



Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

28 March 2019*

(Reference for a preliminary ruling — Environment — Waste — Directive 2008/98/EC — Re-use and recovery of waste — Specific end-of-waste criteria for sewage sludge which has undergone recovery treatment — No defined criteria at European Union or national level)

In Case C-60/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tallinna Ringkonnakohus (Court of Appeal, Tallinn, Estonia), made by decision of 22 January 2018, received at the Court on 31 January 2018, in the proceedings

Tallinna Vesi AS

v

Keskkonnaamet,

intervener:

Keskkonnaministeerium,

THE COURT (Second Chamber),

composed of A. Arabadjiev (Rapporteur), President of the Chamber, T. von Danwitz, E. Levits, C. Vajda and P.G. Xuereb, Judges,

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Tallinna Vesi AS, by T. Pikamäe, vandeadvokaat,
- the Estonian Government, by N. Grünberg, acting as Agent,
- the Italian Government, by G. Palmieri, acting as Agent, and by G. Palatiello, avvocato dello Stato,
- the Netherlands Government, by M.K. Bulterman and M.A.M. de Ree, acting as Agents,

* Language of the case: Estonian.

- the Austrian Government, by G. Hesse, acting as Agent,
- the European Commission by E. Sanfrutos Cano, E. Kružíková and F. Thiran, acting as Agents, and by L. Naaber-Kivisoo, vandeadvokaat,

after hearing the Opinion of the Advocate General at the sitting on 29 November 2018,

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 6(4) of Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (OJ 2008 L 312, p. 3).
- 2 The request has been made in the proceedings between Tallinna Vesi AS and Keskkonnaamet (Environmental Board, Estonia), concerning the adoption of two notices by the latter which were issued to Tallinna Vesi in relation to the recovery of waste and which refused to recognise end-of-waste status for sewage sludge that had undergone recovery treatment.

Legal context

EU law

- 3 Recital 1 of Directive 2008/98 states:

‘Directive 2006/12/EC of the European Parliament and of the Council of 5 April 2006 on waste [(OJ 2006 L 114, p. 9)] establishes the legislative framework for the handling of waste in the Community. It defines key concepts such as waste, recovery and disposal and puts in place the essential requirements for the management of waste, notably an obligation for an establishment or undertaking carrying out waste management operations to have a permit or to be registered and an obligation for the Member States to draw up waste management plans. It also establishes major principles such as an obligation to handle waste in a way that does not have a negative impact on the environment or human health, an encouragement to apply the waste hierarchy and, in accordance with the polluter-pays principle, a requirement that the costs of disposing of waste must be borne by the holder of waste, by previous holders or by the producers of the product from which the waste came.’

- 4 Recitals 28 and 29 of Directive 2008/98 state:

‘(28) This Directive should help move the EU closer to a “recycling society”, seeking to avoid waste generation and to use waste as a resource. ...

(29) Member States should support the use of recyclates ... in line with the waste hierarchy and with the aim of a recycling society, and should not support the landfilling or incineration of such recyclates whenever possible.’

- 5 Recital 30 of that directive provides:

‘In order to implement the precautionary principle and the principle of preventive action enshrined in Article [191] (2) [TFEU], it is necessary to set general environmental objectives for the management of waste within the Community. By virtue of those principles, it is for the Community and the Member

States to establish a framework to prevent, reduce and, in so far as is possible, eliminate from the outset the sources of pollution or nuisance by adopting measures whereby recognised risks are eliminated.’

6 Under Article 3(1) of Directive 2008/98

‘For the purposes of this Directive, the following definitions shall apply:

(1) “waste” means any substance or object which the holder discards or intends or is required to discard’.

7 Article 4(1) of that directive, headed ‘Waste hierarchy’, is worded as follows:

‘1. The following waste hierarchy shall apply as a priority order in waste prevention and management legislation and policy:

- (a) prevention;
- (b) preparing for re-use;
- (c) recycling;
- (d) other recovery, e.g. energy recovery; and
- (e) disposal.’

8 Under Article 6 of Directive 2008/98, headed ‘End-of-waste status’:

‘1. Certain specified waste shall cease to be waste within the meaning of point (1) of Article 3 when it has undergone a recovery, including recycling, operation and complies with specific criteria to be developed in accordance with the following conditions:

- (a) the substance or object is commonly used for specific purposes;
- (b) a market or demand exists for such a substance or object;
- (c) the substance or object fulfils the technical requirements for the specific purposes and meets the existing legislation and standards applicable to products; and
- (d) the use of the substance or object will not lead to overall adverse environmental or human health impacts.

The criteria shall include limit values for pollutants where necessary and shall take into account any possible adverse environmental effects of the substance or object.

2. The measures designed to amend non-essential elements of this Directive by supplementing it relating to the adoption of the criteria set out in paragraph 1 and specifying the type of waste to which such criteria shall apply shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 39(2). End-of-waste specific criteria should be considered, among others, at least for aggregates, paper, glass, metal, tyres and textiles.

...

4. Where criteria have not been set at Community level under the procedure set out in paragraphs 1 and 2, Member States may decide case by case whether certain waste has ceased to be waste taking into account the applicable case-law. They shall notify the Commission of such decisions in accordance with Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services [(OJ 1998 L 204, p. 37)], as amended by Directive 98/48/EC of the European Parliament and of the Council of 20 July 1998 (OJ 1998 L 217, p. 18) where so required by that Directive.

...'

Estonian law

- 9 On 28 January 2004, the Riigikogu (Parliament) of the Republic of Estonia adopted the jäätmeseadus (Waste Law). Articles 2 and 2¹ of the Waste Law, in force from 18 July 2014 to 31 December 2015, were worded as follows:

'Article 2 — Waste

(1) Waste is any movable property or registered vessel which the holder discards or intends or is required to discard.

(2) "To discard" is to render the movable property unusable, to abandon its use or to leave it unused, where the use of that property is not possible from a technical point of view or does not seem reasonable in the light of the economic or environmental circumstances.

...

(4) The Government shall establish the list of waste, including hazardous waste, which fulfil the conditions laid down in paragraph 1 of this article ... through regulatory means.

Article 2¹ — End-of-waste status

(1) Waste shall cease to be waste when it has undergone a recovery or recycling operation and complies with criteria developed on the basis of Article 6(2) of Directive 2008/98 ... in accordance with the following conditions:

- (1) the substance or object is commonly used for specific purposes;
- (2) a market or demand exists for such a substance or object;
- (3) the substance or object fulfils the technical requirements, legislation and standards applicable to products for the specific purposes;
- (4) the use of the substance or object will not lead to overall adverse environmental or human health impacts.

(2) Where criteria within the meaning of paragraph 1 of this Article have not been set in accordance with Article 6(2) of Directive 2008/98/EC, the Minister responsible for this sector may, having regard to the conditions listed in points 1 to 4 of paragraph 1 of this Article, issue a regulation setting end-of-waste criteria for certain types of waste.

(3) The criteria must include any limit values required for hazardous substances, if necessary, and must take account of the potential negative impacts that this substance or object may have on the environment or on human health.

(4) The recovery operation following which the waste acquires end-of-waste status must be specified in the waste permit or integrated environmental permit granted under the *tööstusheite seadus* (Industrial Emissions Law) to the undertaking that performed the recovery operation.'

The dispute in the main proceedings and the questions referred for a preliminary ruling

- 10 Tallinna Vesi operates a municipal sewage mains system for the city of Tallinn (Estonia) and the surrounding area and an activated sludge plant for the treatment of waste water. According to the request for a preliminary ruling, the sewage sludge from the treatment process was transferred to tanks for anaerobic digestion (methanisation). After a process of anaerobic digestion of 15 days, such sludge was dried using centrifugal (filter) presses and was transferred to the composting area for aerobic digestion.
- 11 Tallinna Vesi wished to market the sewage sludge resulting from its treatment of municipal waste water as greening soil. It considered that that process corresponded to biological recycling (operation code R3o) and requested the necessary waste permit.
- 12 In accordance with national law, biological recycling is a waste recovery operation where waste is treated and ceases to be waste, if the technical requirements for the specific purposes are fulfilled and if legislation and the applicable product standards are met, as referred to in Article 2¹(1)(3) of the Waste Law.
- 13 The Republic of Estonia has transposed Article 6 of Directive 2008/98 by providing in Article 2¹ of the Waste Law that end-of-waste status can be determined only on the basis of an EU act or a regulation of the Minister for the Environment laying down the criteria in question. In particular, in accordance with paragraph 2 of that article, the recognition of end-of-waste status for sewage sludge treated by an operator such as Tallinna Vesi presupposes that the Minister for the Environment has previously issued a regulation in relation to the type of waste at issue, setting out the criteria on the basis of which the Environmental Board can assess whether treated sewage sludge has ceased to be waste. The Environmental Board therefore cannot, under Estonian law, rely solely on the principles set out in Article 2¹(1) of the Waste Law to decide whether, in the present case, the fact that the sewage sludge has undergone the processes of stabilisation and disinfection, performed by Tallinna Vesi, means that it has ceased to be waste and can be transformed into products.
- 14 At the time when the permits in question in the main proceedings were issued, neither EU law nor Estonian law laid down such criteria. Consequently, the Environmental Board did not grant the R3o operation code for the recovery operation of sewage sludge from municipal waste water on the ground that the condition laid down in Article 2¹(1)(3) of the Waste Law was not fulfilled. The waste treatment operations carried out by Tallinna Vesi were thus classified — by two notices adopted by the Environmental Board — as 'biological treatment prior to recovery of waste (operation code R12o)'.
- 15 On 1 December 2014 and 20 July 2015, Tallinna Vesi brought actions before the Tallinna Halduskohus (Tallinn Administrative Court, Estonia) for the partial annulment of those two notices and an order requiring the Environmental Board to amend the permits resulting therefrom or, failing that, to issue new permits based on the R3o operation code. Those actions were dismissed by judgment of 15 July 2016, on the ground that there were no technical requirements, legislation or standards applicable to the products. Tallinna Vesi then brought an appeal against that judgment.

- 16 In those circumstances the Tallinna Ringkonnakohus (Court of Appeal, Tallinn, Estonia) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- ‘(1) In the case where end-of-waste criteria have not been set at EU level for a particular type of waste, should Article 6(4) of Directive 2008/98 be interpreted to mean that a national legal act providing that end-of-waste status depends upon whether criteria set in a generally applicable national legal act exist for a particular type of waste is in keeping with that provision?
- (2) In the case where end-of-waste criteria have not been set at EU level for a particular type of waste, does the first sentence of Article 6(4) of Directive 2008/98 grant the waste holder the right to apply to the competent authority or to a court in a Member State for a decision on end-of-waste status in keeping with the applicable case-law of the Court of Justice of the European Union, irrespective of whether criteria set in a generally applicable national legal act exist for a particular type of waste?’

Consideration of the questions referred

- 17 By its questions, which should be examined together, the referring court asks, in essence, whether Article 6(4) of Directive 2008/98 must be interpreted as precluding national legislation, such as that at issue in the main proceedings, under which, where criteria have not been set at EU level for determining end-of-waste status as regards a specific type of waste, such end status depends on the existence of criteria laid down in a generally applicable national legal act concerning that type of waste and whether, in such circumstances, a waste holder may demand the recognition of end-of-waste status by the competent authority of the Member State or by a court of that Member State in accordance with the case-law of the Court of Justice.
- 18 It should be borne in mind that Article 3(1) of Directive 2008/98 defines ‘waste’ as any substance or object which the holder discards or intends or is required to discard.
- 19 The first subparagraph of Article 6(1) of Directive 2008/98 sets out the conditions to be met by the specific criteria which make it possible to determine which waste ceases to be waste within the meaning of Article 3(1) of that directive when it has undergone a recovery, including recycling, operation.
- 20 Under Article 6(2) of Directive 2008/98, the rules for the application of paragraph 1 of that article are to be made by the Commission for the purpose of the adoption of specific criteria for determining end-of-waste status. It is common ground that no such rules have been adopted in relation to sewage sludge, such as that in the main proceedings, which has undergone a recovery operation.
- 21 In such circumstances, Member States may, as is clear from the wording of Article 6(4) of Directive 2008/98, decide on a case-by-case basis whether certain waste has ceased to be waste, while being obliged, where Directive 98/34, as amended by Directive 98/48, so requires, to notify the Commission of technical standards and rules adopted in that regard.
- 22 It should be noted, in the first place, that the EU legislature thus specifically provided that Member States are entitled to adopt measures relating to end-of-waste status of a substance or object, without, however, specifying the nature of those measures.
- 23 In that regard, it must be noted that the measures adopted on the basis of Article 6(4) of Directive 2008/98 — in the same way as the EU regulations adopted on the basis of paragraph 2 of that article — result in the end-of-waste status of waste and, therefore, in the end of the protection that the law governing waste guarantees as regards the environment and human health. Those measures must

therefore comply with the requirements laid down in paragraph 1(a) to (d) of Article 6 and, in particular, take account of any possible adverse impact that the substance or object concerned may have on the environment and on human health.

- 24 It also follows from the wording of Article 6(4) of Directive 2008/98 that Member States may provide for the possibility of decisions in individual cases, in particular on the basis of applications submitted by holders of the substance or object classified as waste, but that they may also adopt technical standards or regulations concerning certain categories of waste or a specific type of waste. Indeed, as the Advocate General observes in point 49 of her Opinion, the obligation, referred to in that provision, to notify the Commission of such measures, where Directive 98/34, as amended by Directive 98/48, so requires, concerns draft technical regulations and not individual decisions.
- 25 Article 6(4) of Directive 2008/98 does not, therefore, preclude national legislation under which, where no criteria are laid down at EU level for determining end-of-waste status as regards a specific type of waste, the end of that status of waste depends on the existence of criteria laid down in a generally applicable national legal act concerning that type of waste.
- 26 In the second place, it follows from the optional nature of the Member State's action, resulting from the use of the verb 'may' in the first sentence of that provision, that the Member State is also entitled to take the view that some waste cannot cease to be waste and to refrain from adopting legislation concerning the end-of-waste status of that waste.
- 27 However, as the Advocate General has observed in point 44 of her Opinion, the Member State must ensure that such abstention does not amount to an obstacle to the attainment of the objectives set by Directive 2008/98, such as encouraging the application of the waste hierarchy laid down in Article 4 of that directive, or, as is stated in recitals 8 and 29, encouraging the recovery of waste and the use of recovered material in order to preserve natural resources and to enable the development of a circular economy. In that context, it is for the Commission and, failing that, for the Member States, to take into account all relevant elements and the most recent scientific and technical knowledge in order to adopt specific criteria which allow the national authorities and courts to recognise end-of-waste status for waste which has undergone a recovery operation, which enables it to be used without endangering human health and without harming the environment.
- 28 In the present case, it is apparent from the documents submitted to the Court that the recovery of sewage sludge entails certain risks for the environment and human health, in particular those linked to the presence of hazardous substances. As regards such substances, a Member State may — in the light of the discretion which it enjoys in accordance with the considerations set out in the preceding two paragraphs — refrain from recognising end-of-waste status of a product or substance or may refrain from laying down standards which would lead to end-of-waste status of that product or substance.
- 29 Furthermore, it should be recalled that the conditions laid down in Article 6(1) of Directive 2008/98 — which must be met by the specific criteria which make it possible to determine which waste ceases to be waste within the meaning of Article 3(1) of that directive when it has undergone a recovery, including recycling, operation — cannot, in themselves, make it possible directly to establish that certain waste or certain categories of waste must no longer be regarded as such (see, to that effect, judgment of 7 March 2013, *Lapin ELY-keskus, liikenne ja infrastruktuuri*, C-358/11, EU:C:2013:142, paragraph 55).
- 30 Consequently, it must be held that Article 6(4) of Directive 2008/98 does not allow a waste holder, such as Tallinna Vesi, to demand, in circumstances such as those in the main proceedings, the recognition of end-of-waste status by the competent authority of the Member State or by a court of that Member State.

- 31 In the light of the foregoing, the answer to the questions referred is that Article 6(4) of Directive 2008/98 must be interpreted as meaning that:
- it does not preclude national legislation, such as that at issue in the main proceedings, under which, where criteria have not been set at European Union level for determining end-of-waste status as regards a specific type of waste, such end status depends on the existence of criteria laid down in a generally applicable national legal act concerning that type of waste, and
 - it does not allow a waste holder, in circumstances such as those in the main proceedings, to demand the recognition of end-of-waste status by the competent authority of the Member State or by a court of that Member State.

Costs

- 32 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Second Chamber) hereby rules:

Article 6(4) of Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives must be interpreted as meaning that:

- **it does not preclude national legislation, such as that at issue in the main proceedings, under which, where criteria have not been set at European Union level for determining end-of-waste status as regards a specific type of waste, such end status depends on the existence of criteria laid down in a generally applicable national legal act concerning that type of waste, and**
- **it does not allow a waste holder, in circumstances such as those in the main proceedings, to demand the recognition of end of waste status by the competent authority of the Member State or by a court of that Member State.**

[Signatures]