

Training module

EU WASTE LEGISLATION AND PROTECTION OF THE
ENVIRONMENT THROUGH CRIMINAL LAW

Focus on combating waste crime
Online Workshop for prosecutors and judges

6-7 October 2020



Illegal treatment and management of waste

ELV, WEEE & Landfill Directive

CJEU case law & Sanctions



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Court of Justice of the European Union

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On the Advocate General

- Member of the Court
- Advises the Court by independently preparing Opinions
- Does not participate in deliberations
- Opinion is not a Judgment
- Only the Judgment has the authority of the Court
- Opinions can illuminate the background
- Presentation is my personal view



Article 252 TFEU

The Court of Justice shall be assisted by eight Advocates-General. Should the Court of Justice so request, the Council, acting unanimously, may increase the number of Advocates-General.

It shall be the duty of the Advocate-General, acting with complete impartiality and independence, to make, in open court, reasoned submissions on cases which, in accordance with the Statute of the Court of Justice of the European Union, require his involvement.

Remarks:

The Council has decided to increase the number of AGs to eleven.

The AG is not assigned to any particular chamber of the court. She does not participate in the deliberations of the judgment.

Outline

- Effective Enforcement of Waste Law - Art. 36 Waste Directive 2008/98/EC
- Directive 2000/53/EC on end-of life vehicles (ELV)
- Directive 2012/19/EU on waste electrical and electronic equipment (WEEE)
- Directive 1999/31/EC on the landfill of waste



Enforcement

- Environmental Crime - Already covered
- Art. 36 (2) WFD

Members States shall lay down provisions on the penalties applicable to infringements of the provisions of this Directive and shall take all measures necessary to ensure that they are implemented. The penalties shall be effective, proportionate and dissuasive.



This provision underlines the general obligations of the MS with regard to the penalisation of breaches of waste law.

Enforcement

- Enforcement of the WFD > ELV, WEEE, Landfill?
- Art. 13 WFD: waste management is to be carried out without endangering human health and without harming the environment
- Art. 15 WFD: original holder of waste is responsible that, inter alia, Art. 13 is respected
- ELV, WEEE and Landfill specify these general obligations > breaches of specific obligations will often also be breaches of the general obligations
- Art. 22 WEEE also requires penalties



Even if other directives do not always have similar clauses, breaches of them will often fall within the scope of the WFD clause.

Enforcement

Art. 36 (2) WFD expresses a general principle of EU law: According to the principle of sincere cooperation (Article 4(3) TEU), while the choice of penalties applicable to infringements of EU law remains within their discretion, MS must ensure in particular that they are effective, proportionate and dissuasive (eg Hansen, C-326/88, para 17, Scialdone, C-574/15, para 46)



Moreover, general EU law also requires effective penalties for the infringement of EU obligations.

Enforcement - EU Principles

Where sanctions implement EU law they must respect the fundamental principles of EU, in particular the Charter (cf. Åkerberg Fransson (C-617/10, EU:C:2013:105, para 27), Berlioz Investment Fund (C-682/15, EU:C:2017:373, paras 39 - 42))



Conversely, sanctions for the infringement of EU law are also limited by EU principles, in particular by fundamental rights.

Enforcement - EU Principles

- Effective, proportionate and dissuasive >> Proportionality >> sufficient, but not excessive (Art. 49 (3) Charter)
- *Nulla poena sine lege* - Legality - no retroactive application, certainty + *lex mitior* - la loi la plus douce - the lesser penalty (Art. 49 (1) Charter)
- Presumption of Innocence (Art. 48 (1) Charter)
- Rights of the Defence (Art. 48 (2) Charter)
- *Ne bis in idem* (Art. 50 Charter)
- *Nulla poena sine culpa* (intention/negligence)? Is strict criminal liability allowed, can it be required?



Art. 48 – 50 of the Charter are particularly relevant.

ELV and WEEE - SPECIFIC POINTS

Directive 2000/53/EC on end-of life vehicles (amended) - ELVs



Background/current situation

- 12 million ELVs per year in the EU
- 8 million tonnes of waste



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Preamble

End-of live vehicles represent :

12 million vehicles per year in the EU

Between 8 and 9 million tonnes of waste.

It means an important impact on the environment.

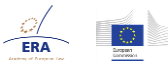
Directive 2000/53/EC was adopted:

to improve the environment protection, of course,

but also to ensure coherence between national approaches particularly with a view to the design of vehicles.

Definitions (Article 2)

- Vehicle :
 - Passenger cars (max. 8 people)
 - Utilities (max. 3.5 t)
- End-of life vehicles
 - Vehicle which is waste within the meaning of the general Directive
 - ELVs = hazardous waste (before dismantling)



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Definitions (Article 2)

Article 2 gives us many definitions. The most important concern the definitions of “vehicle” and “end-of life vehicle”.

“**vehicle**” mainly means passenger car with maximum 8 people but also utilities with a maximum weight of 3.5 tonnes.

“**end-of life vehicle**”: vehicle which is waste within the meaning of the general Directive 2008/98/EC on waste. You know what waste is according to the directive and the case-law from the Court of Justice of the European Union. So, a vehicle could become an end-of life vehicle and consequently waste in itself or by a decision made by the owner. According to Recital 10 of the Directive, vintage vehicles, historic vehicles and vehicles for collectors or museums are excluded from the scope of the Directive.

Don’t forget that an ELV is a hazardous waste before its dismantling.

Scope (Article 3)

- Vehicles and end-of life vehicles
- Components and materials
- Incl. removed used parts (repair)



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Scope (Article 3)

The Directive covers vehicles (because some provisions concern new vehicles) and end-of-life vehicles including their components and materials. But the Directive also covers waste used parts removed when a car is repaired.

Directive 2012/19/EU on waste electrical and electronic equipment (WEEE)



Background/Current situation

- 9 million tonnes in 2005
- 12,3 million tonnes by 2020



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Preamble

The problem of waste electrical and electronic equipment (WEEE) is huge.

Quantitatively, it represents in the EU:

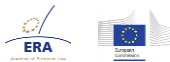
9 million tonnes in 2005

Probably 12.3 million tonnes in 2020

Qualitatively, waste of electrical and electronic equipment (WEEE) is a source of negative impact for human health provision and environment protection because its components involve hazardous substances. But components of waste electrical and electronic equipment are valuable resource to recycle.

Definitions (Article 3) 1/2

- **EEE** : dependent on electric currents or electromagnetic fields (needs electricity for its primary function) (max 1000 volts alternating current / 1500 volts direct current)
- **WEEE** : EEE (incl. all components) which is waste within the meaning of Directive 2008/98/EC
- **Producer** :
 - Manufacturer, importer, seller or reseller who markets EEE
 - Irrespective of the selling technique (incl. by distance communication)
 - Established in the EU (except for distance communication)



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Among many definitions given by Article 3, we can retain some of them.

“Electrical and electronic equipment”: equipment depending on electric current or electromagnetic fields (needs electricity for its primary function) with a voltage rating not exceeding 1 000 volts for alternating current and 1 500 volts for direct current

“Waste electrical and electronic equipment”: EEE which is waste within the meaning of Directive 2008/98/EC.

“Producer”:

Manufacturer, importer, seller or reseller who markets EEE

Irrespective of the selling technique (e.g. by distance communication)

Established in the EU (except for distance communication)

Definitions (Article 3) 2/2

- **Making available on the market** : any supply of product for distribution, consumption or use, also free of charge
- **Placing on the market** : first making available on a professional basis
- ...

“Making available on the market”: any supply of product for distribution, consumption or use, also free of charge

“Placing on the market”: first making available on a professional basis.

Scope (Art. 2)

Since 15/8/2018: all EEE with the exception of specific equipment listed in Art. 2(3) + (4), eg

- specifically designed and installed as part of another type of equipment that is excluded from or does not fall within the scope of this Directive (Art. 2(3)(b))
- filament bulbs (Art. 2(3)(c))
- large-scale stationary industrial tools (Art. 2(4)(b))
- means of transport (Art. 2(4)(d))



Scope

- **CJEU, C-369/14 of 16 July 2015, Sommer Antriebs-und Funktechnik GmbH v. Rademacher Geräte-Electronick GmbH**

Is a garage-door operating device in the scope of the Directive EEE?

A - Yes

B - No



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Interpretation

Globally, Member States have correctly and completely implemented the Directive and its annexes. So in domestic law of the 27 MS, there is no real non-compliance with the Directive WEEE.

But we could/can have some problems in the interpretation of some concepts in the scope of the Directive. An interesting example is given to us by a case submitted to the Court of Justice of the European Union.

CJEU, 16 July 2015, C-369/14, Sommer Antriebs-und Funktechnik GmbH v. Rademacher Geräte-Electronick GmbH

On a request for a preliminary ruling in proceedings between Sommer and Rademacher based on the German law against unfair competition.

Sommer and Rademacher produce and manufacture garage-door operating devices. So they are in competition.

Sommer is registered with the competent authority as a producer of electrical and electronic equipment (EEE). Rademacher is not registered.

Sommer claims that therefore Rademacher is not allowed to place its products on the market. Rademacher disputes this view because, according the company, garage-door operating devices are not in the scope of the Directive.

What is the solution of the Court of Justice of the European Union?

1. Garage-door operating devices are dependent on electric currents of a voltage rating

of approximately 220 to 240 volts. So these devices are likely to constitute electrical and electronic equipment (EEE) within the meaning of the Directive.

2. The second point is to know in which category of Annex I or Annex II garage-door operating devices fall. This kind of equipment is not in the list but the list of Annex II is purely indicative.

For the Court of Justice, this kind of device can be “*electrical and electronic tools (with the exception of large-scale stationary industrial tools)*” within the meaning of Annex I, point 6.

“Tools” is not defined by the Directive. Its usual meaning is “*any article used to carry out particular work or a particular task*”. For the Court, that is the case of garage-door operating device which is an electrical tool.

And clearly, those devices are not large-scale stationary industrial tools.

The last argument presented by Rademacher: its devices do not fulfil an independent function but form part of the components permanently installed in the home automation system of the building concerned. For Rademacher, pursuant to Article 2, § 3, (b), “*the Directive shall not apply to “**equipment which is specifically designed and installed as part of another type of equipment that is excluded** from or does not fall within the scope of the Directive which can fulfil its function only if it is a part of that equipment”*”.

The CJEU does not accept that interpretation because the objectives of the Directive need to include these kinds of devices. And the Court makes a comparison with lighting equipment and photovoltaic panels which are included in buildings without losing their qualification as electrical and electronic equipment within the meaning of the Directive.

Findings: garage-door operating devices are in the scope of waste electrical and electronic equipment Directive and Rademacher had to be registered as a producer of electrical and electronic equipment (EEE).

COMMON PRINCIPLES OF ELV and WEEE

■ HIERARCHY IN THE WASTE MANAGEMENT POLICY (Directive 2008/98/EC)

- Prevent the production of waste
- Preparing for re-use (+re-use)
- Recycling
- Other forms of recovery (eg. incineration to recover energy)
- Disposal



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Now let's continue with the common points between the three directives.

As you know, there is a hierarchy in the waste management policy according to Article 4 of the general Directive 2008/98/EC on waste.

Pursuant to Article 4, at the top of the hierarchy, there is the prevention against the production of waste. This first objective is successively followed by:

the preparing for reuse,

the reuse, the recycling and the other recovery, notably the energy recovery,

and, at the bottom, the disposal.

We find exactly the same objectives and the same hierarchy in the three Directives.

COMMON PRINCIPLES OF ELV and WEEE

Encourage producers to design Veh & EEE to

- minimise waste, in particular hazardous waste and facilitate
- reuse
- recycling
- recovery
- disposal



PREVENTION

- Specific measures in the field of the directives
 - Limit the use of hazardous substances (lead, cadmium, mercury, hexavalent chromium)
 - Directive 2011/65/EU on the restriction of the use of certain hazardous substances in electrical and electronic equipment (ROHS).
 - ELVs Directive (Article 4 (2))
 - WEEE Directive (Article 4 (1) + Annex III)
 - Improve the components



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We have some **specific measures** in the field of the three directives.

That is obviously the case with the Directive 2011/65/EU on the restriction of the use of certain hazardous substances in electrical and electronic equipment (ROHS).

Article 4 of the ELVs Directive pursues prevention objectives. This article imposes, *i.a.*, that the new vehicles put on the market after 1st July 2003 do not contain lead, cadmium, mercury or hexavalent chromium (used in textile dyes but also as anticorrosion product). There are some exceptions under conditions, listed in Annex II which is regularly amended by the Commission decisions on the basis of technical and scientific progress.

We have exactly the same approach in the waste electrical and electronic equipment (WEEE) Directive. Annex II lists the restricted substances referred to in Article 4.1 and the maximum concentration values tolerated by weight in homogeneous materials. We again find, among other substances, lead, cadmium, mercury and hexavalent chromium. And Annex III lists certain exceptions.

PREVENTION

- Reduce the quantity of waste
 - No planned obsolescence of EEE (French law)
 - Shameless Ad: Pinephone - Battery, repair, Operating System



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We can also mention the tricky fight against **the planned obsolescence** of electrical and electronic equipment.

Planned obsolescence or built-in obsolescence in industrial design and economics is a policy of planning or designing a product with an artificially limited useful life so it will become obsolete (unfashionable or no longer functional) after a certain period of time.

A French Act (n° 2015-992) adopted on the 17th August 2015 amends the French Code of Consumption. The new article L.213-4-1 makes the following provision: *“Planned obsolescence is defined as the set of techniques by which a producer on the market aims to reduce deliberately the life of a product to increase the replacement rate”*. The planned obsolescence is punished for a punishment of two years of detention and for 300.000 € of fine. And even 5 % of the average annual sales. The difficulty will be to prove the planned obsolescence.

Preparing for re-use

- ELVs Directive (Article 4)
 - Design and produce new vehicles facilitating
 - Dismantling
 - Re-use
 - Recovery
 - Integrate in the new vehicles more recycled material
- Directive 2005/64/EC on the type-approval of motor vehicles with regard to their reusability, recyclability and recoverability
- ELVs Directive (Article 8) about coding standards and dismantling information and information on components



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The second objective of waste management policy is the preparing for reuse of the products or of all or a part of their components.

ELVs Directive

Article 4 (1) (b) of the ELVs Directive encourages the design and production of new vehicles which take into full account and facilitate dismantling, reuse and recovery, in particular the recycling.

And Article 4 (1) (c) encourages vehicle manufacturers to integrate quantity of recycled material in vehicles.

In this context, we have to mention Directive 2005/64/EC on the type-approval of motor vehicles with regard to their reusability, recyclability and recoverability. The goal of this Directive is to guarantee the reuse, the recycling and the other forms of recovery of components and materials when the new car will become an ELV.

Article 8 of the ELVs Directive also imposes:

- Coding standards to facilitate the identification of components and materials
- Dismantling information from producers for the treatment facilities
- Appropriate information by manufacturers of components used in vehicles.

COMMON PRINCIPLES OF ELV and WEEE

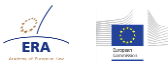
- Consumer shall dispose of ELV & WEEE separately
- Special operators treat ELV & WEEE
- Operators must be licenced and respect certain obligations with regard to waste treatment
- Collection shall be free of charge for consumer (implies a system to cover the costs, possibly with participation of the producers)



Re-use, recycling and recovery

1. Collection

- First step: collection of ELVs and WEEE
- ELVs Directive (Article 5)
 - Obligation of collection of ELVs: all end-of-life vehicles must be transferred to authorized treatment facilities
 - Facilities must be available
 - Free of cost delivery but exceptions
 - Certificate of destruction



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1.Collection

The first step, before reuse, recycling or other forms of recovery, is to collect end-of-life vehicles, waste electrical and electronic equipment and packaging waste.

Pursuant to the **ELVs Directive** (Article 5(1)), economic operators have an obligation of setting up system for the collection of ELVs and, if it is technically feasible, waste parts removed when cars are repaired.

It implies that there is an adequate availability within the territory.

The delivery of ELVs to an authorized facility must be without cost for the last holder or owner even if the ELVs has no or a negative market value. Except if the ELV doesn't contain the essential components (in particular the engine or the coachwork) or contains waste which has been added in the ELV.

Concretely, the usual system of trade-in is the following. In a majority of cases, when you buy a new car, the sales company purchases your old car. And the price of your old car is not only related to its objective value; it is also a commercial/incentive gesture from the manufacturer.

You sign a contract with the car company which becomes the new owner of your old car. There are some possibilities:

- the old car becomes a second-hand car;
- it is reused
- the old car is sold for some euro to a demolisher (components and materials have a

certain value) and a certificate of destruction is granted.

Case-law : CJEU 15th April 2010, C-64/09, Commission v. France

The European Commission puts forward seven pleas in law about the incompatibility of the French legislation with some articles of the ELV Directive concerning, without being exhaustive:

- The definition of dismantling information,

- The date fixing the prohibition of hazardous substances

- The French system of cancellation of the registration upon presentation of a certificate of destruction

- Some interpretation or the lack of certain precisions

- The system of acceptance of ELV, which is, for us, the main point.

Pursuant to the previous French legislation, it was possible for a demolisher to refuse to accept an ELV for destruction if the manufacturer doesn't bear the cost of the destruction.

If a demolisher had accepted an ELV for destruction without an agreement from the producer of the car, he had to take the cost of the destruction in charge.

For the French Republic, its legislation was in compliance with the ELVs Directive:

- Because the objective of the ELV Directive doesn't impose free-of-charge acceptances; it is just an incentive, only one of a number possible means by which that objective may be attained

- Payment by the owner of an ELV is a punitive measure to penalize the abandonment of ELV.

It is not the Court of Justice's findings.

For the Court, article 5(4) is clear: the delivery of an ELV to an authorized treatment facility must be free of charge and the related costs must be borne by the manufacturer.

But, the Court recognizes that it is possible for a demolisher to refuse to accept an ELV. It supposes, that on the territory there are enough treatment facilities that could accept the delivery.

If a demolisher has accepted an ELV to destroy it, the producer concerned has to bear the cost of destruction.

What about the rate of collection? The rate of collection of ELVs is normally 100%.

Re-use, recycling and recovery

1. Collection

WEEE Directive

- Separate collection (out of unsorted municipal waste)
- For WEEE from private households :
 - Systems allowing final holders and distributors to return them at least free of charge
 - Distributors have to accept when supplying a new product that the WEEE of equivalent type can be returned at least free of charge on a one-to-one basis
 - Distributors at retail shops (min. 400 m²) have to accept free of charge very small WEEE (max. 25 cm)



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The **WEEE Directive** also imposes the collection of WEEE. It is a separate collection, out of unsorted municipal waste. Pursuant to Article 6, disposal of separated WEEE is prohibited before specific treatment described in Article 8

For WEEE from private households, the Directive imposes:

Systems allowing final holders and distributors to return them at least free of charge

Distributors have to accept when supplying a new product that the WEEE of equivalent type can be returned at least free of charge on a one-to-one basis (I buy a new wash machine; the seller has to accept my old machine free of charge)

Distributors at retail shops (min. 400 m²) have to accept free of charge very small WEEE (max. 25 cm)

The Directive imposes the transport of WEEE in optimal conditions for reuse, recycling and confinement of hazardous substances (Article 6).

Storage and treatment facilities

- General requirements (Directive 2008/98/EC)
- Specific requirements by the three Directives



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Storage and treatment facilities

As we know, the general Directive 2008/98/EC on waste imposes requirements for the sites for storage and/or treatment of waste. There are specific requirements in the three Directives.

Storage and treatment facilities

Sites

- **Directive ELVs (Article 6)**
 - Annex I of the ELVs directive
 - Impermeable surfaces
 - Equipment for the treatment of water
 - Appropriate storage for dismantled spare parts
 - Appropriate containers/tanks for storage of batteries, fuel, motor oil, ... and used tyres
- **Directive WEEE (Annex VIII)**



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Sites

For **ELVs**, Article 6 and Annex I (amendable by the Commission for technical and scientific progress reasons) determine some specific conditions for storage (and treatment):

Impermeable surfaces

Equipment for the treatment of water

Appropriate storage for dismantled spare parts

Appropriate containers/tanks for storage of batteries, fuel, motor oil, ... and used tyres

We have the same kind of requirements in the **WEEE Directive** (Annex VIII).

Storage and treatment facilities

Treatment

- Annex I of the ELVs Directive + Article 6.3
 - Treatment operations for depollution of ELVs
 - Treatment operations to promote recycling
- Directive WEEE (Article 8)
 - Best available treatment, recovery and recycling techniques
 - Removal of fluids
 - Selective treatment for materials and components (Annex VII)



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Treatment

ELVs must be treated in accordance with the general Directive 2008/98/EC and specific requirements. Annex I, points 3 and 4, describes obligations for:

Treatment operations for depollution of ELV

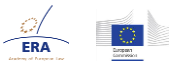
Treatment operations to promote recycling

Article 8 and Annex VIII of **WEEE Directive** specify the conditions of a proper treatment (removal of substances, mixtures and components listed; specific treatment of certain components listed).

Storage and treatment facilities

Permit or registration (Directive ELVs Article 6(2); WEEE Directive Article 9)

- Treatment facilities must be
 - Granted a permit
 - Or registered in compliance with Directive 2008/98/EC on waste (Art. 23)
- Permit or registration must contain all conditions necessary for adequate treatment



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Permit or registration

In accordance to Article 23 of Directive 2008/98/EC on waste which submits any establishment or undertaking intending to carry out waste treatment to obtain a permit from the competent authority, the specific Directives impose such an obligation.

Article 6(2) of the **ELVs Directive** says that treatment facilities must be granted a permit or registered with all conditions necessary for adequate treatment. We have the same rule in Article 9 of the **WEEE Directive**.

For the **PPW Directive**, considering the large diversity of types of treatment facilities, it is the general rule of the Directive 2008/98/EC which applies.

MISCELLANEOUS - Shipments of WEEE

C-624/17 - Tronex

- Intended to ship a consignment of electrical or electronic appliances to buyer in Tanzania
- Electric kettles, steam irons, fans and shavers
- Mainly original boxes, some unpacked
- Returned by consumers, product line abandoned, some defective
- Problems?



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Tronex did not comply with the waste shipments regulation, but contested that the shipment was waste. Therefore, the Court was asked whether it was in fact waste.

MISCELLANEOUS - Shipments of WEEE

C-624/17 - Tronex

- Waste definition: to discard
 - Unopened original packaging?
 - Opened original packaging?
 - Noted as defective or manifestly defective?
 - Without packaging?



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Return under guarantee cannot be considered discarding because the consumer (or trader) because consumer is reimbursed.

The sale of the shipment does not exclude discarding.

EEE in unopened original packaging should normally not be considered waste, while defective EEE must be considered waste.

Opened products must be verified whether they are still fit for sale and if necessary they must be repaired. Otherwise their reuse is uncertain and discarding must be assumed.

MISCELLANEOUS - Shipments of WEEE

C-624/17 - Tronex - Opinion

- Annex VI WEEE Directive on transport of used EEE (not yet applicable to the case)
 - Evidence of Functionality?
 - Sufficiently packaged to prevent damage?
- Opinion: Legality of a sanction based on the general definition of waste? Defective +, unchecked -



Landfill Directive (1999/31)

Art. 2(f): 'landfill' means a waste disposal site for the deposit of the waste onto or into land ...



Waste recovery is excluded from the landfill directive (C-147/15 – Edilizia Mastrodonato).

Landfill Directive (1999/31) Application in Time

C-15/19 - Azienda Municipale (facts)

- Malagrotta landfill near Rome was operated until from 1996 - 2005 with fees to cover 10 years after-care
- Landfill Directive requires 30 years after-care + corresponding fees
- Operator wants additional fees from the waste collector



Facts of the case.

Landfill Directive (1999/31) Application in Time

C-15/19 - Azienda Municipale (judgment)

- Transposition period ends July 2001
- Existing landfills, still operating at this time fall under the directive (Art. 14)
- Old and new waste cannot be separated wrt after-care
- Polluter pays requires full fees, including for past periods (no legitimate expectations)



Main points of the judgment.

Landfill Directive (1999/31)

Operation of landfill

Art. 7 - application for permit

Art. 8 - conditions of permit

Art. 9 - content of permit

Art. 11 - waste acceptance procedures

Art. 12 - control and monitoring

Art. 13 - closure and after-care



Overview of requirements for the operation of a landfill.

Landfill Directive (1999/31)

Art. 3 (2) - (4) allows for the exclusion of certain waste treatments, mostly because of more specific rules.

Art. 4 provides for classes of landfills:

- hazardous waste,
- non-hazardous waste,
- inert waste



Self-explanatory

Landfill Directive (1999/31)

Art. 5 (3) excludes certain waste from landfills:

- (a) liquid waste
- (b) explosive, corrosive, oxidising, highly flammable or flammable waste
- (c) infectious hospital and other clinical wastes
- (d) whole used tyres
- (e) waste not meeting set acceptance criteria
- (f) waste collected separately for re-use or recycling



Self-explanatory

Landfill Directive (1999/31)

Art. 6 specifies allowed waste

- (a) waste must be treated unless not useful
- (b) hazardous waste must meet set criteria of landfill
- (c) landfill for non-hazardous waste accepts:
 - i. municipal waste
 - ii. non-hazardous waste meeting set criteria
 - iii. stable, non-reactive hazardous wastes



Self-explanatory

Landfill Directive (1999/31) a case

A landfill operator accepts hazardous waste that is not covered by their licence.

When this is discovered the competent authority immediately orders them to remove this waste and have it disposed of legally. The operator complies at great costs.



Landfill Directive (1999/31) a case

Subsequently operator is also ordered to pay a substantial fine.

Finally, the authority revokes the operator's licence because they consider them unreliable.



Landfill Directive (1999/31) a case

The operator opposes the withdrawal and the fine in court, claiming an infringement of *ne bis in idem*. These measures, combined with the removal of the waste would amount to a triple sanction for one infraction. Moreover, in combination they would be excessive in comparison to the breach.



These three measures are not a triple fine, but of a different nature:

- Removal of waste only aims to ensure compliance
- Revocation of the licence is the consequence of the lack of reliability they have demonstrated
- Therefore *ne bis in idem* should not affect the fine. However, it cannot be excluded that in view of the administrative consequences of the breach the fine is disproportionate.

Landfill Directive (1999/31) a case

Question to the participants:

A - all three measures are legal

B - fine and revocation of the licence go too far

C - fine is ok, but revocation of the licence goes too far

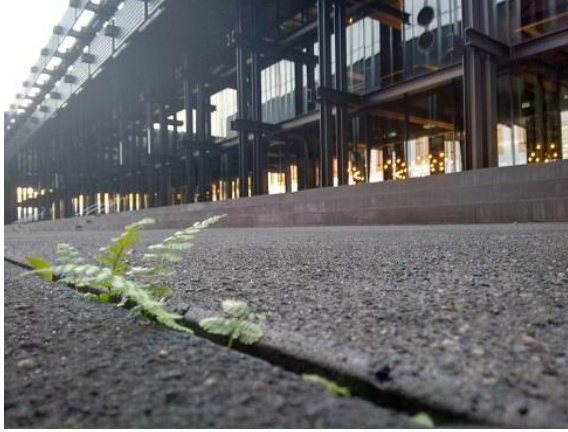
D - the fine goes too far, but revocation is ok



These three measures are not a triple fine, but of a different nature:

- Removal of waste only aims to ensure compliance
- Revocation of the licence is the consequence of the lack of reliability they have demonstrated
- Therefore ne bis in idem should not affect the fine. However, it cannot be excluded that in view of the administrative consequences of the breach the fine is disproportionate.

Thank you for your attention!



Case law: <http://curia.europa.eu/juris/recherche.jsf?language=en>

