



Reports of Cases

Case C-358/11

Lapin elinkeino-, liikenne- ja ympäristökeskuksen liikenne ja infrastruktuuri -vastuualue
v
Lapin luonnonsuojelupiiri ry

(Request for a preliminary ruling from the Korkein hallinto-oikeus)

(Environment — Waste — Hazardous waste — Directive 2008/98/EC — Old telecommunications poles treated with CCA (copper-chromium-arsenic) solutions — Registration, evaluation and authorisation of chemicals — Regulation (EC) No 1907/2006 (REACH Regulation) — List of uses for treated wood in Annex XVII to the REACH Regulation — Old telecommunications poles used as underlay for duckboards)

Summary — Judgment of the Court (Second Chamber), 7 March 2013

1. *Approximation of laws — Registration, evaluation, authorisation and restriction of chemicals — REACH Regulation — Objectives*

(European Parliament and Council Regulation 1907/2006, Art.1(1))

2. *Approximation of laws — Registration, evaluation, authorisation and restriction of chemicals — REACH Regulation — Annex XVII — Restriction applicable to a substance such as that relating to arsenic compounds — Manufacture, placing on the market and use of a substance — Harmonisation by the European Union legislature of related requirements*

(European Parliament and Council Regulation No 1907/2006, as amended by Regulation No 552/2009, Arts 67 and 128, and Annex XVII)

3. *Approximation of laws — Registration, evaluation, authorisation and restriction of chemicals — REACH Regulation — Annex XVII — List setting out the applications for which, by way of derogation, wood treated with a 'CCA' solution may be used — Manufacture, placing on the market and use of a substance — Exhaustive nature of the list — Included among those applications, the use of telecommunications poles as an underlay for duckboards — Verification by the national court*

(European Parliament and Council Regulation No 1907/2006, as amended by Regulation No 552/2009, Annex XVII, para. 19(4)(b))

4. *Approximation of laws — Registration, evaluation, authorisation and restriction of chemicals — REACH Regulation — Annex XVII — Prohibition on use of wood treated with CCA solution in any application where there is a risk of repeating skin contact — Likelihood of repeated skin contact with wood inferred from the specific conditions of normal use — Verification by the national court*

(European Parliament and Council Regulation No 1907/2006, as amended by Regulation No 552/2009, Annex XVII, para. 19(4)(d))

5. *Environment — Waste — Directive 2008/98 — Concept — Criteria for assessment*

(European Parliament and Council Directive 2008/98, Art. 3, para. 1)

6. *Environment — Waste — Directive 2008/98 — Concept — Criteria for assessment — Relevance of Annex XVII to the REACH Regulation*

(European Parliament and Council Regulation No 1907/2006, as amended by Regulation No 552/2009, Annex XVII; European Parliament and Council Directive 2008/98 Art. 3(1))

1. See the text of the decision.

(see paras 31, 48, 62)

2. Articles 67 and 128 of Regulation No 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), in the version resulting from Regulation No 552/2009, must be interpreted as meaning that, European law harmonises the requirements relating to the manufacture, placing on the market or use of a substance such as that relating to arsenic compounds which is subject to a restriction under Annex XVII to that regulation.

Free movement in the internal market is ensured by the fact that, pursuant to Article 128(1) of the REACH Regulation, the Member States are under an obligation not to prohibit, restrict or impede the use of a substance on its own, in a mixture or in an article which complies with the regulation and, where appropriate, with Community acts adopted in implementation thereof. However, according to Article 128(2), no provision of the REACH Regulation prevents the Member States from maintaining or laying down national rules to protect workers, human health and the environment and applying in cases where that regulation does not harmonise the requirements on manufacture, placing on the market or use.

The European Union legislature therefore intended to harmonise those requirements in certain cases, among which are those in Article 67(1) of the REACH Regulation. According to the latter provision, a substance, on its own, in a mixture or in an article to which a restriction applies pursuant to Annex XVII must not be manufactured, placed on the market or used if it does not comply with the conditions laid down in that restriction.

It follows that the manufacture, placing on the market or use of a substance referred to in Article 67(1) of the REACH Regulation cannot be subject to conditions other than those laid down by that regulation and which, as is clear from the provisions of Articles 68(1) and 69 thereof, meet the need for action on a Community-wide basis.

(see paras 32-35, 38, operative part 3)

3. Annex XVII, point 19(4)(b), to Regulation No 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), in the version resulting from Regulation No 552/2009, which lists the applications for which, by way of derogation, wood treated with a 'CCA'

(copper-chromium-arsenic) solution may be used, must be interpreted as meaning that the list in that provision is exhaustive in character and that, therefore, that derogation cannot be applied to cases other than those referred to therein. It is for the referring court to determine whether the use of the telecommunications poles concerned as an underlay for duckboards does in fact come within the scope of the applications listed in that provision.

(see para. 45, operative part 4)

4. The provisions of Annex XVII, point 19(4)(d), second indent, to Regulation No 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), in the version resulting from Regulation No 552/2009, according to which wood treated with a 'CCA' (copper-chromium-arsenic) solution must not be used in any application where there is a risk of repeated skin contact, must be interpreted as meaning that the prohibition at issue must apply in any situation which, in all likelihood, will involve repeated skin contact with the treated wood, such likelihood having to be inferred from the specific conditions of normal use of the application to which that wood has been put, this being a matter for the referring court to ascertain.

(see para. 52, operative part 5)

5. EU law does not, as a matter of principle, exclude the possibility that waste regarded as hazardous may cease to be waste within the meaning of Directive 2008/98 on waste and repealing certain Directives if a recovery operation enables it to be made usable without endangering human health and without harming the environment and, also, if it is not found that the holder of the object at issue discards it or intends or is required to discard it within the meaning of Article 3(1) of that directive, this being a matter for the referring court to ascertain.

(see para. 60, operative part 1)

6. Regulation No 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), in the version resulting from Regulation No 552/2009, in particular Annex XVII thereto, in so far as it authorises the use, subject to certain conditions, of wood treated with a 'CCA' (copper-chromium-arsenic) solution, must be interpreted as meaning that it is relevant for the purpose of determining whether such wood may cease to be waste because, if those conditions were fulfilled, its holder would not be required to discard it within the meaning of Article 3(1) of Directive 2008/98 on waste and repealing certain directives.

(see para. 64, operative part 2)