



Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

9 April 2014*

(Reference for a preliminary ruling — Environment — Waste — Directive 75/442/EEC — Article 7(1) — Management plan — Suitable sites or installations for the disposal of waste — Concept of waste management plan — Directive 1999/31/EC — Articles 8 and 14 — Landfills which have been granted a permit, or which are already in operation at the time of transposition of that directive)

In Case C-225/13,

REQUEST for a preliminary ruling under Article 267 TFEU from the Conseil d'État (Belgium), made by decision of 22 April 2013, received at the Court on 29 April 2013, in the proceedings

Ville d'Ottignies-Louvain-la-Neuve,

Michel Tillieut,

Willy Gregoire,

Marc Lacroix,

v

Région wallonne,

intervening party:

Shanks SA,

THE COURT (Second Chamber),

composed of R. Silva de Lapuerta, President of the Chamber, J.L. da Cruz Vilaça, G. Arestis, J.-C. Bonichot (Rapporteur) and A. Arabadjiev, Judges,

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

having regard to the written procedure,

* Language of the case: French.

after considering the observations submitted on behalf of:

- the town of Ottignies-Louvain-la-Neuve and Messrs Tillieut, Gregoire and Lacroix, by J. Sambon, avocat,
- Shanks SA, by F. Haumont, avocat,
- the Belgian Government, by T. Materne, acting as Agent, and by É. Orban de Xivry, avocat,
- the European Commission, by J.-F. Brakeland, P. Oliver, and A. Sipos, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Council Directive 75/442/EEC of 15 July 1975 on waste (OJ 1975 L 194, p. 39), as amended by Commission Decision 96/350/EC of 24 May 1996 (OJ 1996 L 135, p. 32; 'Directive 75/442'), and Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment (OJ 2001 L 197, p. 30).
- 2 The request has been made in proceedings between the town of Ottignies-Louvain-la-Neuve and Messrs Tillieut, Gregoire and Lacroix and the Région wallonne (Region of Wallonia), concerning a permit applied for by Shanks SA to operate and condition a site intended for waste disposal.

Legal context

EU law

- 3 Article 7(1) of Directive 75/442 provides:

'In order to attain the objectives referred to in Articles 3, 4 and 5, the competent authority or authorities referred to in Article 6 shall be required to draw up as soon as possible one or more waste management plans. Such plans shall relate in particular to:

- the type, quantity and origin of waste to be recovered or disposed of,
- general technical requirements,
- any special arrangements for particular wastes,
- suitable disposal sites or installations.

...'

- 4 Recital 18 in the preamble to Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste (OJ 1999 L 182, p. 1), as amended by Council Directive 2011/97/EU of 5 December 2011 (OJ 2011 L 328, p. 49; 'Directive 1999/31'), states:

'... because of the particular features of the landfill method of waste disposal, it is necessary to introduce a specific permit procedure for all classes of landfill in accordance with the general licensing requirements already set down in [Directive 75/442] ...'.

- 5 Recital 26 of Directive 1999/31 states:

'... the future conditions of operation of existing landfills should be regulated in order to take the necessary measures, within a specified period of time, for their adaptation to this Directive on the basis of a site-conditioning plan'.

- 6 Article 1(1) of that directive, entitled 'Overall objective', states:

'With a view to meeting the requirements of [Directive 75/442], and in particular Articles 3 and 4 thereof, the aim of this Directive is, by way of stringent operational and technical requirements on the waste and landfills, to provide for measures, procedures and guidance to prevent or reduce as far as possible negative effects on the environment ... from landfilling of waste ...'

- 7 Article 8 of the directive, entitled 'Conditions of the permit', states:

'Member States shall take measures in order that:

- (a) the competent authority does not issue a landfill permit unless it is satisfied that:

- (i) without prejudice to Article 3(4) and (5), the landfill project complies with all the relevant requirements of this Directive, including the Annexes;

...

- (b) the landfill project is in line with the relevant waste management plan or plans referred to in Article 7 of Directive 75/442/EEC;

...'

- 8 Article 14 of the directive, entitled 'Existing landfill sites', reads as follows:

'Member States shall take measures in order that landfills which have been granted a permit, or which are already in operation at the time of transposition of this Directive, may not continue to operate unless the steps outlined below are accomplished as soon as possible and within eight years after the date laid down in Article 18(1) at the latest:

- (a) [Within] a period of one year after the date laid down in Article 18(1), the operator of a landfill shall prepare and present to the competent authorities, for their approval, a conditioning plan for the site including the particulars listed in Article 8 and any corrective measures which the operator considers will be needed in order to comply with the requirements of this Directive with the exception of the requirements in Annex I, point 1;

- (b) Following the presentation of the conditioning plan, the competent authorities shall take a definite decision on whether operations may continue on the basis of the said conditioning plan and this Directive. Member States shall take the necessary measures to close down as soon as possible, in accordance with Article 7(g) and 13, sites which have not been granted, in accordance with Article 8, a permit to continue to operate;
- (c) On the basis of the approved site-conditioning plan, the competent authority shall authorise the necessary work and shall lay down a transitional period for the completion of the plan. Any existing landfill shall comply with the requirements of this Directive with the exception of the requirements in Annex I, point 1 within eight years after the date laid down in Article 18(1);

...'

- 9 The first subparagraph of Article 18(1) of Directive 1999/31, entitled 'Transposition', states:

'Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive two years after the entry into force of the Directive at the latest. They shall forthwith inform the [European] Commission thereof.'

- 10 Point 1 of Annex I to that directive states as follows:

'Position

1.1. The location of a landfill must take into consideration requirements relating to:

- (a) the distances from the boundary of the site to residential and recreation areas, waterways, water bodies and other agricultural or urban sites;
- (b) the existence of groundwater, coastal water or nature protection zones in the area;
- (c) the geological and hydrogeological conditions in the area;
- (d) the risk of flooding, subsidence, landslides or avalanches on the site;
- (e) the protection of the nature or cultural patrimony in the area.

1.2. The landfill can be authorised only if the characteristics of the site with respect to the abovementioned requirements, or the corrective measures to be taken, indicate that the landfill does not pose a serious environmental risk.'

- 11 Article 2 of Directive 2001/42 provides:

'For the purposes of this Directive:

- (a) "plans and programmes" shall mean plans and programmes, including those co-financed by the European Community, as well as any modifications to them:
 - which are subject to preparation and/or adoption by an authority at national, regional or local level or which are prepared by an authority for adoption, through a legislative procedure by Parliament or Government, and
 - which are required by legislative, regulatory or administrative provisions;

...'

12 According to Article 13 of that directive:

'1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 21 July 2004. They shall forthwith inform the Commission thereof.

...

3. The obligation referred to in Article 4(1) shall apply to the plans and programmes of which the first formal preparatory act is subsequent to the date referred to in paragraph 1. ...

...'

Belgian law

13 The Decree of the Region of Wallonia on waste of 27 June 1996 (*Moniteur belge*, 2 August 1996, p. 20685), in the version following amendments made most recently by the Decree of the Region of Wallonia of 16 October 2003 (*Moniteur belge*, 23 October 2003, p. 51644; 'the 1996 Decree'), contains an Article 24, paragraphs 1 and 2 of which provide:

'1. The Government shall draw up a waste management plan in accordance with Articles 11 to 16 of the Decree of 21 April 1994 on environmental planning with a view to sustainable development. That plan shall be a sectoral programme for the purposes of the Decree. It may comprise planning by type of waste or by sectoral activity.

This plan shall include in particular:

1° a description of the type, quantity and origin of the waste, of the methods employed in the management of the waste produced and transported each year, and of the installations currently in operation and the occupied sites;

...

The plan shall be accompanied by data relating ... to its foreseeable consequences for the environment.

2. The Government shall establish, following the procedure laid down in Articles 25 and 26, a plan for landfills which includes sites likely to be allocated for setting up and operating landfills, with the exception of those landfills reserved for the exclusive use of the producer of the waste.

No landfills other than one intended for the exclusive use of the producer of waste may be authorised aside from those provided for in the plan referred to in this paragraph.'

14 The first subparagraph of Article 25(2) of the 1996 Decree provides:

'The draft landfill plan shall be subject to an environmental impact assessment. ...'

15 Pursuant to Article 24(1) and (2) respectively of the 1996 Decree, the Walloon Government adopted, firstly, on 15 January 1998, the Walloon waste plan 'Horizon 2010' (*Moniteur belge*, 21 April 1998, p. 11806), and, secondly, on 1 April 1999, the landfill plan (*Moniteur belge*, 13 July 1999, p. 26747), which entered into force on 13 July 1999.

16 Article 70 of the 1996 Decree provides:

‘Until such time as the landfill plan referred to in Article 24(2) has entered into force, applications for permits within the meaning of Article 11 in order to set up and operate landfills and applications for building permits as provided for in Article 41(1) of the Wallonia Town and Country Planning and Heritage Code which were held to be admissible before this Decree was adopted by Parliament may result in a permit being granted in industrial, agricultural and extraction zones as defined in Articles 172, 176 and 182 of that code.

By derogation from Article 24(2), applications relating to landfills other than those reserved for the exclusive use of the producer of the waste, previously authorised, existing before the entry into force of the landfill plan referred to in Article 24(2) or which were granted authorisation or a permit under the first paragraph of the present article may, whatever the date of the application, result in the grant of an environmental licence, a single permit or planning permission, in the areas of the sectoral plan where those landfills have previously been authorised, to permit, on the plots of land covered by that licence or permit, the operation to be prolonged, the alteration of the operating conditions, including those relating to the permitted volume, or alteration of the ground of relief beyond that originally authorised. The present paragraph applies only to authorised landfills referred to in Title VII, Chapter 1, of the landfill plan adopted on 1 April 1999.

...’

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

- 17 The dispute in the main proceedings concerns the operation and conditioning permit of a landfill for non-hazardous household and industrial waste, in operation since 1958 at ‘Les trois burettes’ in Mont-Saint-Guibert (Belgium).
- 18 On 20 May 2003, the company Page, now Shanks SA, applied for a ‘single permit’ in order both to continue the activity and to carry out various conditioning operations at that landfill.
- 19 A permit was issued on 18 December 2003 by the local authority of Mont-Saint-Guibert and subsequently confirmed by the Walloon Government, with some amendments, by a Ministerial Order of 10 May 2004, against which an action for annulment has been brought before the referring court.
- 20 In support of that action, the applicants in the main proceedings dispute the conformity of the second paragraph of Article 70 of the 1996 Decree, on the basis of which that permit was granted, with EU law. Firstly, they argue that that article does not comply with Article 7 of Directive 75/442, in that it permits the operation of landfills on sites not provided for in the waste management plan, which are not, therefore, sited on the basis of environmental criteria, to be authorised. Next, they submit that there is also an infringement of Article 8(b) of Directive 1999/31, which requires that, in order to be authorised, the landfill project must be in line with the waste management plan referred to in Article 7 of Directive 75/442. Finally, those applicants are of the view that paragraph 2 of Article 70 of the 1996 Decree is such as seriously to compromise the objectives of Directive 2001/42, which requires an environmental assessment to be carried out for all plans and programmes drawn up in the area of waste management.
- 21 It is on that basis that the Conseil d’État decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:
1. Is Article 7 of [Directive 75/442] to be interpreted as permitting the classification as a waste management plan of a legislative provision that states that, in derogation from the rule that no landfills may be authorised except on the sites provided for in the waste management plan,

landfills authorised before that waste management plan entered into force may, after such entry into force, be [granted new permits] in respect of the plots covered by the authorisation pre-dating the entry into force of the waste management plan?

2. Is Article 2(a) of [Directive 2001/42] to be interpreted as including within the meaning of plan and programme a legislative provision which states that, in derogation from the rule that no landfills may be authorised except on the sites provided for in the waste management plan required by Article 7 of [Directive 75/442], landfills authorised before that waste management plan entered into force may, after such entry into force, be [granted new permits] in respect of the plots covered by the authorisation pre-dating the entry into force of the waste management plan?
3. If the answer to the second question is in the affirmative, does the second paragraph of Article 70 of [the 1996 Decree] satisfy the requirements for the assessment of effects laid down in [Directive 2001/42]?

The Court's response

The second and third questions

- 22 By its second and third questions, which it is appropriate to examine first and together, the referring court asks, in essence, whether Article 2(a) of Directive 2001/42 is to be interpreted as meaning that a national legislative provision, such as that at issue in the main proceedings, which provides that, in derogation from the rule that no landfills may be authorised except on the sites provided for in the waste management plan required by Article 7 of Directive 75/442, landfills authorised before that waste management plan entered into force may, after such entry into force, be granted new permits in respect of the plots covered by the authorisation, constitutes a 'plan' or 'programme' within the meaning of that provision of Directive 2001/42. If so, the referring court asks whether such a plan or programme satisfies the environmental requirements laid down in that directive.
- 23 However, in the absence of any indication in the order for reference that the court hearing the dispute, in order to assess the legality of the contested decision, must place itself at the date on which it rules, it must be held that Directive 2001/42 is not applicable to the main proceedings, inasmuch as both the permit issued on 18 December 2003 and the Ministerial Order of 10 May 2004 confirming it were adopted before the time-limit for transposing that directive expired (see, by analogy, Joined Cases C-53/02 and C-217/02 *Commune de Braine-le-Château and Others* EU:C:2004:205, paragraph 45).
- 24 In those circumstances, it is not necessary to give an answer to the second and third questions referred by the referring court.

The first question

- 25 By its first question, the referring court asks whether Article 7(1) of Directive 75/442 is to be interpreted as meaning that a national legislative provision, such as that at issue in the main proceedings, which provides that, in derogation from the rule that no landfills may be authorised except on the sites provided for in the waste management plan required by Article 7 of Directive 75/442, landfills authorised before that waste management plan entered into force may, after such entry into force, be granted new permits in respect of the plots covered by the authorisation, constitutes a 'plan' or 'programme' within the meaning of that provision of Directive 2001/42. If so, the referring court asks whether such a plan or programme satisfies the environmental requirements laid down in that directive.

- 26 First of all, it must be noted that the file sent to the Court and the responses given by the parties concerned to the written question posed by the Court in accordance with Article 61(1) of the Rules of Procedure of the Court show serious discrepancies as regards the scope of the provision at issue in the main proceedings, in particular with regard to whether it allows a derogation from land use planning, as a result of the Member State's landfill management plan, for renewing permits for operating landfills already authorised at the date of entry into force of that plan. It is apparent in particular from some of the observations made to the Court that that is not the case, since that provision covers only existing landfills registered as such by that plan.
- 27 To that extent, it is for the referring court, in the cases before it, to interpret the national law with a view to determining its exact scope.
- 28 In those circumstances, it must be recalled that, under the first subparagraph of Article 7(1) of Directive 75/442, the competent authorities of the Member States are required to draw up as soon as possible one or more waste management plans in order to attain the objectives set out in Articles 3, 4 and 5 of that directive. That same paragraph states that such plans are to relate in particular to the type, quantity and origin of waste to be recovered or disposed of, general technical requirements, any special arrangements for particular wastes and suitable disposal sites or installations.
- 29 It follows that a national legislative provision such as that at issue in the main proceedings, insofar as its scope consists solely of providing that, by derogation from the common law, it is possible to renew permits for operating landfills already authorised at the date of entry into force of the waste management plan in the Member State concerned for the same plots of land, even if that land is not included in the plan, cannot, of itself, be regarded as an organised and coherent system for achieving the objectives inherent in a 'waste management plan', within the meaning of Article 7(1) of Directive 75/442 (see, to that effect, Case C-387/97 *Commission v Greece* EU:C:2000:356, paragraph 76).
- 30 Nevertheless, it is clear from the settled case-law of the Court that the fact that the referring court's question refers to certain provisions of EU law does not mean that the Court may not provide the national court with all the guidance on points of interpretation which may be of assistance in adjudicating on the case pending before it, whether or not that court has referred to those points in its question. It is, in this regard, for the Court to extract from all the information provided by the referring court, in particular from the grounds of the decision to make the reference, the points of EU law which require interpretation in view of the subject-matter of the dispute (see, inter alia, Case C-418/11 *Texdata Software* EU:C:2013:588, paragraph 35 and the case-law cited).
- 31 In those circumstances, it is also necessary to consider whether Article 8 of Directive 1999/31, applicable to the facts of the main proceedings, precludes a national legislative provision such as that referred to by the referring court.
- 32 In that regard, it must be noted that it is clear from Article 8(a) and (b) of Directive 1999/31 that a landfill permit can be issued only if the landfill project is in line with the relevant waste management plan or plans referred to in Article 7 of Directive 75/442.
- 33 However, Article 14 of Directive 1999/31 makes 'landfills which have been granted a permit, or which are already in operation at the time of [its] transposition ...', which must be effected by 16 July 2001 at the latest, subject to a transitional derogating system.
- 34 It follows from that transitional system that, in order to be able to continue to operate, those landfills must, within eight years after 16 July 2001, be brought into line with the new environmental requirements set out in Article 8 of Directive 1999/31, with the exception of those listed in Annex I, point 1, thereto. That exception concerns precisely the requirements as to the siting of the landfill.

- 35 Accordingly, Article 14 of Directive 1999/31 allows landfills which have been granted a permit, or which are already in operation at the time of transposition of that directive to continue to operate and obtain new permits, even if they do not appear in the list of sites provided for in that waste management plan adopted pursuant to Article 7(1) of Directive 75/442 provided that the other conditions set out in Article 14 are met.
- 36 Consequently, Article 8 of Directive 1999/31 does not preclude a national legislative provision, such as that at issue in the main proceedings, which may be based on Article 14 of that directive and apply to landfills which have been granted a permit or which are already in operation at the date of the transposition thereof, provided that the other conditions set out in Article 14 are met, which it is for the referring court to ascertain.
- 37 Having regard to the foregoing, the answer to the first question is that Article 7(1) of Directive 75/442 must be interpreted as meaning that a national legislative provision, such as that at issue in the main proceedings, which provides that, in derogation from the rule that no landfills may be authorised except on the sites provided for in the waste management plan required by that article, landfills authorised before that waste management plan entered into force may, after such entry into force, be granted new permits in respect of the plots covered by the authorisation, does not constitute a 'plan' or 'programme' within the meaning of that provision of Directive 2001/42. Article 8 of Directive 1999/31 does not, however, preclude such a national legislative provision which may be based on Article 14 of that directive and apply to landfills which have been granted a permit or which are already in operation at the date of the transposition thereof, provided that the other conditions set out in Article 14 are met, which it is for the referring court to ascertain.

Costs

- 38 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 7(1) of Council Directive 75/442/EEC of 15 July 1975 on waste, as amended by Commission Decision 96/350/EC of 24 May 1996, must be interpreted as meaning that a national legislative provision, such as that at issue in the main proceedings, which provides that, in derogation from the rule that no landfills may be authorised except on the sites provided for in the waste management plan required by that article, landfills authorised before that waste management plan entered into force may, after such entry into force, be granted new permits in respect of the plots covered by the authorisation, does not constitute a 'waste management plan' within the meaning of that provision of Directive 2001/42, as amended by Decision 96/350.

Article 8 of Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste, as amended by Council Directive 2011/97/EU of 5 December 2011, does not, however, preclude such a national legislative provision which may be based on Article 14 of that directive and apply to landfills which have been granted a permit or which are already in operation at the date of the transposition thereof, provided that the other conditions set out in Article 14 are met, which it is for the referring court to ascertain.

[Signatures]