

Case C-238/21

Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice

Date lodged:

13 April 2021

Referring court:

Landesverwaltungsgericht Steiermark (Austria)

Date of the decision to refer:

2 April 2021

Complainant:

Porr Bau GmbH

Respondent authority:

Bezirkshauptmannschaft Graz-Umgebung

Subject matter of the case in the main proceedings

Waste – Classification – End-of-waste status – Requirements

Subject matter and legal basis of the request

Interpretation of Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives; Article 267 TFEU.

Questions referred for a preliminary ruling

1. Does Article 6(1) of Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 preclude national legislation under which end-of-waste status is achieved only once waste or existing substances or the substances obtained from them are used directly as a substitute for raw materials or for products made from primary raw materials or they have been prepared for reuse?

If Question 1 is answered in the negative:

2. Does Article 6(1) of Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 preclude national legislation under which end-of-waste status in respect of extracted materials can be achieved at the earliest when they serve as a substitute for raw materials or for products made from primary raw materials?

If Question 1 and/or Question 2 is/are answered in the negative:

3. Does Article 6(1) of Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 preclude national legislation under which end-of-waste status in respect of extracted materials cannot be achieved if formal criteria (in particular record-keeping and documentation obligations) which have no environmentally relevant influence on the measure carried out are not complied with or are not complied with in full, even though the extracted materials demonstrably fall below the limit values (premium) to be complied with for the specific intended use.

Provisions of EU law relied on

Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives ('Waste Directive'), in particular Articles 3 and 6.

Provisions of national law relied on

Abfallwirtschaftsgesetz 2002 (2002 Law on waste management; 'the 2002 AWG'), in particular Paragraphs 2 and 5

Bundesabfallwirtschaftsplan (Federal Waste Management Plan; 'the BAWP').

Succinct presentation of the facts and procedure in the main proceedings

- 1 The Landesverwaltungsgericht Steiermark (Regional Administrative Court, Styria, Austria; 'referring court') is called on to deal with a complaint lodged against a decision ('contested decision') of the Bezirkshauptmannschaft Graz-Umgebung (administrative authorities of the District of Graz and surrounding area; 'respondent authority').
- 2 The complainant is a construction company. It was contracted by farmers to supply extracted materials (hereinafter also referred to as 'the materials used') to them and distribute them on their properties. The purpose of this was to adapt the terrain and improve the cultivation areas, thereby increasing the yields of those areas.

3 In the contested decision, the respondent authority stated, in essence, that the materials used constitute waste within the meaning of Paragraph 2(1) of the 2002 AWG. It had not lost its status as waste, because formal criteria under the Austrian Federal Waste Management Plan (2011 version), which is based on Article 28 of Directive 2008/98/EC, had not been met.

4 The referring court takes the view that the materials used are uncontaminated extracted materials of quality class A1, which is the highest quality class for excavated soil. Such materials are suitable for terrain adjustments (such as those at issue in the present case) under Austrian law and the use of those materials is legally permissible.

Since the referring court has doubts as to the view taken by the authority concerned and, in particular, as to its interpretation of the definition of waste, it refers the matter to the Court of Justice.

Succinct presentation of the reasoning in the request for a preliminary ruling

5 The referring court also has doubts as to whether uncontaminated extracted materials of a high quality class constitute ‘waste’ within the meaning of the definition of waste under EU law in the first place.

6 According to point (1) of Article 3 of the Waste Directive, ‘waste’ means ‘any substance or object which the holder discards or intends or is required to discard’. The third case (‘objective waste’) can be ruled out, as the materials used can be used for almost any application without concern. Therefore, only the first and second cases (‘subjective waste’) enter into consideration.

7 Should the Court of Justice come to the conclusion that the materials used constitute waste, it would still be necessary to assess whether they have achieved end-of-waste status in the meantime.

8 End-of-waste status (hereinafter also referred to as ‘end of waste’) is regulated more strictly in national law than in the Waste Directive (Article 6) and, in the view of the referring court, is therefore not compatible with the latter.

9 The referring court takes the view that national legislation such as that at issue in the present case, under which end-of-waste status in respect of extracted materials can be achieved at the earliest when they serve as a substitute for raw materials or for products made from primary raw materials, infringes Article 6(1) of the Waste Directive.

10 National law also provides that the end-of-waste status in respect of extracted materials cannot be achieved if formal criteria (in particular record-keeping and documentation obligations) are not complied with or are not complied with in full. This is the case even though those formal criteria have no environmentally

relevant influence and the extracted materials demonstrably fall below the limit values to be complied with for the specific intended use.

- 11 A further reason why the referring court considers the national legislation to be contrary to EU law is that the use of the extracted materials of the highest quality class for a useful purpose had already been established from the very outset, the technical requirements were complied with, testing and safety were demonstrated by means of expert opinions and there have not been and will not be any other harmful environmental or health consequences. In addition, the use of such extracted materials also pursues the objective of waste prevention and the substitution of primary raw materials that would be required otherwise. Were that use to be prohibited, it would mean that primary raw materials would have to be used instead, and secondary raw materials that are fundamentally extremely suitable for recovery (that is to say, extracted materials in the present case) would have to be landfilled. However, this would contradict the objectives of the Waste Directive.