JUDGMENT OF THE COURT (Second Chamber)

25 February 2010 (*)

(Environment – Directive 1999/31/EC – Article 10 – Special levy on the disposal of solid waste in landfills – Operator of a landfill subject to that levy – Operating costs of a landfill – Directive 2000/35/EC – Default interest)

In Case C-172/08,

REFERENCE for a preliminary ruling under Article 234 EC, from the Commissione tributaria provinciale di Roma (Italy), made by decision of 1 April 2008, received at the Court on 25 April 2008, in the proceedings

Pontina Ambiente Srl

v

Regione Lazio,

THE COURT (Second Chamber),

composed of C. Toader, President of the Eighth Chamber, acting for the President of the Second Chamber, C.W.A. Timmermans, K. Schiemann, P. Kūris (Rapporteur) and L. Bay Larsen, Judges,

Advocate General: E. Sharpston,

Registrar: R. Şereş, Administrator,

having regard to the written procedure and further to the hearing on 4 June 2009,

after considering the observations submitted on behalf of:

– Pontina Ambiente Srl, by M.F. Zadotti, ragioniere, and A. Presutti, avvocato,

– the Italian Government, by I. Bruni, acting as Agent, assisted by G. De Bellis, avvocato dello Stato,

– the Commission of the European Communities, by A. Aresu and J.-B. Laignelot, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 17 September 2009,

gives the following

Judgment

1 This reference for a preliminary ruling relates to the interpretation of Articles 12 EC, 14 EC, 43 EC and 46 EC and Article 10 of Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste (OJ 1999 L 182, p. 1), as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council of 29 September 2003 (OJ 2003 L 284, p. 1, 'Directive 1999/31'), and Directive 2000/35/EC of the European Parliament and of the Council of 29 June 2000 on combating late payment in commercial transactions (OJ 2000 L 200, p. 35).

2 The reference has been made in the course of proceedings between Pontina Ambiente Srl ('Pontina Ambiente') and Regione Lazio relating to two tax assessments finding that Pontina Ambiente had been late in paying the special levy on the disposal of solid waste in landfills for the third and fourth quarters of 2004 and imposing penalties on it, together with interest.

Legal context

European Union legislation

3 Recital 29 in the preamble to Directive 1999/31 is worded as follows:

'Whereas measures should be taken to ensure that the price charged for waste disposal in a landfill cover all the costs involved in the setting up and operation of the facility, including as far as possible the financial security or its equivalent which the site operator must provide, and the estimated cost of closing the site including the necessary after-care'.

4 Article 1(1) of Directive 1999/31 provides as follows:

'With a view to meeting the requirements 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 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, in particular the pollution of surface water, groundwater, soil and air, and on the global environment, including the greenhouse effect, as well as any resulting risk to human health, from landfilling of waste, during the whole life-cycle of the landfill.'

5 According to Article 2 of Directive 1999/31:

'For the purposes of this Directive:

…

(l) "*operator*" means the natural or legal person responsible for a landfill in accordance with the internal legislation of the Member State where the landfill is located; this person may change from the preparation to the after-care phase;

…

(n) "*holder*" means the producer of the waste or the natural or legal person who is in possession of it;

…'

6 Article 10 of Directive 1999/31 provides as follows:

‘Member States shall take measures to ensure that all of the costs involved in the setting up and operation of a landfill site, including as far as possible the cost of the financial security or its equivalent referred to in Article 8(a)(iv), and the estimated costs of the closure and after-care of the site for a period of at least 30 years shall be covered by the price to be charged by the operator for the disposal of any type of waste in that site. Subject to the requirements of Council Directive 90/313/EEC of 7 June 1990 on the freedom of access to information on the environment [OJ 1990 L 158, p. 56], Member States shall ensure transparency in the collection and use of any necessary cost information.’

7 Article 3(1)(a) of Directive 75/442 is worded as follows:

‘Member States shall take appropriate measures to encourage:

(a) first, the prevention or reduction of waste production and its harmfulness …’

8 Article 1 of Directive 2000/35 provides that its provisions are to apply to all payments made as remuneration for commercial transactions.

9 According to Article 2(1) of Directive 2000/35, ‘commercial transactions’ means ‘transactions between undertakings or between undertakings and public authorities which lead to the delivery of goods or the provision of services for remuneration’.

10 Article 3 of the Directive, entitled ‘Interest in case of late payment’, provides, inter alia, that the Member States are to ensure that interest is payable in the case of late payment and may be claimed by the creditor if he has fulfilled his contractual and legal obligations; and has not received the amount due on time, unless the debtor is not responsible for the delay.

National legislation

11 In order to promote a reduction in the amount of waste produced and the recovery of raw materials and energy from such waste, Article 3(24) of Law No 549 of 28 December 1995 on measures to rationalise public finances (Ordinary Supplement to GURI No 302 of 29 December 1995, ‘Law No 549/95’) introduced a special levy on the disposal of solid waste in landfills.

12 Pursuant to Article 3(25) of Law No 549/95, the event which gives rise to the levy is the depositing of solid waste in landfills.

13 It is apparent from Article 3(26) of Law No 549/95 that the person liable for the levy is the operator of the undertaking of final storage who is under an obligation to seek reimbursement from the authority providing the waste to be deposited.

14 Article 3(27) of Law No 549/95 provides that the levy is payable to the regions.

15 According to Article 3(28) and (29) of Law No 549/95, the amount to be paid is determined by multiplying the amount of the levy by the amount of waste deposited in landfills, expressed in kilograms, and by a multiplication factor which takes account of the specific weight and quality of the waste as well as the conditions under which it is deposited in the landfill.

16 Article 3(31) of Law No 549/95 provides for a financial penalty in case of non-payment, insufficient

payment or late payment of the levy, which could be as much as 400% of the amount of the levy relating to the operation carried out.

17 Articles 1(1) and 2(a) of Legislative Decree No 231 of 9 October 2002 transposing Directive 2000/35 on combating late payment in commercial transactions (GURI No 249 of 23 October 2002, p. 16) are worded in essentially the same terms as Articles 1 and 2(1) of that Directive.

The case in the main proceedings and the reference for a preliminary ruling

18 Pontina Ambiente, whose registered office is in Rome, collects and disposes of waste. In particular, it receives, in a landfill intended for that purpose, solid waste from various municipal authorities in Regione Lazio, it stocks that waste and processes it in order to produce derivatives and compost and also to reduce its volume.

19 Pursuant to Law No 549/95 and the regional implementing law, Pontina Ambiente is liable to pay quarterly, to Regione Lazio, the special levy on the disposal of solid waste in landfills, which must be paid not later than the month following the end of the quarter of the calendar year during which the waste was deposited. Pontina Ambiente is obliged to seek reimbursement from the municipal authorities sending waste to landfill.

20 That company paid, late, the levy for the third and fourth quarters of 2004, which caused the competent authorities of Regione Lazio to issue two tax assessments to it in October 2006 and, at the same time, impose on it the financial penalties laid down in Article 3(31) of Law No 549/95.

21 On 4 January 2007, Pontina Ambiente brought an action before the Commissione tributaria provinciale di Roma for annulment of the measures adopted by Regione Lazio.

22 Pontina Ambiente challenges Law No 549/95 legislation in so far as it makes the operator of the landfill liable for the levy in question. It also challenges the penalties imposed on it by Regione Lazio for late payment of the levy on the ground that the municipal authorities concerned were the cause of the delay. It criticises the fact that payment of the levy is not subject to a requirement on the part of the municipal authorities involved to pay for the services provided and there is no provision for penalties to be imposed on those authorities.

23 The company raises, in particular, the incompatibility with European Union law of certain rules for application of the levy at issue in regard to the determination of the person liable for the levy and the system of penalties for late payment, more precisely, with Articles 12 EC, 14 EC, 43 EC, 46 EC, Article 10 of Directive 1999/31 and the relevant provisions of Directive 2000/35.

24 Considering that the claims put forward by Pontina Ambiente might be well founded, the Commissione tributaria provinciale di Roma decided as follows:

‘The court finds that Article 3(26) and (31) of Law No 549/95 …, interpreted as set out above by the Amministrazione Finanziaria, and according to the incontestable literal wording of that provision, may be contrary to Articles 12 [EC], 14 [EC], 43 [EC] and 46 [EC], Article 10 of Directive 1999/31 and recitals 7, 10, 16 and 19 in the preamble to Directive 2000/35 and that the issue therefore arises as to whether such national legislation is compatible with Community law; stays the pending proceedings and any enforcement measures; refers the matter to the Court … so that it may it may give a ruling on the question in accordance with its specific authority’.

The reference for a preliminary ruling

Admissibility of the reference for a preliminary ruling and formulation of the questions

25 The Commission of the European Communities questions whether the reference for a preliminary ruling is admissible inasmuch as, on the one hand, the national court has not expressly formulated a question and, on the other, the reference asks the Court to rule on the compatibility of national legislation with European Union law.

26 Moreover, the Italian Government and the Commission observe that the order for reference contains nothing to indicate the reason why reference is made to Articles 12 EC, 14 EC, 43 EC and 46 EC.

27 It is to be borne in mind, first, that although the Court does not, in a reference for a preliminary ruling, have jurisdiction to give a ruling on the compatibility of a national measure with European Union law, it does have jurisdiction to supply the national court with a ruling on the interpretation of European Union law so as to enable that court to determine whether such compatibility exists with a view to deciding the case before it (Case C-254/08 *Futura Immobiliare and Others* [2009] ECR I-0000, paragraph 28 and the case-law cited).

28 Secondly, it must be stated that, although the national court did not expressly formulate a question, it none the less provided sufficient information as regards both the matters of fact and the matters of law which characterise the main proceedings to permit the Court to understand the purpose of the reference and to provide the national court with an interpretation of the relevant provisions of European Union law which might be useful in resolving the dispute in the main proceedings.

29 That is the case in regard to Article 10 of Directive 1999/31 and to Directive 2000/35. On the other hand, the order for reference provides no explanation for the relevance to the reference for a preliminary ruling of Articles 12 EC, 14 EC, 43 EC and 46 EC. In particular, it does not state how those articles could be applicable to the situation which it describes and which, as the Advocate General remarked in points 35 to 38 of her Opinion, appears to be purely internal to a single Member State and does not contain a cross-border element.

30 In those circumstances, it must be held that the reference for a preliminary ruling is admissible except in regard to Articles 12 EC, 14 EC, 43 EC and 46 EC.

31 It may be deduced from the indications provided by the national court that the reference for a preliminary ruling concerns the following questions:

1. Is Article 10 of Directive 1999/31 to be interpreted as meaning that it precludes a national provision, such as that at issue in the main proceedings, which makes the operator of a landfill site subject to a special levy on the disposal of solid waste in landfills that has to be reimbursed by the authority depositing the waste and which provides for financial penalties to be imposed on that operator for late payment of the levy, without requiring the authority depositing the waste to reimburse the amount of the levy to the operator within a specified period and, in the case of late reimbursement, to bear all the costs created by its delay, including the amount of the financial penalties imposed on the operator?

2. Is Directive 2000/35 to be interpreted as meaning that sums owed to the operator of a landfill site by an authority depositing waste in the landfill, such as the sums due by way of reimbursement of

a tax, come within the scope of that Directive and that the Member States must ensure, in accordance with Article 3 thereof, that, in the case of late payment, interest is paid on those sums?

Substance

The first question

32 Pursuant to Article 10 of Directive 1999/31, Member States are to take measures to ensure that all of the costs involved in the setting up and operation of a landfill site are covered by the price to be charged by the operator for the disposal of any type of waste in that site.

33 As the Advocate General remarked in point 49 of her Opinion, Article 10 of Directive 1999/31 does not impose on the Member States a specific method of financing the cost of a landfill. Consequently, as European Union law currently stands, there is no legislation adopted on the basis of Article 175 EC imposing a specific method upon the Member States for financing that cost, so that the cost may, in accordance with the choice of the Member State concerned, equally well be financed by means of a tax or of a charge or in any other manner (see, by analogy, *Futura Immobiliare and Others*, paragraph 48).

34 It follows that Article 10 of Directive 1999/31 does not preclude a Member State from imposing a levy on the waste deposited in a landfill which is initially payable by the operator of the landfill and then passed on to the holder who deposited the waste. It also does not preclude the imposition of sanctions penalising a site operator who pays the levy late, since making provision for such sanctions, like the designation of the person liable to such a levy, is a matter for the Member States alone.

35 However, as may also be seen from recital 29 to that Directive, Article 10 of Directive 1999/31 requires the Member States to take measures to ensure that the price charged for waste disposal in a landfill covers all the costs involved in the setting up and operation of the facility.

36 That requirement is an expression of the ‘polluter pays’ principle, which implies, as the Court has already held in regard to Directive 75/442 and Directive 2006/12/EC of the European Parliament and of the Council of 5 April 2006 on waste (OJ 2006 L 114, p. 9), that the cost of disposing of the waste must be borne by the waste holders (Case C-1/03 *Van de Walle and Others* [2004] ECR I-7613, paragraph 57; Case C-188/07 *Commune de Mesquer* [2008] ECR I-4501, paragraph 71; and *Futura Immobiliare and Others*, paragraphs 44 and 45 and the case-law cited). It forms part of the objective of Directive 1999/31 which, according to Article 1(1) thereof, is to meet the requirements of Directive 75/442, and in particular Article 3 thereof, which inter alia requires the Member States to take appropriate measures to encourage the prevention or reduction of waste production.

37 The consequence, in particular, is that whatever the national rules may be governing landfill sites, they must ensure that that all the operating costs of such a site is actually borne by the holders of the waste deposited in the landfill for disposal.

38 Consequently, although a Member State can introduce a levy on waste to be paid by the landfill operator and reimbursed to the latter by the authorities depositing waste in the landfill, it can do so only on condition that the fiscal provision in question is accompanied by measures to ensure that the levy is actually reimbursed within a short time so as not to impose excessive operating costs on the operator on account of late payment by those authorities, thereby undermining the ‘polluter pays’ principle. Causing the operator to bear such charges would amount to charging to him the costs arising from the disposal of waste which he did not generate but of which he merely disposes in the framework of his

activities as a provider of services.

39 In any event, just as a levy such as that at issue in the main proceedings, calculated on the basis of the amount of waste deposited in the landfill, is an operating cost within the meaning of Article 10 of Directive 1999/31, which must be included in the price to be paid to the operator of the landfill site by the holder of the waste being deposited in the landfill, all the costs relating to the recovery of amounts which the waste holder owes to the site operator on that account, and in particular, the costs resulting from late payment of those amounts, including any costs incurred in order to avoid a financial penalty, must be passed on in that price if the requirements of Article 10 of Directive 1999/31 are to be satisfied.

40 The same is true of financial penalties imposed on the operator of a landfill site for late payment of such a levy when the delay is due to late reimbursement by the waste holder of amounts due in respect of the levy, a matter which it for the national court to ascertain.

41 In the light of the foregoing, the answer to the first question must be that Article 10 of Directive 1999/31 must be interpreted as meaning that it does not preclude a national provision, such as that at issue in the main proceedings, which makes the operator of a landfill site subject to a levy to be reimbursed by the local authority depositing the waste and which provides for financial penalties to be imposed on that operator for late payment of the levy, on condition that those rules are accompanied by measures to ensure that the levy is actually reimbursed within a short time and that all the costs of recovery, and in particular, the costs resulting from late payment of amounts which that authority owes to the site operator on that account, including costs incurred in order to avoid any financial penalty which might be imposed on the site operator, are passed on in the price to be paid by the authority to that operator. It is for the national court to ascertain whether those conditions have been satisfied.

The second question

42 After providing in Article 1 thereof that its provisions are to apply to all payments made as remuneration for commercial transactions, Article 2(1) of Directive 2000/35 defines ‘commercial transactions’ as ‘transactions between undertakings or between undertakings and public authorities which lead to the delivery of goods or the provision of services for remuneration’.

43 Those provisions were transposed into the Italian legal system by Legislative Decree No 231 of 9 October 2002.

44 With regard, in the main proceedings in the present case, to the relationship between the operator of a landfill site and the authority depositing waste in the landfill, it is apparent from the information in the order for reference that the operator provides a service to the authority, namely, disposal of the waste deposited in the landfill, in return for which the authority pays him a remuneration, including, pursuant to Article 3(26) of Law No 549/95, the amount of the special levy paid by him.

45 It thus appears that, contrary to the Italian Government's argument, the relationship between the operator of a landfill site and the authority depositing waste in the landfill constitutes a transaction between an undertaking and a public authority which leads to a service being provided for remuneration and, consequently, a commercial transaction within the meaning of Article 2(1) of Directive 2000/35.

46 Therefore, the payments made by way of remuneration for such a transaction come within the scope of Directive 2000/35.

47 It follows that in a situation such as that in the main proceedings, the Member States must ensure that,

in accordance with Article 3 of the Directive, interest is payable in the case of late payment to the landfill site operator of the sums due in that connection by the local authority depositing waste in the landfill, those sums including in an appropriate case, as was stated in paragraph 38 of the present judgment, the amount of the levy paid by the operator which must be reimbursed by the local authority having deposited the waste in the landfill.

48 It follows from the foregoing that the answer to the second question must be that Articles 1, 2(1) and 3 of Directive 2000/35 have to be interpreted as meaning that the sums owed to the operator of a landfill site by a local authority depositing waste in the landfill, such as the sums due by way of reimbursement of a tax, come within the scope of that Directive and that the Member States must ensure, in accordance with to Article 3 thereof, that, in the case of late payment, the landfill operator may charge the local authority interest on those sums for which the local authority is liable.

Costs

49 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:

1. **Article 10 of Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste, as amended by Regulation No 1882/2003 of the European Parliament and of the Council of 29 September 2003 must be interpreted as meaning that it does not preclude a national provision, such as that at issue in the main proceedings, which makes the operator of a landfill site subject to a levy to be reimbursed by the local authority depositing the waste and which provides for financial penalties to be imposed on that operator for late payment of the levy, on condition that those rules are accompanied by measures to ensure that the levy is actually reimbursed within a short time and that all the costs of recovery, and in particular, the costs resulting from late payment of amounts which that authority owes to the site operator on that account, including costs incurred in order to avoid any financial penalty which might be imposed on the site operator, are passed on in the price to be paid by the authority to that operator. It is for the national court to ascertain whether those conditions have been satisfied**

2. **Articles 1, 2(1) and 3 of Directive 2000/35/EC of the European Parliament and of the Council of 29 June 2000 on combating late payment in commercial transactions must be interpreted as meaning the sums owed to the operator of a landfill site by a local authority depositing waste in the landfill, such as the sums due by way of reimbursement of a levy, come within the scope of that Directive and that the Member States must ensure, in accordance with Article 3 thereof, that, in the case of late payment, the landfill operator may charge the local authority interest on those sums for which the local authority is liable.**

[Signatures]

* Language of the case: Italian.