he produces. It cannot be ruled out that high-revenue undertakings produce particularly large amounts of waste, but the same applies to the contrary assumption. High revenue may be based specifically on resource-saving behaviour.

66. Revenue-earning capacity cannot as a social factor justify higher contributions either. The aim of the 'polluter pays' principle

is that all social strata tailor their behaviour so as to harm the environment as little as possible. It would therefore be incompatible with that principle to exempt certain groups from paying the costs connected with the environmental pollution they cause on the basis of greater need or less ability to pay. However, that does not preclude such costs from being taken into consideration in the assessment of any social support measures, in particular to the extent that environmental pollution is an unavoidable part of life. This would safeguard the incentive function of the 'polluter pays' principle.

67. Revenue-earning capacity is therefore a manifestly unsuitable criterion for the implementation of the 'polluter pays' principle.

6. Other criteria put forward

68. In the main proceedings, the applicant hotels have claimed that consideration must also be given to room occupancy rates, the presence or absence of restaurant services, the seasonal nature of the business and the impact of areas used for services and not occupied.

69. These criteria may allow inferences to be drawn as regards the expected quantity of waste and would not therefore be manifestly unsuitable for implementing the 'polluter pays' principle. However, it would also not be manifestly wrong to refrain from applying these criteria. They do not therefore necessarily have to be taken into consideration in assessing contributions to costs.

V — Conclusion

70. I therefore suggest that the question referred for a preliminary ruling be answered as follows:

The 'polluter pays' principle laid down in Article 15 of Directive 2006/12/EC on waste is to be interpreted as precluding domestic rules which impose on individuals costs for the disposal of waste which are manifestly inappropriate because those individuals do not have any reasonable link with the causing of waste.