



Press and Information

Court of Justice of the European Union

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Judgment in Case C-181/20  
VYSOČINA WIND

**The Court of Justice rules that Directive 2012/19 on waste electrical and electronic equipment is partially invalid, in so far as it obliges producers of photovoltaic panels to finance the costs relating to the management of waste from those panels where they were placed on the market on a date prior to the date on which that directive entered into force**

*In addition, the directive precludes national legislation which imposes the obligation to finance such costs on users of photovoltaic panels placed on the market after the date on which the directive entered into force*

Vysočina Wind is a Czech company which operates a solar power plant equipped with photovoltaic panels that were placed on the market after 13 August 2005.

In accordance with the obligation laid down by Czech Law No 185/2001 on waste ('the Law on waste'), <sup>1</sup> it participated in the financing of the costs relating to the management of waste from photovoltaic panels and, for that purpose, paid contributions in the course of 2015 and 2016.

Since Vysočina Wind took the view, however, that that obligation to pay contributions resulted from an incorrect transposition of Directive 2012/19 on waste electrical and electronic equipment (WEEE) <sup>2</sup> and that the payment of those contributions constituted harm, it brought before the Czech courts an action for damages against the Czech Republic. In that context, Vysočina Wind submitted that the provision of the Law on waste laying down the obligation on users of photovoltaic panels to pay contributions is contrary to Article 13(1) of the WEEE Directive, which makes producers of electrical and electronic equipment, and not its users, responsible for the financing of the costs relating to the management of waste from equipment placed on the market after 13 August 2005.

After the action brought by Vysočina Wind was upheld, both at first instance and on appeal, the Czech Republic brought an appeal on a point of law before the Nejvyšší soud (Supreme Court, Czech Republic).

Having been requested by that court to give a preliminary ruling, the Court of Justice, sitting as the Grand Chamber, rules on the interpretation and validity of Article 13(1) of the WEEE Directive and also explains the conditions under which a Member State may be liable for infringement of EU law in the context of transposition of a directive.

### **Findings of the Court**

On the basis of a literal interpretation of the WEEE Directive, the Court confirms, first, that **photovoltaic panels constitute electrical and electronic equipment** within the meaning of that directive, so that, in accordance with Article 13(1) of the directive, the financing of the costs relating to the management of waste from such panels placed on the market from 13 August 2012, the

<sup>1</sup> Paragraph 37p of zákon č. 185/2001 Sb., o odpadech a o změně některých dalších zákonů (Law No 185/2001 on waste and amending certain other laws).

<sup>2</sup> Directive 2012/19/EU of the European Parliament and of the Council of 4 July 2012 on waste electrical and electronic equipment (WEEE) (OJ 2012 L 197, p. 38; 'the WEEE Directive').

date on which the directive entered into force, must be borne by their producers and not, as the Czech legislation provides, their users.

Second, the Court examines the validity of Article 13(1) of the WEEE Directive, in so far as that provision applies to photovoltaic panels placed on the market after 13 August 2005, that is to say, on a date before the date on which the directive entered into force.

In that regard, the Court notes first of all that, whilst the principle of legal certainty precludes a new legal rule from applying to a situation established prior to its entry into force, it also follows from the Court's case-law that a new legal rule applies immediately to the future effects of a situation which arose under the old law, as well as to new legal situations.

Thus, the Court determines whether application of the legal rule laid down in Article 13(1) of the WEEE Directive, that producers, and not users, are required to provide for the financing of the costs relating to the management of waste from photovoltaic panels placed on the market after 13 August 2005, where those panels have, or will, become waste from the date of the directive's entry into force, is such as to affect adversely a situation established before the directive entered into force or whether its application serves, on the contrary, to govern the future effects of a situation which arose before the directive entered into force.

Since the EU legislation which existed before the WEEE Directive was adopted left the Member States the choice of requiring the costs of management of waste from photovoltaic panels to be borne either by the current or previous waste holders or by the producer or distributor of the panels, **the WEEE Directive affected situations established before it entered into force**, in the Member States which had decided to impose those costs on the users of photovoltaic panels and not their producers, as was the case in the Czech Republic.

In this respect, the Court explains that a new legal rule which applies to previously established situations cannot be regarded as complying with the principle of the non-retroactivity of legal acts where it alters, subsequently and unforeseeably, the allocation of costs the incurring of which can no longer be avoided. In the present instance, **producers of photovoltaic panels were unable to foresee, when designing the panels, that they would subsequently be required to provide for the financing of the costs relating to the management of waste from those panels.**

In the light of those considerations, the **Court declares Article 13(1) of the WEEE Directive invalid in so far as it imposes on producers the obligation to finance the costs relating to the management of waste from photovoltaic panels placed on the market between 13 August 2005 and 13 August 2012.**

Third, the Court states that the insertion in the Law on waste of a provision obliging users of photovoltaic panels to pay contributions which is contrary to the WEEE Directive, more than a month before the directive was adopted, does not constitute, in itself, a breach of EU law by the Czech Republic, since the achievement of the result prescribed by the directive cannot be regarded as seriously compromised before the directive formed part of the EU legal order.

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**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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