JUDGMENT OF THE COURT (Second Chamber)

16 July 2009 (*)

(Reference for a preliminary ruling – Directive 2006/12/EC – Article 15(a) – Waste disposal costs not allocated on the basis of actual production of waste – Compatibility with the 'polluter pays' principle)

In Case C−254/08,

REFERENCE for a preliminary ruling under Article 234 EC from the Tribunale amministrativo regionale della Campania (Italy), made by decision of 19 March 2008, received at the Court on 16 June 2008, in the proceedings

**Futura Immobiliare srl Hotel Futura,**

**Meeting Hotel,**

**Hotel Blanc,**

**Hotel Clyton,**

**Business srl**

v

**Comune di Casoria,**

intervener:

**Azienda Speciale Igiene Ambientale (ASIA) SpA,**

THE COURT (Second Chamber),

composed of C.W.A. Timmermans, President of the Chamber, J.−C. Bonichot, K. Schiemann, P. Kūris and C. Toader (Rapporteur), Judges,

Advocate General: J. Kokott,

Registrar: R. Grass,

after considering the observations submitted on behalf of:

– Comune di Casoria, by M. Spagna, avvocato,

– the Italian Government, by I. Bruni, acting as Agent, and M. Russo, avvocatessa dello Stato,

– the Commission of the European Communities, by D. Recchia and J.−B. Laignelot, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 23 April 2009,

gives the following

## Judgment

1 This reference for a preliminary ruling relates to the interpretation of Article 15(a) of Directive 2006/12/EC of the European Parliament and of the Council of 5 April 2006 on waste (OJ 2006 L 114, p. 9) and, in particular, to the 'polluter pays' principle.

2 The reference has been made in proceedings between Futura Immobiliare srl Hotel Futura, Meeting Hotel, Hotel Blanc, Hotel Clyton and Business srl ('Futura Immobiliare and Others'), which are hotel businesses, and the Comune di Casoria (Municipality of Casoria) concerning determination of the rates of the tax for the disposal of private solid urban waste ('the waste tax') payable by those businesses in respect of 2006 and 2007.

### Legal context

*Community law*

3 Recitals 1, 6 and 14 in the preamble to Directive 2006/12 are worded as follows:

'(1) Council Directive 75/442/EEC of 15 July 1975 on waste [OJ 1975 L 194, p. 39] has been significantly amended on several occasions ... In order to clarify matters, a codification of the provisions in question should be drawn up.

…

(6) In order to achieve a high level of environmental protection, Member States should, in addition to taking responsible action to ensure the disposal and recovery of waste, take measures to restrict the production of waste particularly by promoting clean technologies and products which can be recycled and re-used, taking into consideration existing or potential market opportunities for recovered waste.

…

(14) That proportion of the costs not covered by the proceeds of treating the waste must be defrayed in accordance with the "polluter pays" principle'.

4 Article 1(1)(c) of Directive 2006/12 states:

'For the purposes of this Directive:

…

(c) "holder" shall mean the producer of the waste or the natural or legal person who is in possession of it'.

5 Article 8 of the directive provides:

'Member States shall take the necessary measures to ensure that any holder of waste:

(a) has it handled by a private or public waste collector or by an undertaking which carries out the operations listed in Annex II A or II B; or

(b) recovers or disposes of it himself in accordance with the provisions of this Directive.'

6 Article 15 of the directive is worded as follows:

‘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.’

7 Article 20 of Directive 2006/12 states:

‘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.’

8 Annex III, Part B, to Directive 2006/12 indicates 17 July 1977 as being the time-limit for transposition of Directive 75/442.

*National law*

9 Legislative Decree No 507 of 15 November 1993 providing for revision and harmonisation of local taxes on advertising and charges for public advertising displays, of the fee for occupation of public spaces and areas of municipalities and provinces and of the tax for disposal of solid urban waste under Article 4 of Law No 421 of 23 October 1992, concerning the reorganisation of local authority financing (ordinary supplement to GURI No 108 of 9 December 1993; ‘Decree No 507/1993’), established the waste tax in Chapter III.

10 In that regard, Article 58(1) of Decree No 507/1993 states:

‘For the service of disposing of private solid urban waste, supplied under a monopoly regime in built-up areas, hamlets and residential clusters and possibly extended to areas of the municipality with scattered settlements, the municipalities shall introduce an annual [waste] tax that is governed by appropriate regulations and applied at the appropriate rate, in compliance with the requirements and criteria set out in the following rules.’

11 Article 62(1) and (4) of Decree No 507/1993 provides, under the heading ‘Condition for liability to the [waste] tax and exemptions’:

‘1. This [waste] tax shall be payable by persons in occupation or possession of premises and open land whatever their use, with the exception of open land attached or ancillary to private dwellings other than green spaces, existing in the areas of the municipality where this service is introduced and implemented or at least provided continuously …

…

4. In buildings for residential use in which an economic and professional activity is pursued, the regulations may provide that the [waste] tax shall be payable on the basis of the rate laid down for the particular activity in question and that it shall be in proportion to the surface area assigned to that activity.’

12 According to Article 65 of Decree No 507/1993, headed ‘Proportionality and rates’, the waste tax may be proportional in that it is calculated on the basis of the ordinary average quantity and quality, per unit of taxable surface area, of private solid urban waste, and waste regarded as such, liable to be generated in the premises and areas through the type of use for which they are intended and on the basis of the cost of disposal. Also, as provided in Article 65(2), the municipalities are to lay down the rates for each standard category or sub-category, in accordance with the cost coverage ratio chosen within the statutory limits, by

multiplying the cost, estimated for the forthcoming year, of disposal per verified unit of taxable surface area by one or more quantitative and qualitative waste production coefficients.

13 Article 68 of Decree No 507/1993, headed 'Rules', is worded as follows:

'1. For implementation of the [waste] tax, the municipalities shall be required to adopt appropriate regulations, which must contain:

(a) the classification of the categories and any sub-categories of premises and areas having the same waste production potential and subject to the same rate of tax;

…

2. For the purposes of the comparative determination of the rates, the categories and any sub-categories shall be arranged having regard, as far as possible, to the following groups of activity or use:

…

(c) premises and areas for residential use by families and persons living as a group or together, hotel establishments;

…'

14 Article 69(1) and (2) of Decree No 507/1993 states:

'1. No later than 31 October the municipalities shall, upon the basis of the classification and the criteria for graduation set out in the regulations, decide upon the rates per unit of surface area of the premises and areas included in the various categories or sub-categories which are to be applied for the following year. If no decision is taken within that time-limit, the rates approved for the current year shall be deemed to be extended to the following year.

2. For the purposes of review of its legality, the decision shall set out the reasons for the ratios established for the rates, the final and provisional data, distinguished according to their economic classification, relating to the costs of the service, and the data and circumstances which have led to the minimum mandatory coverage of the cost being increased …'

15 Legislative Decree No 22 of 5 February 1997 transposing Directives 91/156/EEC on waste, 91/689/EEC on hazardous waste and 94/62/EC on packaging and packaging waste (ordinary supplement to GURI No 33 of 15 February 1997; 'Legislative Decree No 22/1997') provides for abolition of the waste tax and introduction of a tariff regime.

16 According to the information provided by the national court, the charge under this regime comprises, first, a fixed amount which is designed to cover the main costs of the waste management service and is determined on the basis of the surface area of the property occupied or possessed. It comprises, second, a variable amount calculated on the basis of the quantity of waste actually collected.

17 Legislative Decree No 22/1997 was repealed by Article 264 of Legislative Decree No 152 of 3 April 2006 laying down environmental rules (ordinary supplement to GURI No 96 of 14 April 2006). The regime established by the latter decree is, to a large extent, based on that laid down in Legislative Decree No 22/1997.

18 However, according to the information provided by the national court, the tariff regime laid down by Legislative Decree No 152 of 3 April 2006 has not yet been fully implemented, so that the waste tax as laid down by Decree No 507/1993 remained applicable in the municipality of Casoria for 2006 and 2007.

**The main proceedings and the question referred for a preliminary ruling**

19 Futura Immobiliare and Others are hotel businesses in the municipality of Casoria. On that basis, they must pay the waste tax. However, under the latter tax, hoteliers are taxed more heavily than individuals occupying residential premises.

20 Since it considered this difference in treatment to be unlawful, Futura Immobiliare srl Hotel Futura brought an action for annulment of a decision of 25 May 2006 of the Commissione straordinaria (Extraordinary Committee of the Comune di Casoria) regarding the determination of the waste tax for 2006, a decision of the Giunta municipale (Municipal Council) of Casoria of 15 March 2005 and other measures related to those decisions.

21 Futura Immobiliare and Others also brought an action for annulment of two other decisions, of 4 April 2007, of the Commissione straordinaria, respectively concerning the adoption of the regulations for the application of the waste tax and the determination of the schedule of costs and rates of tax for the 2007 financial year, and of other measures related to those decisions.

22 The Tribunale amministrativo regionale della Campania (Regional Administrative Court of Campania), before which these actions were brought, decided to join the cases.

23 In their actions against those measures and decisions, Futura Immobiliare and Others submit, in particular, that the rate of the waste tax set for hotels is disproportionate to that laid down for residential property and, in reality, is based on their revenue-earning capacity rather than their waste-production capacity. According to these hotel businesses, the tax does not take account of room occupancy rates or of whether or not there are restaurant services, which are liable to produce more waste, nor of the seasonal nature of the hotel trade and the impact of surface areas which are used for services and consequently not occupied.

24 They further submit that, although rates of tax for hotels and for private residential property are deemed to be substantially equivalent, given their respective levels of waste production, the measures and decisions challenged provided for a rate eight to nine times as high for hotels. Nor is the rate adopted accompanied by any indication of the method applied or by data concerning the ordinary average quantity and quality of the waste liable to be produced per unit of surface area depending on the use made of the premises.

25 Since it considered that the applicable provisions of national law appeared to be inconsistent with Community law, the Tribunale amministrativo regionale della Campania decided to stay proceedings and to refer the following question to the Court for a preliminary ruling:

‘Are the national provisions contained in Article 58 et seq. of [Decree No 507/1993] and the transitional provisions maintaining them in force …, 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 [Directive 2006/12] and the “polluter pays” principle referred to?’

**Admissibility of the reference for a preliminary ruling**

*Observations submitted to the Court*

26 The Comune di Casoria essentially submits that the reference for a preliminary ruling is inadmissible since it relates to Directive 2006/12 the period for whose transposition had not yet expired and that, being a directive, this Community measure is not directly applicable in Italian law.

27 The Italian Government submits that the reference is inadmissible since, in order to give an answer in response to it, the Court would have to rule on the compatibility of the national legislation with

Community law. The Italian Government further contends that the national court fails to set out adequately the matters of law and fact that are to enable the Court to provide it with a useful answer.

*Findings of the Court*

28 As regards, first, the Italian Government's arguments, it must be remembered 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 Community law, 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 (see Case C−439/06 *citiworks* [2008] ECR I−3913, paragraph 21 and the case-law cited).

29 Also, it is indeed settled case-law that the need to provide an interpretation of Community law which will be of use to the national court makes it necessary that the national court should define the factual and legislative context of the questions it is asking or, at the very least, explain the factual circumstances on which those questions are based (Case C-345/06 *Heinrich* [2009] ECR I-0000, paragraph 30 and the case-law cited).

30 However, in the present case, the Court considers that it has been provided with sufficient information by the national court as regards both the matters of fact and the matters of law which characterise the main proceedings.

31 As regards, second, the arguments of the Comune di Casoria, it is be noted that, as is apparent from recital 1 in its preamble, Directive 2006/12, in order to clarify matters, codified Directive 75/442, the period for the transposition of which expired on 17 July 1977.

32 As the Advocate General has observed in point 22 of her Opinion, it is clear from Article 20 of Directive 2006/12, read in conjunction with Annex III, Part B, thereto, that the repeal of Directive 75/442 on the date upon which Directive 2006/12 entered into force was without prejudice to Member States' obligations relating to the time-limit for transposition into national law of the directive thereby repealed.

33 Accordingly, since the wording of Article 15 of Directive 2006/12 is essentially identical to that of Article 11 of Directive 75/442, the entry into force of Directive 2006/12 did not have the effect of granting the Member States a fresh period for transposing Article 15.

34 Furthermore, contrary to the submissions of the Comune di Casoria, under Article 234 EC the Court has jurisdiction to give preliminary rulings concerning the interpretation of acts of the institutions of the European Community regardless of whether they are directly applicable (see, to this effect, Case 111/75 *Mazzalai* [1976] ECR 657, paragraph 7, and Case C-261/95 *Palmisani* [1997] ECR I−4025, paragraph 21).

35 Accordingly, the question submitted by the Tribunale amministrativo regionale della Campania must be answered.

**Consideration of the question referred**

36 By its question, the national court essentially asks whether Article 15(a) of Directive 2006/12 must be interpreted as precluding national legislation which, for the purposes of financing an urban waste management and disposal service, provides for a tax or charge which is calculated on the basis of an estimate of the volume of waste generated by users of that service and not on the basis of the quantity of waste which they have actually produced and presented for collection.

37 The national court is uncertain, in particular, whether that provision must be interpreted as requiring the cost borne by the 'holder' of the waste, who presents it for collection for the purpose of its disposal, to be proportional to the quantity of waste actually presented.

*Observations submitted to the Court*

38 The Comune di Casoria and the Italian Government submit that the Member States have significant freedom of action in implementing the 'polluter pays' principle, in particular where the transposition of a provision of a directive – here, Article 15 of Directive 2006/12 – is involved. The Italian Government invites the Court to accord the Member States the same freedom of action as that accorded by it to the Community institutions in its interpretation of Article 130r of the EC Treaty (now, after amendment, Article 174 EC) in Case C-284/95 *Safety Hi-Tech* [1998] ECR I-4301.

39 In any event, the Italian Government contends that the Italian tax-based system is fully compatible with the 'polluter pays' principle since the cost of management and disposal of the waste is placed on those in a position to influence its production. Furthermore, the parameters used for calculating the tax, such as the waste-production capacity of the various categories of users or the nature of the waste produced, are pertinent.

40 The Commission of the European Communities emphasises that Directive 2006/12 does not set out the manner in which the Member States are to organise their system for allocating the costs of collection and disposal of urban waste and that it is for them to choose the form and methods for achieving the objective of charging those costs to those who have generated the waste.

41 Relying on the Communication from the Commission to the Council regarding cost allocation and action by public authorities on environmental matters – Principles and detailed rules governing their application, which is annexed to Council Recommendation 75/436/Euratom, ECSC, EEC of 3 March 1975 regarding cost allocation and action by public authorities on environmental matters (OJ 1975 L 194, p. 1), the Commission submits that Member States' legislation must provide, inter alia, for a correlation between the quantity of waste produced and the amount paid for the waste disposal service.

42 In particular, the national legislation may lay down a system identifying certain categories of users (waste producers), in order to levy upon the latter a tax or charge calculated on the basis of estimates of the quantity of waste which those categories produce. Article 15 of Directive 2006/12 therefore does not require the tax or charge to be calculated on the basis of the quantity of waste actually generated by each user. However, such national legislation should not have the effect of excluding certain categories of waste producers from the requirement to contribute financially.

*The Court's answer*

43 By virtue of Article 8 of Directive 2006/12, any 'holder of waste' is obliged either to have the waste handled by a private or public waste collector or by an undertaking which carries out the operations listed in Annex II A or II B to the directive or to recover or dispose of it himself in accordance with the provisions of the directive.

44 Accordingly, in circumstances such as those in the main proceedings, where holders of waste have it handled by a collector, Article 15(a) of Directive 2006/12 provides that, in accordance with the 'polluter pays' principle, the cost of disposing of the waste must be borne by those holders.

45 That financial obligation is imposed on those holders because of their contribution to the production of the waste (see Case C-188/07 *Commune de Mesquer* [2008] ECR I-4501, paragraph 77).

46 So far as concerns the financing of the cost of management and disposal of urban waste, inasmuch as a service provided on a collective basis to a body of 'holders' is involved, the Member States are obliged, under Article 15(a) of Directive 2006/12, to ensure that, in principle, all the users of that service, in their capacity as 'holders' within the meaning of Article 1 of the directive, collectively bear the overall cost of disposing of the waste.

47 While the Member States as the addressees of Directive 2006/12 are bound as to this result to be achieved in terms of financial liability for the cost of disposing of waste, in accordance with Article 249 EC they may, however, choose the form and the methods to be applied in order to attain that result (see *Commune de Mesquer*, paragraph 80).

48 The Commission has rightly observed that, as Community 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 the cost of the disposal of urban waste, 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.

49 It should however be pointed out, first, that, as the Advocate General has stated in point 40 of her Opinion, it is often difficult, indeed onerous, to determine the precise volume of urban waste presented for collection by each 'holder'.

50 Accordingly, recourse to criteria founded, first, on the waste-production capacity of the 'holders', calculated on the basis of the surface area of the property which they occupy and of its use, and/or, second, on the nature of the waste produced can provide a means of calculating the costs of disposing of that waste and allocating them among the various 'holders', since those two parameters are such as to have a direct impact on the amount of the costs.

51 From this point of view, national legislation which, for the purposes of financing the management and disposal of urban waste, provides for a tax or charge calculated on the basis of an estimate of the volume of waste generated and not on the basis of the quantity of waste actually produced and presented for collection cannot, as Community law currently stands, be considered contrary to Article 15(a) of Directive 2006/12.

52 Second, the 'polluter pays' principle does not preclude the Member States from varying, on the basis of categories of users determined in accordance with users' respective capacities to produce urban waste, the contribution of each of those categories to the overall cost necessary to finance the system for the management and disposal of urban waste.

53 In the main proceedings, it is apparent with regard to calculation of the waste tax that hotel establishments constitute a category of 'holders' and that, in the submission of Futura Immobiliare and Others, hotel establishments are treated less favourably than individuals.

54 In that regard, it must be found that, when calculating a waste disposal tax or charge, a distinction drawn for fiscal purposes between categories of users of the urban waste collection and disposal service – like that drawn by the national legislation at issue in the main proceedings between hotel undertakings and individuals – which is based on objective criteria having a direct relationship with the cost of the service, such as their waste-production capacity or the nature of the waste produced, may prove appropriate for achieving the objective of financing the service.

55 While the distinction drawn for fiscal purposes must not go beyond what is necessary in order to achieve that financing objective, it is however to be noted that here, as Community law currently stands, the competent national authorities have a broad discretion when determining the manner in which such a tax or charge is calculated.

56 Thus, it is incumbent upon the national court to review, on the basis of the matters of fact and law placed before it, whether the waste tax at issue in the main proceedings results in the allocation to certain 'holders', in the case in point hotel establishments, of costs which are manifestly disproportionate to the volumes or nature of the waste that they are liable to produce.

57 In light of the foregoing, the answer to the question referred is that Article 15(a) of Directive 2006/12 must, as Community law currently stands, be interpreted as not precluding national legislation which, for the purposes of financing an urban waste management and disposal service, provides for a tax or charge

calculated on the basis of an estimate of the volume of waste generated by users of that service and not on the basis of the quantity of waste which they have actually produced and presented for collection. It is, however, incumbent upon the national court to review, on the basis of the matters of fact and law placed before it, whether the waste tax at issue in the main proceedings results in the allocation to certain 'holders', in the case in point hotel establishments, of costs which are manifestly disproportionate to the volumes or nature of the waste that they are liable to produce.

**Costs**

58 Since these proceedings are, for the parties to the main proceedings, a step in the actions 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 15(a) of Directive 2006/12/EC of the European Parliament and of the Council of 5 April 2006 on waste must, as Community law currently stands, be interpreted as not precluding national legislation which, for the purposes of financing an urban waste management and disposal service, provides for a tax or charge calculated on the basis of an estimate of the volume of waste generated by users of that service and not on the basis of the quantity of waste which they have actually produced and presented for collection.**

**It is, however, incumbent upon the national court to review, on the basis of the matters of fact and law placed before it, whether the tax for the disposal of private solid urban waste at issue in the main proceedings results in the allocation to certain 'holders', in the case in point hotel establishments, of costs which are manifestly disproportionate to the volumes or nature of the waste that they are liable to produce.**

[Signatures]

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* Language of the case: Italian.