

***668 Criminal proceedings against Alfonso Verlezza**

Positive/Neutral Judicial Consideration

Court

European Court of Justice (Tenth Chamber)

Judgment Date

28 March 2019

Report Citation

[2019] Env. L.R. 29

(Case C-487/17)

European Court of Justice (Tenth Chamber)

K. Lenaerts , President of the Court, acting as President of the Tenth Chamber, F. Biltgen (Rapporteur) and E. Levits , JJ :
M. Campos Sánchez-Bordona , Advocate General :

28 March 2019

Classification; EU law; Precautionary principle; Waste; Waste management;

H1 *Waste—EU law—Directive 2008/98 and Decision 2000/532—waste material that could be assigned either hazardous waste or non—hazardous waste codes—“Mirror Codes”—material composition not immediately known—material assigned non—hazardous waste code—whether holder required to determine composition—whether such waste required to be classified as hazardous waste where doubts over hazardous properties or impossible to determine absence of hazardous substances—precautionary principle.*

H2. The defendants in domestic proceedings were landfill managers, waste collection and production companies, and companies responsible for carrying out chemical analyses of waste. They were accused of illegal waste trafficking in having treated waste which could have been assigned either hazardous waste codes or non-hazardous waste codes (Mirror Codes) as non-hazardous waste. It was alleged that, on the basis of non-exhaustive, partial chemical analyses, they assigned to the waste in question non-hazardous waste codes and then treated it in landfill sites for non-hazardous waste. The domestic court requested a preliminary ruling on questions that asked, essentially:

- (1) Whether, under [Annex III to Directive 2008/98](#) and the [Annex to Decision 2000/532](#) , the holder of waste which could be classified under Mirror Codes, but the composition of which was not immediately known, was required, in view of that classification, to determine that composition and ascertain whether the waste in question contained one or more hazardous substances in order to establish whether the waste had hazardous properties and, if so, to what degree that composition should be determined, using which methods; and
- (2) Where there were doubts over the hazardous properties of waste which could be classified under Mirror Codes, or where it was impossible to determine with certainty that there were no hazardous substances in that ***669** waste, such waste had to be classified as hazardous waste in accordance with the precautionary principle.

H3. Held:

H4. (1) Where the composition of waste to which Mirror Codes could be assigned was not immediately known, it fell to the holder of that waste, as the party responsible for its management, to gather information which could enable it to gain sufficient knowledge of that composition and, thus, assign the appropriate code to that waste. If that information was not

obtained, the holder of such waste risked being in breach of its obligations as the party responsible for managing it, where it subsequently turned out that the waste was treated as non-hazardous waste, when it had one or more of the hazardous properties listed in [Annex III](#) . Whilst not being obliged to establish that there were no hazardous substances in the waste at issue, the waste holder was nevertheless required to look for hazardous substances which may reasonably be found in that waste, and thus, in that respect, it had no discretion. The waste holder could, for that purpose, use the sampling, chemical analyses and tests provided for in [Regulation 440/2008](#) or any other internationally recognised sampling, chemical analysis or test. Where the assessment of the hazardousness of waste could be made on the basis of information already obtained, such that the use of a test would be neither appropriate nor proportionate, the waste holder was permitted to classify that waste without a test.

H5. (2) Where it was impossible, in practical terms, for a holder of waste which could be classified under Mirror Codes to determine the presence of hazardous substances or to assess the hazardous property of that waste, following as complete as possible an assessment of the risks in the particular circumstances of the case, the precautionary principle required that waste to be classified as hazardous waste.

H6 Cases referred to:

Chacón Navas v Eurest Colectividades SA (C-13/05) EU:C:2006:456; [2006] 3 C.M.L.R. 40; [2007] I.C.R. 1
Citta Metropolitana di Bari v Edilizia Mastrodonato srl (C-147/15) EU:C:2016:606; [2017] P.T.S.R. 94
Commission v Austria (C-194/01) EU:C:2004:248
Commission v France (C-333/08) EU:C:2010:44; [2010] 2 C.M.L.R. 43
Commission v Italy (C-323/13) EU:C:2014:2290
Commission v Netherlands (C-41/02) EU:C:2004:762; [2006] 2 C.M.L.R. 11
Confédération Paysanne v Premier Ministre (C-528/16) EU:C:2018:583; [2019] 1 C.M.L.R. 11
Criminal proceedings against Fidenato (C-111/16) EU:C:2017:676; [2018] 1 C.M.L.R. 39
Criminal proceedings against Ognyanov (C-614/14) EU:C:2016:514; [2018] 1 C.M.L.R. 18
Fornasar and Others (C-318/98) EU:C:2000:337
Gauweiler v Deutscher Bundestag (C-62/14) EU:C:2015:400; [2016] 1 C.M.L.R. 1
Kodbranchens Fællesråd (C-112/15) EU:C:2016:185
Landelijke Vereniging tot Behoud van de Waddenzee v Staatssecretaris van Landbouw, Natuurbeheer en Visserij (C-127/02) EU:C:2004:482; [2005] 2 C.M.L.R. 31; [2005] Env. L.R. 14 *670
Leur-Bloem v Inspecteur der Belastingdienst/Ondernemingen Amsterdam 2 (C-28/95) EU:C:1997:369; [1998] Q.. 182; [1998] 2 W.L.R. 27161
Ministerul Justiției și Libertăților Cetățenesti v Agafitei (C-310/10) EU:C:2011:467; [2011] 3 C.M.L.R. 33
Monsanto and Others (C-58/10 to C-68/10) EU:C:2011:553
Monsanto Agricoltura Italia and Others (C-236/01) EU:C:2003:431
Pérez Retamero (C-97/16) EU:C:2017:158
Pillbox 38 (UK) Ltd v Secretary of State for Health (C-477/14) EU:C:2016:324; [2016] 4 W.L.R. 110; [2016] 3 C.M.L.R. 34
Queisser Pharma (C-282/15) EU:C:2017:26
R. (on the application of PJSC Rosneft Oil Co) v HM Treasury (C-72/15) EU:C:2017:236; [2018] Q.B. 1; [2017] 3 W.L.R. 1031
Ullens de Schooten v Belgium (C-268/15) EU:C:2016:874; [2017] 4 W.L.R. 47; [2019] 2 C.M.L.R. 7

H7 Legislation referred to:

[Treaty on the Functioning of the European Union arts 191 & 267](#)
[Directive 75/442 on waste \(Waste Framework\)](#)
[Directive 91/689 on hazardous waste \(Hazardous Waste\)](#)
[Decision 94/904](#)

[Directive 98/34 on a procedure for the provision of information in the field of technical standards and regulations arts 8 & 10](#)
[Directive 1999/31 on the landfill of waste \(Landfill\) arts 6 & 11 and Annex II](#)
[Decision 2000/532 \(List of Wastes\) Annex](#)
[Decision 2003/33](#)
[Regulation 850/2004 \(POPs\) Annex IV](#)
[Regulation 1013/2006 \(Waste Shipments\) art. 11](#)
[Regulation 1907/2006 \(REACH\)](#)
[Directive 2008/98 on waste \(Waste Framework\) arts 1 , 3, 4 , 7 , 13 , 16, 17, 18, 19, 20 , 23, 24, & 25 and Annex III](#)
[Regulation 440/2008](#)
[Regulation 1272/2008 art.1 and Annex VI](#)
[Regulation 1357/2014](#)
[Decision 2014/955 on the list of waste pursuant to Directive 2008/98 Annex II](#)

H8 Representation

V. Spigarelli , avvocato, appeared on behalf of Mr Verlezza.
F. Giampietro , avvocato, appeared on behalf of Mr Rando.
L. Imperato , avvocato, appeared on behalf of Mr E. and Mr A. Giuliano.
F. Pugliese and L. Giampietro , avvocatessa, appeared on behalf of E. Giovi Srl.
G. Sciacchitano , avvocato, appeared on behalf of Vetresco Srl.
R. Mastroianni , F. Lettera and M. Pizzutelli , avvocati, appeared on behalf of MAD Srl.
G. Pignatone and A. Galanti , acting as Agents, appeared on behalf of the Procuratore della Repubblica presso il Tribunale di Roma.
G. Palmieri , acting as Agent, and G. Palatiello , avvocato dello Stato, appeared on behalf of the Italian Government.
G. Gattinara , F. Thiran and E. Sanfrutos Cano , acting as Agents, appeared on behalf of the Commission. ***671**

OPINION ¹

AG1. Hazardous waste, which comes primarily from the chemical industry, does not form a large proportion of the overall waste produced in the EU, but its impact on the environment can be very high if it is not properly managed and controlled. In particular, hazardous substances can be present in waste from the mechanical treatment of municipal waste, as was the case in the disputes giving rise to the present references for a preliminary ruling.

AG2. On this occasion, the Court is required to rule—for the first time, unless I am mistaken—on the classification of waste under the so-called *mirror codes* ² in the European List of Waste (“LoW”), laid down in [Decision 2000/532/EC](#) . ³ It will be necessary to clarify the criteria to be applied for that purpose, so that the referring court can determine whether, by treating as non-hazardous waste which was actually hazardous, the accused in a number of criminal proceedings have committed illegal waste trafficking in Italy.

I. Legal framework

A. EU law

1. Directive 2008/98/EC ⁴

AG3. In accordance with [art.3](#) :

“For the purposes of this Directive, the following definitions shall apply:

1. ‘waste’ means any substance or object which the holder discards or intends or is required to discard;
2. ‘hazardous waste’ means waste which displays one or more of the hazardous properties listed in Annex III;
- ...
6. ‘waste holder’ means the waste producer or the natural or legal person who is in possession of the waste;
7. ‘dealer’ means any undertaking which acts in the role of principal to purchase and subsequently sell waste, including such dealers who do not take physical possession of the

waste;

8. ‘broker’ means any undertaking arranging the recovery or disposal of waste on behalf of others, including such brokers who do not take physical possession of the waste;
9. ‘waste management’ means the collection, transport, recovery and disposal of waste, including the supervision of such operations and the after-care of disposal sites, and including actions taken as a dealer or broker; *672
10. ‘collection’ means the gathering of waste, including the preliminary sorting and preliminary storage of waste for the purposes of transport to a waste treatment facility;
...”

AG4. [Article 7](#), headed “List of waste”, provides:

- “1. The measures designed to amend non-essential elements of this Directive relating to the updating of the list of waste established by [Decision 2000/532/EC](#) shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 39(2). The list of waste shall include hazardous waste and shall take into account the origin and composition of the waste and, where necessary, the limit values of concentration of hazardous substances. The list of waste shall be binding as regards determination of the waste which is to be considered as hazardous waste. The inclusion of a substance or object in the list shall not mean that it is waste in all circumstances. A substance or object shall be considered to be waste only where the definition in point (1) of Article 3 is met.
2. A Member State may consider waste as hazardous waste where, even though it does not appear as such on the list of waste, it displays one or more of the properties listed in Annex III. The Member State shall notify the Commission of any such cases without delay. It shall record them in the report provided for in Article 37(1) and shall provide the Commission with all relevant information. In the light of notifications received, the list shall be reviewed in order to decide on its adaptation.
3. Where a Member State has evidence to show that specific waste that appears on the list as hazardous waste does not display any of the properties listed in Annex III, it may consider that waste as non-hazardous waste. The Member State shall notify the Commission of any such cases without delay and shall provide the Commission with the necessary evidence. In the light of notifications received, the list shall be reviewed in order to decide on its adaptation.
4. The reclassification of hazardous waste as non-hazardous waste may not be achieved by diluting or mixing the waste with the aim of lowering the initial concentrations of hazardous substances to a level below the thresholds for defining waste as hazardous.
...
6. Member States may consider waste as non-hazardous waste in accordance with the list of waste referred to in paragraph 1.
...”

AG5. [Annex III to Directive 2008/98](#), as amended by [Regulation \(EU\) No 1357/2014](#),⁵ includes the list of properties which render waste hazardous. In relation to test methods, it states: *673

“The methods to be used are described in [Council Regulation \(EC\) No 440/2008](#) and in other relevant CEN [European Committee for Standardisation] notes or other internationally recognised test methods and guidelines.”

AG6. In the annex to the decision, under the heading “Assessment and classification”, point 2 (“Classification of waste as hazardous”) reads:

“Any waste marked with an asterisk (*) in the list of wastes shall be considered as hazardous waste pursuant to [Directive 2008/98/EC](#) , unless [Article 20](#) of that Directive applies.

For those wastes for which hazardous and non-hazardous waste codes could be assigned, the following shall apply:

- An entry in the harmonised list of wastes marked as hazardous, having a specific or general reference to “hazardous substances”, is only appropriate to a waste when that waste contains relevant hazardous substances that cause the waste to display one or more of the hazardous properties HP 1 to HP 8 and/or HP 10 to HP 15 as listed in [Annex III to Directive 2008/98/EC](#) . The assessment of the hazardous property HP 9 “infectious” shall be made according to relevant legislation or reference documents in the Member States.
 - A hazardous property can be assessed by using the concentration of substances in the waste as specified in [Annex III to Directive 2008/98/EC](#) or, unless otherwise specified in [Regulation \(EC\) No 1272/2008](#) , by performing a test in accordance with [Regulation \(EC\) No 440/2008](#) or other internationally recognised test methods and guidelines, taking into account [Article 7 of Regulation \(EC\) No 1272/2008](#) as regards animal and human testing.
- ...”

B. Italian Law

AG7. Article 184 of Legislative Decree No.152/2006 ⁶ governs the classification of waste, differentiating by origin between municipal waste and special waste. The latter is classified as hazardous waste and non-hazardous waste, depending on whether or not it displays hazardous properties. Non-domestic waste expressly categorised as such by an asterisk in the list in Annex D is considered to be hazardous.

AG8. Annex D to part 4 provides for the creation of a list of waste in accordance with the EU legislation.

AG9. The original version of art.184 provided, in paragraph (4), for a list of waste to be drawn up by ministerial decree, in accordance with [Directive 75/442/EEC](#) , ⁷ [Directive 91/689/EEC](#) ⁸ and [Decision 2000/532](#) . It further stated that, pending the adoption of the future decree, the provisions of the Directive of the ^{*674} Minister for the Environment and Territorial Protection of 9 April 2002, which were set out in Annex D, would continue to apply.

AG10. Annex D was subsequently amended a number of times:

- first, by Legislative Decree No 205 of 3 December 2010, ⁹ which gave it the title “List of waste established by [Commission Decision 2000/532/EC](#) of 3 May 2000”;
- second, by Law No 28 of 24 March 2012 laying down urgent special measures concerning the environment ¹⁰ ;
- third, by Law No 116 of 11 August 2014, ¹¹ laying down, inter alia, urgent measures for environmental protection.

AG11. The latter Law amended the preamble to Annex D and inserted the provisions which I shall examine below. ¹²

AG12. Article 9 of Decree Law No 91/2017 of 20 June 2017 (Urgent measures for economic growth in southern Italy), ¹³ in force since 21 June 2017 but not yet converted into law at the date of the order for reference, deleted points 1 to 7 of Annex D to Pt 4 of Legislative Decree 152/2006 and replaced them with the following wording:

“Waste shall be classified by the producer, who must allocate to that waste the appropriate EWC code by applying the provisions of [Decision 2014/955/EU](#) and [Commission Regulation \(EU\) No 1357/2014 of 18 December 2014](#) .”

II. Main proceedings and questions referred for a preliminary ruling

AG13. The questions have arisen in three sets of criminal proceedings brought against around 30 persons who are accused of the offence of organised illegal waste trafficking, contrary to art.260 of Legislative Decree No.152/2006.

AG14. The accused include landfill site operators, waste disposal companies, testing laboratories and professionals. The Public Prosecutor's Office accuses them of having classified, for illicit purposes, mirror waste as non-hazardous, by carrying out partial, complacent and non-exhaustive analyses. That waste was treated in landfill sites for non-hazardous waste.

AG15. On 22 November 2016 and 16 January 2017, at the request of the Public Prosecutor's Office, an investigating judge in Rome ordered the seizure (albeit with the right of use), for evidence-gathering purposes, of a number of landfill sites where the waste had been treated. The judge also ordered that the assets of the *675 proprietors of those sites be frozen and appointed a judicial trustee to manage the landfill sites and the waste production and collection points.

AG16. On 28 February 2017, the Tribunale di Roma—Sezione per il riesame dei provvedimenti di sequestro (District Court, Rome, Italy—Section responsible for the re-examination of seizure orders) ruled on the requests for review submitted by a number of the accused. By three orders, it annulled the measures ordered by the judge since it disagreed with the Public Prosecutor's Office's interpretation based on the presumption that the waste was hazardous.

AG17. The Procuratore della Repubblica presso il Tribunale di Roma—Direzione distrettuale antimafia (Public Prosecutor at the District Court, Rome—District Anti-Mafia Prosecutor's Office) challenged those orders before the Corte suprema di Cassazione (Supreme Court of Cassation, Italy), arguing that, by accepting the arguments put forward in support of the defence, the first-instance court had misinterpreted the national and EU provisions on the classification of mirror waste.

AG18. The referring court notes that, in order to be able to establish whether the offence has been committed and, therefore, in order to ascertain whether or not the waste with mirror codes in question was characterised and classified correctly, it is necessary to clarify the scope of [Decision 2014/955](#) and of [Regulation No.1357/2014](#). Only in that way will it be possible to determine which (chemical, microbiological, and the like) analyses are necessary for the purpose of ascertaining whether dangerous substances are present in such waste in order to characterise it and subsequently classify it by attribution of a hazardous or non-hazardous code.

AG19. The referring court also notes that the classification of waste with mirror codes has been widely debated in Italy:

- Some legal commentators support the so-called “certainty argument” or “presumed hazardousness” argument, which, based on the precautionary principle, presumes that waste is hazardous in the absence of proof to the contrary.¹⁴
- Other legal commentators advocate the opposing so-called “probability” theory, pursuant to which the principle of sustainable development makes it necessary to establish in advance whether waste is hazardous by means of suitable analyses.¹⁵

AG20. The Corte suprema di Cassazione (Supreme Court of Cassation) refers to its own case-law on the amendments introduced by Law No 116/2014. In that case-law, it laid down the principle according to which, in the case of waste with mirror codes, in order to classify the waste and assign a hazardous or non-hazardous code, the producer or holder must

carry out the analyses necessary to ascertain whether dangerous substances are present and, if so, whether they exceed the concentration thresholds. Only when it is specifically confirmed that there are either no dangerous ¹⁶*676 substances present in the waste or that those substances do not exceed the applicable thresholds may the waste be classified as non-hazardous.

AG21. In order to dispel its uncertainties about the provisions of EU law in this area, the referring court decided to make three references to the Court of Justice for a preliminary ruling on the following questions, which are identical in all three cases:

“(1) Must the [Annex to Decision 2014/955](#) and [Regulation No 1357/2014](#) be interpreted, with reference to the classification of waste to which mirror codes have been assigned, as meaning that the producer of the waste must, when the composition of the waste is not known, carry out a prior classification of it, and, if so, within what limits?

(2) Must the examination as to hazardous substances be carried out on the basis of uniform, predetermined methods?

(3) Must the examination as to hazardous substances be based on a precise and representative verification that takes into account the composition of the waste, if this is already known or has been identified during the classification phase, or may the examination as to hazardous substances instead be carried out according to criteria of probability by taking into consideration which hazardous substances might reasonably be present in the waste?

(4) Where there is doubt, or where it is impossible to establish with certainty whether or not hazardous substances are present in the waste, must that waste nevertheless be classified and treated as hazardous waste by application of the precautionary principle?”

AG22. Written observations were lodged by the Procuratore generale della Repubblica presso la Corte Suprema di Cassazione (General Public Prosecutor at the Supreme Court of Cassation), Vetresco Srl, Francesco Rando, MAD Srl, Alfonso Verlezza, Antonio and Enrico Giuliano, the Italian Republic and the European Commission.

AG23. At the hearing held on 6 September 2018, oral argument was presented by the representatives of Francesco Rando, E. Giovi Srl, Vetresco Srl, MAD Srl, the Procuratore della Repubblica presso il Tribunale di Roma (Public Prosecutor at the Rome District Court), the Italian Republic and the Commission.

III. Replies to the questions referred for a preliminary ruling

A. Admissibility

AG24. The Prosecutor at the Supreme Court of Cassation, Mr Rando and Vetresco Srl have put forward a number of

arguments challenging the admissibility of the questions referred for a preliminary ruling.

AG25. Mr Rando submits that those questions are inadmissible because they are based on the application of Law No.116/2014, which is a technical regulation within the meaning of [art.8 of Directive 98/34/EC](#),¹⁷ and, since that law was not notified to the Commission, it is not applicable to individuals. *677

AG26. I do not agree with that argument. The Italian provision on the classification of waste with mirror codes, laid down in Law No.116/2014, was adopted to transpose and implement the EU legislation on waste classification. Whether or not that law is a technical regulation within the meaning of [Directive 98/34](#), [arts 8\(1\)](#) and [10\(1\)](#) of that directive provide that national technical regulations adopted to transpose EU harmonising provisions are exempt from the obligation of notification to the Commission. In any event, the determination of whether the Italian law is a technical regulation entails a reply on the substance which cannot be transferred to the admissibility stage of the references for a preliminary ruling.

AG27. The other arguments concern the description (which, in the view of those putting forward those arguments, is insufficient) of the factual and legal context of the disputes:

- Mr Rando contends that the order for reference does not state that he was responsible for the dispatch of waste to certain landfill sites and that there is no question concerning the application of [Directive 1999/31/EC](#) or of [Decision 2003/33/EC](#).¹⁸ Nor has the referring court mentioned, in the context of the facts, the chemical analyses submitted by Mr Rando, in which a laboratory classified the waste with the CED code 19 12 12 (mirror non-hazardous code).
- Vetresco Srl submits that the questions referred for a preliminary ruling are unnecessary because the referring court has case-law on the criteria applicable to the classification of waste with mirror codes. The referring court should, therefore, confine itself to an examination of the facts and the application of its case-law, for which purpose it does not need to seek a ruling from the Court of Justice.
- The Prosecutor at the Supreme Court of Cassation submits that the questions referred do not accurately identify the provisions of EU law of which an interpretation is sought, since only the first question makes a general reference to [Decision 2014/955](#) and [Regulation No 1357/2014](#). In addition, the questions fail to satisfy the requirement of self-sufficiency, since they are not comprehensible in themselves without it being necessary to refer to the reasoning on which they are based. There is no explanation in the order for reference of the events which took place in 2013, 2014 and 2015, and the referring court merely sets out its uncertainties regarding the interpretation of a term in point 2 of [Annex II to Decision 2014/955](#).

AG28. To my mind, none of those arguments is sufficient to rule the three references for a preliminary ruling inadmissible. The Court has repeatedly held in its case-law that it may refuse to give a ruling on a question referred by a national court only where it is quite obvious that the interpretation, or the determination of validity, of a rule of EU law that is sought bears no relation to the facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it. *678¹⁹

AG29. It is for the national court, and not the parties appearing before it, to refer to the Court of Justice the questions on which it has uncertainties as regards interpretation. The national court is, therefore, entitled to refrain from referring questions about [Directive 1999/31](#) and [Decision 2003/33](#) in the proceedings involving Mr Rando if it does not consider it necessary to do so. The national court may also refer other questions if it believes that its earlier case-law may be modified or may conflict with that which is derived from the answer provided in the reference for a preliminary ruling. In any event, the Court of Justice is free to refer to EU provisions other than those mentioned in the order for reference where it considers it necessary for the purposes of answering the questions referred for a preliminary ruling.

AG30. There is an undeniable link in this case between the questions and the subject matter of the dispute, and the need for interpretation of the EU provisions can be inferred from the explanations provided by the national court. Moreover, the order of the national court sets out in essence the factual and legislative context of the criminal proceedings underway, including a fairly comprehensive description of the applicable Italian provisions. It is true that the account of the facts could have included additional information concerning the type of waste and the analyses carried out. However, nothing has prevented the parties from submitting observations and I believe that the Court has sufficient material to enable it to give a helpful reply to the referring court.

AG31. In short, the requirements of art.94 of the Rules of Procedure of the Court of Justice are satisfied.

B. The substance

AG32. The classification of waste is crucial at all stages of its existence, from production to final treatment. It determines decisions regarding waste management and the feasibility and economic viability of waste collection, the choice between recycling and disposal and, where appropriate, the recycling method.

AG33. The classification of waste as hazardous creates important legal effects,²⁰ for [Directive 2008/98](#) lays down strict conditions regarding the management of such waste. Among other conditions, the directive requires the provision of evidence to enable the monitoring of hazardous waste, in accordance with the method established by the Member State ([art.17](#)); prohibits the mixing of hazardous waste ([art.18](#)); lays down specific obligations regarding labelling and packaging ([art.19](#)); and provides that hazardous waste can only be treated at specifically designated facilities which have obtained a special permit (granted under [arts 23–25](#)).²¹

AG34. By its first three questions, which may be answered together, the referring court asks about the manner in which [Directive 2008/98](#) (as amended by [Regulation No.1357/2014](#)) and [Decision 2000/532](#) (as amended by [Decision 2014/955](#)) govern the procedure for the classification of waste to which mirror codes may be assigned. By its fourth question, the referring court asks whether, where there is doubt or [*679](#) where it is impossible to establish with certainty whether or not hazardous substances are present in waste, the precautionary principle means that that waste must be classified with a mirror code for hazardous waste.

AG35. The arguments put forward in the proceedings before the court hearing the case help to shed light on the questions:

— The Public Prosecutor’s Office submits that a waste producer or waste holder is responsible for classifying waste, taking account of the precautionary principle, and following exhaustive analyses. The Public Prosecutor’s Office relies on European guidelines and national technical manuals in support of its contention that the methodology laid down in the Italian legislation constitutes a technical complement to [Decision 2014/955](#) and [Regulation No.1357/2014](#) .

— The accused contend that the investigation and allegations against them are based on a presumption of the hazardous nature of waste with mirror codes, which is contrary to the spirit of the law and impossible to rebut in the specific case. In their submission, there is no suitable methodology for identifying all or almost all of the components in waste; therefore, the classification they carried out, by means of sample analysis, is correct. Moreover, [Decision 2014/955](#) and [Regulation No.1357/2014](#) , which are to be interpreted as meaning that analyses of hazardousness should refer solely to the substances “that are relevant on the basis of the production process” are applicable as from 1 June 2015.²²

1. Questions 1, 2 and 3

AG36. According to the information in the case file and the submissions made by the parties in writing and at the hearing, the proceedings are concerned solely with waste from the mechanical biological treatment of municipal waste²³ ; doubts exist regarding whether or not such waste is hazardous and it may, therefore, be classified under mirror codes. If that waste contains hazardous substances or substances with traces of hazardous properties, it will be classified with the mirror hazardous waste code 19 12 11*, whereas if there are no such traces of hazardous properties, it will be classified with the mirror non-hazardous waste code 19 12 12.²⁴

AG37. It is important to make clear that the referring court’s questions are not concerned with the classification of mixed municipal waste, which benefits from the presumption of non-hazardousness under [art.20 of Directive 2008/98](#) , and is [*680](#) therefore exempt from application of the primary restrictions imposed on hazardous waste.²⁵

AG38. The referring court’s uncertainties are therefore confined to the classification of waste resulting from the mechanical treatment of municipal waste, which is not to be confused with mixed municipal waste which is taken to landfill. In my opinion, that distinction has two outcomes:

- the non-application of the provisions on the disposal and acceptance of waste at landfill sites to waste resulting from the mechanical treatment of municipal waste²⁶ ;
- the presumption that mixed municipal waste is non-hazardous cannot be applied to waste from the mechanical treatment of municipal waste. Waste from such mechanical treatment may contain substances with traces of hazardous properties simply because products like batteries, printer cartridges, or any other kind of waste containing hazardous substances, were incorrectly included in mixed municipal waste.

AG39. I shall therefore confine my analysis to waste in respect of which doubts exist as to its hazardousness and which can therefore be classified with mirror codes, and in particular to waste from the mechanical biological treatment of

municipal waste, which is the waste at issue in the main proceedings.

AG40. [Article 3 of Directive 2008/98](#) defines as “waste” “any substance or object which the holder discards or intends or is required to discard”, and as “hazardous waste” waste which displays one or more of the properties listed in [Annex III to Directive 2008/98](#) ; that list of properties was adapted to reflect scientific progress by [Regulation No.1357/2014](#) , applicable from 1 June 2015. ²⁷

AG41. The difficulty in classifying waste and determining which waste is hazardous is the reason why the EU legislature drew up a list of waste, in order to simplify the decision-making of producers and holders of this type of commodity.

AG42. [Article 7\(1\) of Directive 2008/98](#) provides that that list is to include hazardous waste and take into account its origin and composition and, where necessary, the limit values of concentration of hazardous substances. [Article 7\(1\)](#) further provides that, in principle, ²⁸ the list is to be binding as regards determination of the waste which is to be considered as hazardous waste. The list is, therefore, mandatory for [*681](#) Member States but not definitive or absolute, since the harmonisation effected by [Directive 2008/98](#) is not exhaustive. ²⁹

AG43. The LoW was established by [Decision 2000/532](#) ³⁰ and revised, in accordance with [art.7\(1\) of Directive 2008/98](#) , by [Decision 2014/955](#) ³¹ to adapt it to reflect scientific progress and bring it into line with advances in the legislation on chemicals. ³²

AG44. Classification in accordance with the LoW involves the assignment to each type of waste of a six-digit number, called the “European Waste Code” (“EWC”), ³³ from which it can be inferred whether or not the waste is hazardous. In that connection, the LoW recognises three types of code:

- “Absolute hazardous (AH) codes”: waste with these codes (marked with an asterisk (*)) is considered to be hazardous without the need for any further assessment.
- “Absolute non-hazardous (ANH) codes”: waste with these codes is considered to be non-hazardous without the need for any further assessment.
- “Mirror codes”: where waste has not been classified with an absolute code, it can, in principle, be assigned an AH or an ANH code depending on the specific case and the composition of the waste. In other words, mirror codes can be defined as two or more related codes where one of the codes is hazardous and the other is non-hazardous, meaning that here are mirror hazardous (MH) codes (marked with an asterisk (*)) and mirror non-hazardous (MNH) codes for waste.

AG45. Where the composition of waste is known, the producer classifies it, in accordance with the LoW, with an AH code or an ANH code. However, the classification process is more complicated where the waste concerned can be classified with mirror codes because the waste producer or holder must carry out additional assessments with a view ultimately to assigning that waste an MH code or an MNH code. That is the situation before the referring court.

AG46. The Corte Suprema de Cassazione (Supreme Court of Cassation) states that it must apply points 4, 5 and 6 of Annex D to pt 4 of Legislative Decree No.152/2006, as amended by Law No.116/2014, which established the procedure for determining [*682](#) in Italy whether or not waste classifiable with mirror codes is hazardous. That procedure for establishing whether waste is hazardous comprises the following three stages (in chronological order):

- identification of the components of the waste by means of the producer’s data sheet; knowledge of the chemical process; the sampling and analysis of the waste;
- determination of the hazards connected to the components by means of EU legislation on the labelling of dangerous substances and preparations; European and international information sources; and the safety data sheets of the products from which the waste is derived; and
- establishment of whether the concentrations of the components present in the waste mean that the waste is hazardous, by comparing the concentrations detected by chemical analysis against the threshold limit for the specific risk elements of the components, or the conducting of tests to verify whether the waste displays hazardous properties.

AG47. That legislation also provides that, where chemical analyses do not enable identification of all the specific constituents of waste, the most hazardous constituents are to be used as a reference to determine the hazardousness of that waste, in accordance with the precautionary principle. Where the procedure has not been followed or has not made it possible to identify the constituents of the waste or whether that waste is hazardous, the waste must be classified as hazardous, in other words, with a mirror hazardous (MH) waste code (with an asterisk (*)).

AG48. The referring court asks, in short, whether national legislation worded in that way is compatible with [Directive 2008/98](#) and [Decision 2000/532](#), as amended by [Regulation No.1357/2014](#) and [Decision 2014/955](#), respectively.

AG49. In my view, the Italian legislation is basically compatible with EU law for the reasons I shall set out below.

AG50. Under [art.3\(2\) of Directive 2008/98](#), the assessment of whether waste is hazardous requires, first, knowledge of the composition of the waste in order to identify the hazardous substances it contains which may afford it one or more of the 15 hazardous properties (HP 1 to HP 15) referred to in [Annex III](#). It is for the waste producer or holder to carry out the necessary checks if the composition of the waste is unknown.

AG51. When determining the composition of waste, it must be borne in mind that the LoW classifies waste according to the source that creates the waste (the specific process or activity during which the waste is produced) and the “type of waste” (or types of waste, in the case of a mixture). Investigations to establish the composition of waste must enable identification of the source and/or type of waste, thereby making it possible to classify the waste under one of the codes in the LoW.

AG52. There are a number of methods whereby a waste producer or holder can obtain information about the composition of waste, the hazardous substances in waste and its potential hazardous properties. These include ³⁴ :

- information on the manufacturing process and waste-generating chemical process and its input substances and intermediates including expert opinions. ^{*683} Useful sources may be BREF reports, ³⁵ industrial process handbooks, process descriptions and lists of input materials provided by the producer;
- information from the original producer of the substance or object before it became waste. This can be found in the Safety Data Sheets (SDS), product label or product fiches;
- databases on waste analysis available in the Member States; and
- sampling and chemical analysis of the waste.

AG53. Once the producer has gathered information about the composition of the waste, he must establish whether that waste is a substance identified as hazardous (this will not normally be the case) or whether it contains substances with hazardous properties (this is the usual situation and what occurred in the present cases). The substances are classified in accordance with [Regulation \(EC\) No 1272/2008](#), ³⁶ whereas the examination of whether there are hazardous substances in the waste is carried out in accordance with [Annex III to Directive 2008/98](#). ³⁷

AG54. [Regulation No.1272/2008](#), which adapts for the EU the UN system of classification of chemicals (Globally Harmonised System (“GHS”)), provides detailed criteria for the evaluation of substances and determination of their hazard classification.

AG55. Under [art.1\(3\)](#) of that regulation, waste is not a substance, mixture or article; accordingly, the obligations laid down in the regulation do not apply to waste producers or holders. However, [Annex VI to Regulation No.1272/2008](#) lays down a set of harmonised hazardous substance codes which must be used for the classification of waste, in view of the fact that many mirror codes refer specifically to “hazardous substances”. ³⁸

AG56. The assessment of whether hazardous substances are present must be carried out by the waste producer or holder, in accordance with [Annex III to Directive 2008/98](#), which, as I have already pointed out, refers to 15 properties of waste which make it hazardous. ³⁹ That assessment can be made: (a) by means of a calculation, that is, by calculating whether the substances present in the waste are equal to or exceed the limit values based on the hazard statement codes (individually, on the basis of the properties HP 4 to HP 14); and (b) by means of ^{*684} a direct test to determine whether the waste displays hazardous properties (particularly suitable for the properties HP 1 to HP 4). ⁴⁰

AG57. Under the heading relating to the assessment of hazardous properties of waste (point 1 *in fine*), the [Annex to Decision 2000/532](#) states that “where a hazardous property of a waste has been assessed by a test and by using the concentrations of hazardous substances as indicated in [Annex III to Directive 2008/98/EC](#), the results of the test shall prevail.”

AG58. Where waste displays one or more of the 15 hazardous properties, the producer or holder must classify it with a mirror hazardous (MH) code. Where waste does not display any of those properties, it may also be classified in that way if it contains any of the persistent organic pollutants ⁴¹ referred to in the Annex to the LoW (point 2, indent 3) above the limit values provided for in [Annex IV to Regulation \(EC\) No.850/2004](#). ⁴²

AG59. The foregoing considerations allow me to rule out what the referring court calls the probability theory, according to which waste producers can classify waste covered by mirror codes as hazardous or non-hazardous at their *discretion*, because it would be impossible to carry out tests to establish all the substances present in waste and all waste would ultimately be classified with MH codes.

AG60. As I have already explained, the EU legislation requires waste producers or holders to carry out a reasonable identification of the composition of waste and to check subsequently whether the substances identified might be hazardous in order to establish whether or not, on the basis of their concentration values, they come under [Annex III to Directive 2008/98](#) or [Annex IV to Regulation No.850/2004](#). That approach also rules out the “certainty argument or presumed hazardousness”, mentioned by the referring court, which would require an exhaustive analysis of the composition of waste and all possible hazardous substances, together with their concentration levels, as the only way of avoiding classification of waste as hazardous.

AG61. The referring court is uncertain about the interpretation of two terms in point 2, under the heading “Assessment and classification”, in the [Annex to Decision 2000/532](#), as amended by [Decision 2014/955](#). According to the Italian version of that provision, “... l’iscrizione di una voce nell’elenco armonizzato di rifiuti contrassegnata come pericolosa, con un riferimento specifico o generico a “sostanze pericolose”, è *opportuna* solo quando questo rifiuto contiene sostanze pericolose *pertinenti* che determinano nel rifiuto una o più delle caratteristiche di pericolo...”. The referring court states that, according to some interpretations, use of the terms “opportuna” and “pertinenti” in relation to mirror codes confirms that there is scope for discretion in the assessment and that the determination of whether waste is hazardous is confined to the *relevant* components of waste based on their hazardousness. *685

AG62. In accordance with the case-law of the Court,⁴³ it is necessary to look at other language versions of that provision in order to find out whether there are differences and, if so, to interpret it by reference to the purpose and general scheme of the rules of which it forms part.

AG63. The Spanish,⁴⁴ Portuguese,⁴⁵ French⁴⁶ and English⁴⁷ versions of the provision all state that, as regards waste with mirror codes, an entry in the harmonised list of wastes marked as hazardous is only *justified* or *appropriate* “... when that waste contains relevant hazardous substances *that cause the waste to display* one or more of the hazardous properties ...”. Waste to which a mirror code is applicable is only to be classified with an MH code if it contains substances which *cause it to display* one or more of the 15 hazardous properties laid down in [Annex III to Directive 2008/98](#). Therefore, there is no scope for discretion or *chance* in that regard. I believe that those language versions faithfully reflect the purpose and general scheme of the provision.

AG64. As regards the methods of analysis and testing that the waste producer or holder may use to assess the toxicity or hazardousness of waste and to classify that waste with a mirror code (question 2), neither [Directive 2008/98](#) nor [Decision 2000/532](#) contain specific and direct guidelines, since those methods have not been harmonised by EU law. However, [Annex III in fine to Directive 2008/98](#), as amended by [Regulation No 1357/2014](#), stipulates, in relation to test methods, that the methods which “... are described in [Council Regulation \(EC\) No.440/2008](#) and in other relevant CEN notes or other internationally recognised test methods and guidelines” must be used.

AG65. Point 2 of the section headed “Assessment and classification” in the [Annex to Decision 2000/532](#) also provides some further information regarding analyses and test methods:

- Point 2, second indent, states that a hazardous property can be assessed on the basis of substances in the waste or, unless otherwise specified in [Regulation No.1272/2008](#), by performing a test in accordance with [Regulation \(EC\) No.440/2008](#)⁴⁸ or other internationally recognised test methods and guidelines. *686
- Point 2, fifth indent, states that “where applicable, the following notes included in [Annex VI to Regulation \(EC\) No.1272/2008](#) may be taken into account when establishing the hazardous properties of wastes: — 1.1.3.1. Notes relating to the identification, classification and labelling of substances: Notes, D, F, J, L, M, P, Q, R, and U.
- 1.1.3.2. Notes relating to the classification and labelling of mixtures: Notes 1, 2, 3 and 5.”

AG66. Both references provide a clue about the types of tests and chemical analyses⁴⁹ that waste producers or holders may use to analyse whether the substances contained in waste are hazardous. Naturally, the test methods applicable to chemicals in the context of the [REACH Regulation](#), laid down in [Regulation No.440/2008](#), will be valid. Also valid are the test methods and methods of calculating the hazardous properties of waste stipulated by the Commission in [Annex III](#) to its notice of 2018.⁵⁰

AG67. For its part, [Annex 4](#) to that notice lists the CEN standards and methods for the characterisation of waste by means of different types of chemical analysis.⁵¹

AG68. I believe, however, that any other type of test accepted by international, EU or national legislation⁵² would be equally valid for the purposes of determining whether substances present in waste are hazardous or non-hazardous. [Annex III in fine](#) to [Directive 2008/98](#), as amended by [Regulation No.1357/2014](#), and point 2, second indent, under the heading “Assessment and classification”, of the [Annex to Decision 2000/532](#) both stipulate that “other internationally recognised test methods and guidelines” may be used. It should be pointed out again that the results of a test take precedence over the method of calculating the concentration of such hazardous substances, in accordance with para.1 *in fine*, under the heading “Assessment and classification”, of the [Annex to Decision 2000/523](#).

AG69. As regards the scope of tests and chemical analysis, I believe, in line with the foregoing considerations, that such analyses can be performed by sampling but there must be full guarantees that the samples are effective and representative. Those guarantees can be achieved, for example, by applying the technical standards and specifications drawn up by the CEN on the “characterisation of waste—sampling of waste materials”.⁵³

AG70. In the light of the above, [art.7](#) of and [Annex III to Directive 2008/98](#), and point 2, “Classification of waste as hazardous”, under the heading “Assessment and classification”, of the [Annex to Decision 2000/532](#) must be interpreted as meaning that a mirror waste producer or holder is required to identify the composition of waste and to verify subsequently, by means of a calculation or a test, whether that waste contains any of the hazardous substances or substances with traces of the [*687](#) hazardous properties listed in [Annex III to Directive 2008/98](#) or [Annex IV to Regulation No.850/2004](#). For those purposes, it is necessary to use sampling, chemical analyses and tests, as provided for in [Regulation No 440/2008](#), or any sampling, chemical analyses or tests which are internationally recognised or accepted by the national law of the Member State.

2. Question 4

AG71. The referring court seeks to ascertain whether the precautionary principle requires that, where there is doubt, or where it is impossible to establish with certainty whether or not hazardous substances are present in waste, that waste must be classified with a mirror hazardous (MH) code.

AG72. In accordance with [art.191\(2\) TFEU](#), the precautionary principle is one of the principles on which EU environmental policy is based, in addition to the principles of prevention and rectification of pollution at source, and the principle that “the polluter should pay”. The precautionary principle is a risk-management tool which can be used where there is scientific uncertainty regarding a suspicion of risk to human health or the environment, and which allows preventive measures to be adopted before that uncertainty is dispelled.⁵⁴

AG73. The precautionary principle is, together with other principles, referred to in the last subparagraph of [art.4\(2\) of Directive 2008/98](#),⁵⁵ while [arts 1](#) and [13](#) of that directive refer to the obligation of Member States to take the necessary measures to ensure that waste management is carried out without endangering human health and without harming the environment.

AG74. As I have observed, the classification of waste with a mirror hazardous (MH) code has important consequences for the subsequent management of that waste (reuse, recycling, possible recovery and disposal). As the Commission states, the precautionary principle does not automatically require such classification where there is mere uncertainty regarding the presence of substances with hazardous properties of the kind provided for in [Annex III to Directive 2008/98](#) or [Annex IV to Regulation No.850/2004](#).

AG75. In order to determine whether it is necessary to assign waste an MH code or an MNH code, the waste producer or holder must use the procedure for classifying waste with mirror codes, establishing the composition of the waste first and then, if substances with traces of hazardous properties are identified, calculating their values or carrying out the relevant tests.

AG76. However, the waste producer or holder cannot rely on the precautionary principle as an excuse for not applying the procedure for classifying waste with mirror codes laid down by [Directive 2008/98](#) and [Decision 2000/532](#). Member States are permitted to reclassify or declassify waste as hazardous but they must inform the Commission so that, where

appropriate, it may amend the LoW, in accordance with [art.7\(2\) and \(3\) of Directive 2008/98](#) . Since there is that restriction for the Member States, the precautionary principle does not permit individuals to classify *688 waste other than by means of the procedure laid down in the EU provisions concerned.

AG77. I believe that that is borne out by the Court's case-law. ⁵⁶ In that connection, "a correct application of the precautionary principle presupposes, first, identification of the potentially negative consequences for health of the substances or foods concerned, and, second, a comprehensive assessment of the risk to health based on the most reliable scientific data available and the most recent results of international research". ⁵⁷ Accordingly, "protective measures ... cannot validly be based on a purely hypothetical approach to the risk, founded on mere assumptions which have not yet been scientifically verified. On the contrary, such protective measures, notwithstanding their temporary character and even if they are preventive in nature, may be adopted only if they are based on a risk assessment which is as complete as possible in the particular circumstances of an individual case, which indicate that those measures are necessary". ⁵⁸

AG78. Furthermore, it is not sufficient to rely on mere uncertainty as to the hazardous nature of waste in order to classify that waste with an MH code on the basis of the precautionary principle. If that were the case, all mirror codes would result in the classification of waste as hazardous. However, I repeat, that classification requires an individual analysis of the composition of waste and subsequent verification of whether the substances of which it is composed may be hazardous. The procedure laid down in [Directive 2008/98](#) and [Decision 2000/532](#) imposes similar requirements to those which the Court lays down for reliance on the precautionary principle.

AG79. I agree with the Italian Government that waste producers or holders are not under an obligation to conduct an exhaustive analysis in order to identify *all* the hazardous substances, for the purposes of [Regulation No.1272/2008](#) , which may be present in the waste, and *all* possible traces of hazardous properties which the waste may display for the purposes of [Annex III to Directive 2008/98](#) . That view is shared by the referring court, which considers that it is not the detection, at any cost, of all the substances that that waste might theoretically contain that is necessary, but rather an appropriate characterisation of the waste based, first, on the determination of its exact composition and, subsequently, on the examination of the hazardous nature of the substances identified.

AG80. Moreover, the principle of technical feasibility and economic viability, referred to in the last subparagraph of [art.4\(2\) of Directive 2008/98](#) , precludes the requirement that a waste producer must conduct an absolutely exhaustive analysis of the composition of waste and of all the traces of hazardous properties of substances of which that waste is composed. An obligation of that nature would also be disproportionate.

AG81. In my opinion, the precautionary principle does justify the classification of waste with an MH code where the analysis of the composition of that waste and/or of the traces of hazardous properties in its components proves to be impossible, for reasons that cannot be attributed to the waste producer or holder. In that case, there is a *689 real risk to public health or the environment which supports the classification of waste with an MH code, as a restrictive measure to "neutralise" its hazardousness. ⁵⁹

IV. Conclusion

AG82. In the light of the foregoing considerations, I suggest that the answers to the questions referred for a preliminary ruling by the Corte suprema di Cassazione (Supreme Court of Cassation, Italy) should be as follows:

[Article 7](#) of and [Annex III to Directive 2008/98/EC](#) of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives, as amended by [Regulation \(EU\) No 1357/2014](#) , and point 2, "Classification of waste as hazardous", under the heading "Assessment and classification", of the [Annex to Commission Decision 2000/532/EC of 3 May 2000](#) replacing [Decision 94/3/EC](#) establishing a list of wastes pursuant to [Article 1\(a\) of Council Directive 75/442/EEC](#) on waste and [Council Decision 94/904/EC](#) establishing a list of hazardous waste pursuant to [Article 1\(4\) of Council Directive 91/689/EEC](#) on hazardous waste, as amended by [Decision 2014/955/EU](#) , must be interpreted as meaning that:

- (1) A producer or holder of waste which may be classified with a mirror code is required to identify the composition of that waste and to verify subsequently, by means of a calculation or a test, whether that waste contains any of the hazardous substances or substances with traces of the hazardous properties listed in [Annex III to Directive 2008/98](#) or [Annex IV to Regulation \(EC\) No.850/2004](#) . For those purposes, it is necessary to use sampling, chemical analyses and tests, as provided for in [Regulation \(EC\) No 440/2008](#) , or any sampling, chemical analyses or tests which are internationally recognised or accepted by the national law of the Member State.

- (2) The precautionary principle cannot be relied on by a waste producer or holder as an excuse for failure to use the procedure for classification of waste with mirror codes laid down in [Directive 2008/98](#) and [Decision 2000/532](#), unless an analysis of the composition of the waste and/or of the traces of hazardous properties of its components proves to be impossible.

Judgment

1. These requests for a preliminary ruling concern the interpretation of [art.4\(2\)](#) of and [Annex III to Directive 2008/98/EC](#) of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives ([2008] OJ L 312/3), as amended by [Commission Regulation \(EU\) No.1357/2014 of 18 December 2014](#) ([2014] OJ L 365/89, and corrigendum [2017] OJ L 42/43) **690* (“Directive 2008/98”), and point 2 of the section headed “Assessment and classification” in the [Annex to Commission Decision 2000/532/EC of 3 May 2000](#) replacing [Decision 94/3/EC](#) establishing a list of wastes pursuant to [art.1\(a\) of Council Directive 75/442/EEC on waste](#) and [Council Decision 94/904/EC](#) establishing a list of hazardous waste pursuant to [art.1\(4\) of Council Directive 91/689/EEC on hazardous waste](#) ([2000] OJ L 226/3), as amended by [Commission Decision 2014/955/EU of 18 December 2014](#) ([2014] OJ L 370/44) (“Decision 2000/532”).
2. The requests were made in criminal proceedings brought against Mr Alfonso Verlezza, Mr Riccardo Traversa, Ms Irene Cocco, Mr Francesco Rando, Ms Carmelina Scaglione, Mr Francesco Rizzi, Mr Antonio Giuliano and Mr Enrico Giuliano, Refecta Srl, E. Giovi Srl, Vetreco Srl, SE.IN Srl (Case C-487/17), Ms Carmelina Scaglione (Case C-488/17) and MAD Srl (Case C-489/17) for offences concerning, inter alia, illegal waste trafficking.

Legal context

EU law

3. Recital 14 of [Directive 2008/98](#) states:

“The classification of waste as hazardous waste should be based, inter alia, on the Community legislation on chemicals, in particular concerning the classification of preparations as hazardous, including concentration limit values used for that purpose. Hazardous waste should be regulated under strict specifications in order to prevent or limit, as far as possible, the potential negative effects on the environment and on human health due to inappropriate management. Furthermore, it is necessary to maintain the system by which waste and hazardous waste have been classified in accordance with the list of the types of waste as last established by [Commission Decision 2000/532](#) ..., in order to encourage a harmonised classification of waste and ensure the harmonised determination of hazardous waste within the Community.”

4. [Article 3 of Directive 2008/98](#) provides, inter alia, the following definitions:
- “(1) ‘waste’ means any substance or object which the holder discards or intends or is required to discard;
 - (2) ‘hazardous waste’ means waste which displays one or more of the hazardous properties listed in Annex III;

- ...
- (6) ‘waste holder’ means the waste producer or the natural or legal person who is in possession of the waste;
 - (7) ‘dealer’ means any undertaking which acts in the role of principal to purchase and subsequently sell waste, including such dealers who do not take physical possession of the waste;
 - (8) ‘broker’ means any undertaking arranging the recovery or disposal of waste on behalf of others, including such brokers who do not take physical possession of the waste; ***691**
 - (9) ‘waste management’ means the collection, transport, recovery and disposal of waste, including the supervision of such operations and the after-care of disposal sites, and including actions taken as a dealer or broker;
 - (10) ‘collection’ means the gathering of waste, including the preliminary sorting and preliminary storage of waste for the purposes of transport to a waste treatment facility;
- ...”

5. The third subparagraph of [art.4\(2\)](#) of that directive provides:

“Member States shall take into account the general environmental protection principles of precaution and sustainability, technical feasibility and economic viability, protection of resources as well as the overall environmental, human health, economic and social impacts, in accordance with Articles 1 and 13.”

6. [Article 7](#) of that directive, entitled “List of waste”, provides:

- “1 The measures designed to amend non-essential elements of this Directive relating to the updating of the list of waste established by [Decision 2000/532/EC](#) shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 39(2). The list of waste shall include hazardous waste and shall take into account the origin and composition of the waste and, where necessary, the limit values of concentration of hazardous substances. The list of waste shall be binding as regards determination of the waste which is to be considered as hazardous waste. The inclusion of a substance or object in the list does not mean that it is waste in all circumstances. Furthermore, a substance or object is to be considered to be waste only where the definition in point (1) of [Article 3](#) is met.
- 2. A Member State may consider waste as hazardous waste where, even though it does not appear as such on the list of waste, it displays one or more of the properties listed in Annex III. The Member State must notify the Commission of any such cases without delay. It shall record them in the report provided for in Article 37(1) and shall provide the Commission with all relevant information. In the light of notifications received, the list shall be reviewed in order to decide on its adaptation.
- 3. Where a Member State has evidence to show that specific waste that appears on the list as hazardous waste does not display any of the properties listed in Annex III, it may consider that waste as non-hazardous waste. The Member State shall notify the Commission of any such cases without delay and shall provide the Commission with the necessary evidence. In the light of notifications received, the list shall be reviewed in order to decide on its adaptation.
- 4. The reclassification of hazardous waste as non-hazardous waste may not be achieved by diluting or mixing the waste with the aim of lowering the initial concentrations of

hazardous substances to a level below the thresholds for defining waste as hazardous.

...

6. Member States may consider waste as non-hazardous waste in accordance with the list of waste referred to in paragraph 1. ***692**

...”

7. [Annex III to Directive 2008/98](#) lists the various properties of waste which render it hazardous. With regard to the “test methods”, that annex provides:

“The methods to be used are described in [Commission Regulation \(EC\) No 440/2008](#) [of 30 May 2008 laying down test methods pursuant to [Regulation \(EC\) No 1907/2006](#) of the European Parliament and of the Council on the Registration, Evaluation, Authorisation and Restriction of Chemicals ([REACH](#)) ([2008] OJ L 142/1),] and in other relevant [European Committee for Standardization (CEN)] notes or other internationally recognised test methods and guidelines.”

8. The section headed “Assessment and classification” of the [Annex to Decision 2000/532](#) states:

“1. Assessment of hazardous properties of waste

When assessing the hazardous properties of wastes, the criteria laid down in [Annex III to Directive 2008/98/EC](#) shall apply. For the hazardous properties HP 4, HP 6 and HP 8, cut-off values for individual substances as indicated in [Annex III to Directive 2008/98/EC](#) shall apply to the assessment. Where a substance is present in the waste below its cut-off value, it shall not be included in any calculation of a threshold. Where a hazardous property of a waste has been assessed by a test and by using the concentrations of hazardous substances as indicated in [Annex III to Directive 2008/98/EC](#) , the results of the test shall prevail.

2. Classification of waste as hazardous

Any waste marked with an asterisk (*) in the list of wastes shall be considered as hazardous waste pursuant to [Directive \[2008/98\]](#) , unless [Article 20](#) of that Directive applies.

For those wastes for which hazardous and non-hazardous waste codes could be assigned, the following shall apply:

- An entry in the harmonised list of wastes marked as hazardous, having a specific or general reference to “hazardous substances”, is only appropriate to a waste when that waste contains relevant hazardous substances that cause the waste to display one or more of the hazardous properties HP 1 to HP 8 and/or HP 10 to HP 15 as listed in [Annex III to Directive \[2008/98\]](#) . The assessment of the hazardous property HP 9 “infectious” shall be made according to relevant legislation or reference documents in the Member States.
- A hazardous property can be assessed by using the concentration of substances in the waste as specified in [Annex III to Directive \[2008/98\]](#) or, unless otherwise specified in [Regulation \(EC\) No 1272/2008](#) , by performing a test in accordance with [Regulation](#)

[No 440/2008] or other internationally recognised test methods and guidelines, taking into account of Regulation (EC) No 1272/2008 as regards animal and human testing. ...”

9. Recital 2 of Regulation No 1357/2014 states: ***693**

“Directive 2008/98/EC states that the classification of waste as hazardous should be based, inter alia, on the Union legislation on chemicals, in particular concerning the classification of preparations as hazardous, including concentration limit values used for that purpose. Furthermore, it is necessary to maintain the system by which waste and hazardous waste have been classified in accordance with the list of the types of waste as last established by [Decision 2000/532], in order to encourage a harmonised classification of waste and ensure the harmonised determination of hazardous waste within the Union.”

Italian law

10. According to the information provided by the referring court, the basic provisions concerning waste currently appear in Legislative Decree No.152 of 3 April 2006 (Ordinary Supplement to the GURI No.88 of 14 April 2006, “Legislative Decree No.152/2006”). In particular, art.184 of that decree governs the classification of waste by distinguishing, on the basis of origin, municipal waste and special waste which in turn may be distinguished, on the basis of its hazardous properties, as hazardous waste and non-hazardous waste. Article 184 has been subject to a number of amendments.

11. Originally, para.4 of that article provided for a waste list to be drawn up, by means of an inter-ministerial decree, in accordance with various provisions of EU law, in particular Decision 2000/532 , and stipulated that, until that decree is adopted, the provisions of a directive of the Minister for the Environment and the Protection of Natural Resources of 9 April 2002 would apply, which directive is set out in Annex D to Legislative Decree No 152/2006. In addition, art.4 classified as dangerous non-domestic waste expressly specified as such by way of an asterisk to that effect on the list set out in Annex D.

12. Law No 116 of 11 August 2014 (Ordinary Supplement to GURI No.192 of 20 August 2014, “Law No.116/2014”), which converted, with amendments, Decree-Law No.91 of 24 June 2014 into law, amended the preamble to Annex D to Legislative Decree No.152/2006 by introducing the following provisions:

- “1. The classification of waste shall be carried out by the producer, who shall assign to that waste the appropriate EWC [European Waste Catalogue] code in accordance with the provisions of Decision [2000/532] .
2. If waste is classified under an EWC code as “absolute” hazardous waste, it is hazardous without any further qualification. The hazardous properties, defined under H 1 to H 15, of the waste must be determined in order to manage that waste.
3. If waste is classified under an EWC code as “absolute” non-hazardous waste, it is non-hazardous without any further qualification.
4. If waste is classified under mirror codes, one which is hazardous and one which is non-hazardous, then, in order to establish whether or not that waste is hazardous, the hazardous properties of that waste must be determined. The checks which must be carried out in order to determine the hazardous properties of waste are as follows: (a) identify the compounds present in the waste by using the producer’s fact sheet, ***694** having an

understanding of the chemical process and sampling and analysing the waste; (b) determine the hazards connected with those compounds using European legislation on the labelling of hazardous substances and preparations, European and international sources of information and the safety data sheet for the products which generate the waste; (c) establish whether the concentrations of those compounds imply that the waste has hazardous properties by comparing the concentrations measured during the chemical analysis with the threshold for the specific risk phrases for the compounds, or by tests carried out in order to verify whether the waste has hazardous properties.

5. If the chemical analyses reveal the components of the waste with no further qualification, and if the exact compounds of that waste are unknown, then, in order to identify the hazardous properties of the waste, it will be necessary to take into consideration the most hazardous compounds, in compliance with the precautionary principle.
6. Where the substances present in the waste are not known or are not determined in accordance with the methods laid down in the preceding paragraphs, or where the hazardous properties cannot be determined, the waste shall be classified as hazardous.
7. In any event, the classification shall take place before the waste is taken away from the place of production.”

The disputes in the main proceedings and the questions referred for a preliminary ruling

13. These requests for a preliminary ruling have been made in three cases concerning criminal proceedings brought against around thirty defendants charged with offences connected with the treatment of hazardous waste.

14. It is apparent from the orders for reference that those defendants, in their respective capacities as landfill managers, waste collection and production companies, and companies responsible for carrying out chemical analyses of waste, are accused of illegal waste trafficking, contrary to art.260 of Legislative Decree No.152/2006. They are accused of having treated waste which could have been assigned either hazardous waste codes or non-hazardous waste codes (“mirror codes”) as non-hazardous waste. It is alleged that, on the basis of non-exhaustive, partial chemical analyses, they assigned to that waste non-hazardous waste codes and then treated it in landfill sites for non-hazardous waste.

15. In that context, the Giudice per le indagini preliminari del Tribunale di Roma (judge responsible for preliminary investigations at the Rome District Court, Italy) ordered various seizure measures targeting the landfill sites where the waste at issue had been treated and the capital assets of the owners of those landfill sites, and, in that context, appointed a court commissioner to manage those landfill sites, and the waste collection and production sites for a period of six months.

16. Hearing a number of appeals brought by the defendants against those measures, the Tribunale di Roma (Rome District Court) issued three separate orders setting those measures aside. ***695**

17. The Procuratore della Repubblica presso il Tribunale di Roma (Public Prosecutor at the Rome District Court, Italy) brought three appeals against those orders before the Corte suprema di cassazione (Court of Cassation, Italy).

18. According to that court, the cases in the main proceedings concern the determination of the criteria to be applied when assessing the hazardous properties of waste to which mirror codes may be assigned. In that regard, that court states that the determination of those criteria has been a question of interest in Italian case-law and legal literature over the past 10 years and that two different solutions have been adopted in connection with the interpretation to be given to the relevant

provisions both of national law and of EU law.

19. Thus, on the one hand, according to the so-called “safety” or “presumed hazardousness” theory, based on the precautionary principle, in a case of waste to which mirror codes may be assigned, the holder must rebut the presumption that that waste is hazardous and is therefore required to carry out analyses in order to ensure that the waste in question is devoid of any hazardous substance.

20. On the other hand, in accordance with the so-called “probability” theory, based on the sustainable development principle and relying on the Italian-language version of point 2 of the section headed “Assessment and classification” in the [Annex to Decision 2000/532](#), the holder of waste to which mirror codes may be assigned has a discretion when determining beforehand the hazardous nature of the waste in question using the appropriate analyses. Thus, the waste holder could limit its analyses to the substances which, with a high degree of probability, may be found in the products at the start of the waste production process at issue.

21. In those circumstances, the Corte suprema di cassazione (Supreme Court of Cassation) decided to stay the proceedings and to refer the following questions, which are worded identically in Cases C-487/17 to C-489/17, to the Court for a preliminary ruling:

“(1) Must the [Annex to Decision \[2000/532\]](#) and [[Annex III to Directive 2008/98](#)] be interpreted, with reference to the classification of waste to which mirror codes have been assigned, as meaning that the producer of the waste must, when the composition of the waste is not known, carry out a prior classification of it, and, if so, within what limits?

(2) Must the examination as to hazardous substances be carried out on the basis of uniform, predetermined methods?

(3) Must the examination as to hazardous substances be based on a precise and representative verification that takes into account the composition of the waste, if this is already known or has been identified during the classification phase, or may the examination as to hazardous substances instead be carried out according to criteria of probability by taking into consideration which hazardous substances might reasonably be present in the waste?

(4) Where there is doubt, or where it is impossible to establish with certainty whether or not hazardous substances are present in the waste, must that waste nevertheless be classified and treated as hazardous waste by application of the precautionary principle?”

22. By order of the President of the Court of 7 September 2017, Cases C-487/17 to C-489/17 were joined for the purposes of the written and oral procedure, and the judgment. ***696**

Admissibility

23. Mr Rando, Vetreco and the Procuratore generale della Repubblica presso la Corte suprema di cassazione (Public Prosecutor at the Court of Cassation, Italy) submit that the requests for a preliminary ruling are inadmissible and must therefore be dismissed.

24. According to Mr Rando, the questions referred for a preliminary ruling are irrelevant, given that they are based on the application of Law No.116/2014. That law is a “technical rule” which the Commission should have been given notice of in advance. Since that notice was not given, that law cannot be applied to individuals.

25. Vetreco maintains that the questions referred for a preliminary ruling are not essential for the resolution of the dispute in the main proceedings, given that Italian case-law has defined the criteria according to which waste capable of coming under mirror codes should be classified. The referring court must therefore restrict itself to assessing the facts and applying its case-law, and accordingly there is no need to refer questions to the Court.

26. The Public Prosecutor at the Court of Cassation argues, first of all, that the questions referred do not identify precisely the provisions of EU law in respect of which an interpretation is sought, in that only the first of those contains a generic reference to [Decision 2000/532](#) and [Directive 2008/98](#). Next, those questions also fail to satisfy the self-sufficiency criteria, in that they are in themselves incomprehensible. Finally, the orders for reference do not contain any explanation with regard to the illegal classification allegedly committed in 2013 to 2015, and the referring court did not explain the logical and argumentative link between, on the one hand, the single doubt relating to interpretation set out in the grounds for those orders concerning the terms “appropriate” and “relevant” in point 2 of the section headed “Assessment and classification” in the [Annex to Decision 2000/532](#) and, on the other, the questions referred for a preliminary ruling covering matters not addressed in those grounds.

27. In that regard, it should be borne in mind that, according to settled case-law, the procedure laid down in [art.267 TFEU](#) is an instrument for cooperation between the Court of Justice and the national courts. It follows that it is for the national courts alone which are seised of the case and which are responsible for the judgment to be delivered to determine, in view of the special features of each case, both the need for a preliminary ruling in order to enable them to give their judgment and the relevance of the questions which they put to the Court (see, inter alia, judgments of 17 July 1997, [Leur-Bloem, C-28/95, EU:C:1997:369](#), at [24], and of 7 July 2011, [Agafitei and Others, C-310/10, EU:C:2011:467](#), at [25]).

28. Consequently, where questions submitted by national courts concern the interpretation of a provision of EU law, the Court is, in principle, obliged to give a ruling (see, inter alia, judgments of 17 July 1997, [Leur-Bloem, C-28/95, EU:C:1997:369](#), at [25], and of 7 July 2011, [Agafitei and Others, C-310/10, EU:C:2011:467](#), at [26]).

29. Nevertheless, the Court may refuse to rule on a question referred for a preliminary ruling by a national court only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its [*697](#) purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to enable it to give a useful answer to the questions submitted to it (see, inter alia, judgments of 11 July 2006, [Chacon Navas, C-13/05, EU:C:2006:456](#), at [33]; of 7 July 2011, [Agafitei and Others, C-310/10, EU:C:2011:467](#), at [27], and of 2 March 2017, [Pérez Retamero, C-97/16, EU:C:2017:158](#), at [22]).

30. In the present case, it should first of all be noted that, although it is true that the description of the factual and legal context in the requests for a preliminary ruling is succinct, that description nevertheless satisfies the requirements of [art.94](#) of the Rules of Procedure of the Court and therefore enables the Court to understand both the facts and the legal context in which the actions in the main proceedings arose.

31. Next, it should be added that, as is apparent from [18]–[20] above, the referring court explained the reasons which led it to seek an interpretation of the provisions of EU law covered by the questions referred for a preliminary ruling.

32. Finally, it is important to note that, under [art.10 of Directive 98/34/EC](#) of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on information society services ([1998] OJ L 204/37), as amended by [Directive 98/48/CE](#) of the European Parliament and of the Council of 20 July 1998 ([1998] OJ L 217/18), Member States are not under an obligation to notify the Commission of a draft technical regulation or to provide information where they fulfil their obligations arising out of EU directives.

33. In the present case, it is common ground that, by adopting the provisions of Law No.116/2014, the Italian Republic fulfilled its obligations arising out of directives on the classification of waste, in particular [Directive 2008/98](#) . Accordingly, assuming that Law No.116/2014 falls within the scope of [Directive 98/34](#) , the fact that that Member State did not give notice of those provisions does not amount to a substantial procedural defect such as to prevent the technical rules at issue being applied to individuals. That fact does not affect their enforceability as against individuals and therefore does not have any impact as such on the admissibility of the questions referred for a preliminary ruling.

34. In the light of the foregoing considerations, it must be held that the requests for a preliminary ruling contain the necessary elements of fact and law to enable the Court to give a useful answer to the referring court.

35. Therefore, the requests for a preliminary ruling are admissible.

Substance

Questions 1 to 3

36. By its first to third questions which should be answered together, the referring court asks, in essence, whether [Annex III to Directive 2008/98](#) and the [Annex to Decision 2000/532](#) must be interpreted to the effect that the holder of waste which may be classified under mirror codes, but the composition of which is not immediately known, must, in view of that classification, determine that composition and ascertain whether the waste in question contains one or more hazardous substances in order to establish whether that waste has hazardous properties and, if so, to what degree that composition should be determined, using which methods. ***698**

37. As a preliminary point, it should be made clear that, on the basis that the waste at issue in the main proceedings, which is the product of the mechanical treatment of municipal waste, may come under mirror codes, the referring court has clearly defined the reason for referring the questions, such that, contrary to what some parties to the main proceedings maintain, there is no need for this Court to rule on whether or not the classification carried out by the referring court is correct.

38. Under [art.3\(2\) of Directive 2008/98](#) , hazardous waste is defined as “waste which displays one or more of the hazardous properties listed in [Annex III](#) ” to that directive. It should be noted, as the Advocate General stated in point [AG33] of his Opinion, that that directive makes hazardous waste management subject to specific requirements concerning its traceability, packaging and labelling, the ban on mixing that waste with other hazardous waste or other waste, substances or materials, and the fact that the hazardous waste may be treated only in specifically designated facilities which have obtained special authorisation.

39. As is apparent from [art.7\(1\) of Directive 2008/98](#) , in order to ascertain whether waste falls within the list of waste

established by [Decision 2000/532](#) , which is binding as regards the determination of waste considered to be hazardous waste, account must be taken of “the origin and composition of the waste and, where necessary, limit values of concentration of hazardous substances”, given that those substances make it possible to determine whether waste has one or more of the hazardous properties listed in [Annex III](#) to that directive.

40. Therefore, where the composition of waste to which mirror codes may be assigned is not immediately known, it falls to the holder of that waste, as the party responsible for its management, to gather information which may enable it to gain sufficient knowledge of that composition and, thus, assign the appropriate code to that waste.

41. If that information is not obtained, the holder of such waste risks being in breach of its obligations as the party responsible for managing it, where it subsequently turns out that that waste was treated as non-hazardous waste, when it had one or more of the hazardous properties listed in [Annex III to Directive 2008/98](#) .

42. It must be noted that, as the Advocate General stated in point [AG52] of his Opinion, there are different methods for gathering the necessary information relating to the composition of the waste which thus make it possible to identify the possible presence of hazardous substances and one or more of the hazardous properties listed in [Annex III to Directive 2008/98](#) .

43. In addition to the methods identified under the section headed “Test methods” of that annex, the waste holder may, *inter alia*, refer to:

- information relating to the manufacturing process or chemical process “from which the waste came” and to input substances and intermediates, including expert opinions;
- information from the original producer of the substance or object before it became waste, in particular the safety data sheets, product labels or product fact sheets;
- databases on waste analysis available in the Member States, and
- sampling and chemical analysis of the waste.

44. With regard to sampling and chemical analysis, it should be made clear, as the Advocate General stated in point [AG69] of his Opinion, that those methods must provide guarantees that they are effective and representative. *699

45. It is true that the chemical analysis of waste must enable the holder to gain sufficient knowledge of the composition of that waste in order to determine whether the waste has one or more of the hazardous properties listed in [Annex III to Directive 2008/98](#) . However, no provision of the EU legislation in question may be interpreted to the effect that the purpose of that analysis is to determine the absence of any hazardous substance in the waste at issue, such that the waste holder would be required to rebut a presumption that that waste is hazardous.

46. It must be recalled, first, that, as regards the obligations under [art.4 of Directive 2008/98](#) , it is clear from para.2 of that article that, when applying the waste hierarchy provided for in that directive, Member States must take appropriate measures to encourage the options that deliver the best overall environmental outcome (judgment of 15 October 2014, *Commission v Italy*, C-323/13 , not published, EU:C:2014:2290, at [36]). In doing so, that article provides that Member States must take into consideration technical feasibility and economic viability, such that the provisions of that directive may not be interpreted to the effect that they impose on a waste holder unreasonable obligations, both from a technical and from an economic point of view, in respect of waste management. Secondly, in accordance with point 2, first indent, of the section entitled “Assessment and classification” of the [Annex to Decision 2000/532](#) , the classification of waste which may come under mirror codes as “hazardous waste” is appropriate only if that waste contains hazardous substances which confer on it one or more of the hazardous properties listed in [Annex III to Directive 2008/98](#) . It follows that the waste holder, whilst not being obliged to establish that there are no hazardous substances in the waste at issue, is nevertheless required to look for hazardous substances which may reasonably be found in that waste, and thus, in that respect, it has no discretion.

47. That interpretation, as the parties to the main proceedings submitted at the hearing, is now supported by the Commission Communication of 9 April 2018 containing technical recommendations on the classification of waste ([2018]

OJ C 124/1). However, since that communication postdates the facts at issue in the main proceedings, the Court, in view of the criminal nature of those cases, considers that it is not necessary to take that communication into consideration in its replies to the questions referred for a preliminary ruling.

48. Moreover, that interpretation is also compatible with the precautionary principle, which is one of the foundations of the EU's policy of protection in environmental matters, since it follows from the case-law of the Court that a protection measure such as the classification of waste as hazardous is required only where, following an assessment of the risks, which is as complete as possible having regard to the particular circumstances of the case, there is objective evidence which demonstrates that such a classification is required (see, by analogy, judgments of 7 September 2004, *Waddenvereniging and Vogelbeschermingsvereniging*, C-127/02, EU:C:2004:482 , at [44], and of 13 September 2017, *Fidenato and Others*, C-111/16, EU:C:2017:676 , at [51]).

49. Where the waste holder has gathered information on the composition of that waste, in situations such as those in the main proceedings, it must carry out the assessment of the hazardous properties of that waste in accordance with point 1 of the section entitled "Assessment and classification" of the [Annex to Decision 2000/532](#) , in order to be able to classify the waste, either on the basis of the calculation of the concentrations of hazardous substances present in that waste and *700 in accordance with the cut-off values indicated for each substance in [Annex III to Directive 2008/98](#) , or on the basis of a test, or on the basis of both those methods. In the latter case, point 1 provides that "the results of the test shall prevail."

50. With regard to the calculation of the hazardous property present in waste, it is clear from point 2, second indent, of the section entitled "Assessment and classification" of the [Annex to Decision 2000/532](#) , that the degree of concentration of hazardous substances contained in waste and capable of attributing hazardous properties to that waste must be calculated as explained in [Annex III to Directive 2008/98](#) . In the case of hazardous properties HP 4 to HP 14, that annex contains precise instructions for determining the concentrations in question and, in tables specific to the various hazardous properties, sets the concentration limits at or above which the waste in question must be classified as hazardous.

51. With regard to the tests, it should be pointed out in the first place that the assessment of the hazardous properties HP 1 to HP 3, as is clear from [Annex III to Directive 2008/98](#) , must be carried out on the basis of that method where that is "appropriate and proportionate". It follows that, where the assessment of the hazardousness of waste may be made on the basis of information already obtained, such that the use of a test would be neither appropriate nor proportionate, the waste holder may classify that waste without a test.

52. In the second place, it is important to note that, although it is true that, as the Advocate General stated in point [AG64] of his Opinion, the EU legislature, at this stage, has not harmonised analysis and test methods, the fact remains that both [Annex III to Directive 2008/98](#) and [Decision 2000/532](#) , in that respect, refer, first, to [Regulation No.440/2008](#) and to the relevant CEN notes and, secondly, to the internationally recognised testing methods and guidelines.

53. However, it is clear from the heading entitled "Test methods" in [Annex III to Directive 2008/98](#) that that reference does not exclude test methods developed nationally from also being taken into account provided that they are internationally recognised.

54. In view of those considerations, the answer to the first to third questions is that [Annex III to Directive 2008/98](#) and the [Annex to Decision 2000/532](#) must be interpreted to the effect that the holder of waste which may be classified under mirror codes, but the composition of which is not immediately known, must, in view of that classification, determine that composition and ascertain the hazardous substances which may reasonably be found in that waste in order to establish whether that waste has hazardous properties and may, for that purpose, use the sampling, chemical analyses and tests provided for in [Regulation No.440/2008](#) or any other internationally recognised sampling, chemical analysis or test.

55. By its fourth question, the referring court asks, in essence, whether the precautionary principle must be interpreted to the effect that, where there are doubts over the hazardous properties of waste which may be classified under mirror codes, or where it is impossible to determine with certainty that there are no hazardous substances in that waste, it must be classified as hazardous waste in accordance with that principle. **701*

56. In order to answer that question, it must be recalled first of all that, in accordance with [art.191\(2\) TFEU](#) , the precautionary principle constitutes one of the foundations of the EU's policy on the environment.

57. Next, it should be pointed out that it is clear from the case-law of the Court that a correct application of the precautionary principle presupposes, first, identification of the potentially negative consequences for the environment of the waste concerned, and, second, a comprehensive assessment of the risk to the environment based on the most reliable scientific data available and the most recent results of international research (see, to that effect, judgments of 9 September 2003, *Monsanto Agricoltura Italia and Others*, C-236/01, [EU:C:2003:431](#) , at [113]; of 28 January 2010, *Commission v France*, C-333/08, [EU:C:2010:44](#) , at [92], and of 19 January 2017, *Queisser Pharma*, C-282/15, [EU:C:2017:26](#) , at [56]).

58. The Court thus inferred that, where it proves to be impossible to determine with certainty the existence or extent of the alleged risk because of the insufficiency, inconclusiveness or imprecision of the results of studies conducted, but the likelihood of real harm to the environment persists should the risk materialise, the precautionary principle justifies the adoption of restrictive measures, provided they are non-discriminatory and objective (see, to that effect, judgment of 19 January 2017, *Queisser Pharma*, C-282/15, [EU:C:2017:26](#) , at [57] and the case-law cited).

59. Finally, it is important to note that, in accordance with the third subparagraph of [art.4\(2\) of Directive 2008/98](#) , Member States must take into account, not only the general environmental protection principles of precaution and sustainability, but also technical feasibility and economic viability, protection of resources as well as the overall environmental, human health, economic and social impacts. It follows that the EU legislature, in the specific area of waste management, intended to strike a balance between, on the one hand, the precautionary principle and, on the other, technical feasibility and economic viability, such that waste holders are not required to ensure that the waste in question is devoid of any hazardous substance, but may confine themselves to ascertaining the substances which may reasonably be found in that waste and assessing its hazardous properties on the basis of calculations or through tests relating to those substances.

60. It follows that a protection measure such as the classification of waste which may be classified under mirror codes as hazardous waste is required where, following an assessment of the risks which is as complete as possible having regard to the particular circumstances of the case, it is impossible, in practical terms, for that waste holder to determine the presence of hazardous substances or to assess the hazardous property of that waste (see, by analogy, judgments of 7 September 2004, *Waddenvereniging and Vogelbeschermingsvereniging*, C-127/02, [EU:C:2004:482](#) , at [44], and of 13 September 2017, *Fidenato and Others*, C-111/16, [EU:C:2017:676](#) , at [51]).

61. As the Commission stated in its observations, that practical impossibility cannot arise due to the conduct of the waste holder itself.

62. In view of those considerations, the answer to the fourth question is that the precautionary principle must be interpreted to the effect that where, following an assessment of the risks, which is as complete as possible having regard to the particular circumstances of the case, it is impossible, in practical terms, for a holder of waste which may be classified under mirror codes to determine the presence of hazardous substances or to assess the hazardous property of that waste, it must be classified as hazardous waste. **702*

Costs

63. 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.

Order

On those grounds, the Court (Tenth Chamber) hereby rules:

1. [Annex III to Directive 2008/98/EC](#) of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives, as amended by [Commission Regulation \(EU\) No 1357/2014](#) of 18 December 2014, and the [Annex to Commission Decision 2000/532/EC](#) of 3 May 2000 replacing [Decision 94/3/EC](#) establishing a list of wastes pursuant to [art.1\(a\) of Council Directive 75/442/EEC](#) on waste and [Council Decision 94/904/EC](#) establishing a list of hazardous waste pursuant to [art.1\(4\) of Council Directive 91/689/EEC](#) on hazardous waste, as amended by [Commission Decision 2014/955/EU](#) of 18 December 2014, must be interpreted to the effect that a holder of waste which may be classified under either hazardous waste codes or non-hazardous waste codes, but the composition of which is not immediately known, must, in view of that classification, determine that composition and ascertain the hazardous substances which may reasonably be found in that waste in order to establish whether that waste has hazardous properties and may, for that purpose, use the sampling, chemical analyses and tests provided for in [Commission Regulation \(EC\) No.440/2008 of 30 May 2008](#) laying down test methods pursuant to [Regulation \(EC\) No.1907/2006](#) of the European Parliament and of the Council on the Registration, Evaluation, Authorisation and Restriction of Chemicals ([REACH](#)), or any other internationally recognised sampling, chemical analysis or test.
2. The precautionary principle must be interpreted to the effect that where, following an assessment of the risks, which is as complete as possible having regard to the particular circumstances of the case, it is impossible, in practical terms, for a holder of waste which may be classified under either hazardous waste codes or non-hazardous waste codes to determine the presence of hazardous substances or to assess the hazardous property of that waste, it must be classified as hazardous waste. ***703**

Footnotes

- 1 Original language: Spanish.
- 2 Waste which, due to the fact that it contains, or does not contain, a hazardous substance, can be categorised, in principle, as hazardous or as non-hazardous.
- 3 Commission Decision of 3 May 2000 replacing [Decision 94/3/EC](#) establishing a list of wastes pursuant to [art.1\(a\) of Council Directive 75/442/EEC](#) on waste and [Council Decision 94/904/EC](#) establishing a list of hazardous waste pursuant to [Article 1\(4\) of Council Directive 91/689/EEC](#) on hazardous waste (notified under document number C(2000) 1147) ([2000] OJ L 226/3), as amended by [Commission Decision 2014/955/EU](#) of 18 December 2014 ([2014] OJ L 370/44) (“Decision 2000/532”).
- 4 Directive of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives ([2008] OJ L 312/3).
- 5 Commission Regulation of 18 December 2014 replacing [Annex III to Directive 2008/98/EC](#) of the European Parliament and of the Council on waste and repealing certain Directives ([2014] OJ L 365/89).
- 6 Decreto legislativo 3 aprile 2006, n.152, Norme in materia ambientale (GU Serie Generale n.88 of 14 April 2006—Supplemento Ordinario n. 96) (Legislative Decree No 152 of 3 April 2006 on environmental standards) (“Legislative Decree No 152/2006”).

- 7 Council Directive of 15 July 1975 on waste ([1975] OJ L 194/47).
- 8 Council Directive of 15 July 1975 on waste ([1975] OJ L 194/47).
- 9 Decreto legislativo 3 dicembre 2010, n.205, Disposizioni di attuazione della direttiva 2008/98/CE del Parlamento europeo e del Consiglio del 19 novembre 2008 relativa ai rifiuti e che abroga alcune direttive (GU Serie Generale n.288 of 10 December 2010—Supplemento Ordinario n.269).
- 10 Testo del decreto-legge 25 gennaio 2012, n.2 (GURI Serie Generale n.20 of 25 January 2012), coordinato con la legge di conversione 24 marzo 2012, n.28, recante: «Misure straordinarie e urgenti in materia ambientale» (GURI Serie Generale n.71 of 24 March 2012).
- 11 Testo del decreto-legge 24 giugno 2014, n.91 (GURI Serie Generale n.144 of 24 June 2014), coordinato con la legge di conversione 11 agosto 2014, n.116, recante: «Disposizioni urgenti per il settore agricolo, la tutela ambientale e l'efficientamento energetico dell'edilizia scolastica e universitaria, il rilancio e lo sviluppo delle imprese, il contenimento dei costi gravanti sulle tariffe elettriche, nonché» per la definizione immediata di adempimenti derivanti dalla normativa europea.» (GURI Serie Generale n.192 of 20 August 2014—Supplemento Ordinario n.72) (“Law No.116/2014”).
- 12 Points [AG46] and [AG47] of this Opinion.
- 13 Decreto-legge 20 giugno 2017, n.91, recante: «Disposizioni urgenti per la crescita economica nel Mezzogiorno.» (GURI Serie generale n.141 of 20 June 2017).
- 14 The advocates of that stance reacted positively to the procedures introduced by Law No.116/2014, drawing attention to the compliance of that law with [Decision 2000/532](#) , with the European Commission’s guidelines and with the reports and the technical manuals on hazardous waste introduced by other Member States, as well as with [Decision 2014/955](#) and [Regulation No.1357/2014](#) . Those reports include Report No.4/2/2016 drawn up by the French Ministry of Ecology (MEDDE) (“Classification réglementaire des déchets. Guide d’application pour la caractérisation et dangerosité”) and “Hazardous waste, Interpretation of the definition and classification of hazardous waste (Technics Guidance WM2)”, first published in 2003 in the United Kingdom.
- 15 From that perspective, Law No.116/2014 has been decidedly negative, both technically and economically, for operators in the sector. Demonstrating the non-hazardous nature of waste involves a “probatio diabolica” [legal requirement to provide proof which is impossible to obtain], which requires the producer always to classify the waste as hazardous. Advocates of that view submit that that law is incompatible with EU law and argue that Decree-Law No.91/2017, which abolished the procedures introduced by Law No.116/2014, confirms their position.
- 16 Judgment No.46897 of 3 May 2016, *Arduini and Others* , Rv. 26812601.
- 17 Directive of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations ([1998] OJ L 204/37). With effect from 6 October 2015, that directive was consolidated and replaced by Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services ([2015] OJ L 241/1).
- 18 Council Directive of 26 April 1999 on the landfill of waste ([1999] OJ L 182/1), and Council Decision of 19 December 2002 establishing criteria and procedures for the acceptance of waste at landfills pursuant to [art.16](#) of and [Annex II to Directive 1999/31](#) ([2003] OJ L 11/27).
- 19 For example, judgments of 16 June 2015, *Gauweiler and Others* (C-62/14, EU:C:2015:400 , at [24] and [25]);

of 4 May 2016, *Pillbox 38* (C-477/14, EU:C:2016:324 , at [15] and [16]); of 5 July 2016, *Ognyanov* (C-614/14, EU:C:2016:514 , at [19]); of 15 November 2016, *Ullens de Schooten* (C-268/15, EU:C:2016:874 , at [54]); and of 28 March 2017, *Rosneft* (C-72/15, EU:C:2017:236 , at [50] and [155]).

- 20 See, in that connection, the systematic approach of De Saeleer, N., *Droit des déchets de l'UE. De l'élimination à l'économie circulaire*, Bruylant , Brussels, 2016, pp.253 and 254.
- 21 In addition, hazardous waste may only be disposed of in landfill sites for hazardous waste, in accordance with certain conditions (arts 6 and 11 of Directive 1999/31), while shipments of hazardous waste between Member States are subject to the requirements of notification and authorisation. The import and export of hazardous waste is banned or subject to stringent controls in accordance with the provisions of Regulation (EC) No.1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste (OJ 2006 L 190 p. 1).
- 22 The accused refer to a report from the Lazio Region prepared in response to the seizure and produced by the defence, and to a note of 26 January 2017 from the competent ministry confirming “the applicability from 1 June 2015 of the European provisions”. The accused further contest the Prosecutor’s allegation based on Decree-Law No.91/2017 which, in particular, repeals the national provisions on the investigations to be carried out with regard to the classification of waste.
- 23 Mixed municipal waste certainly constitutes waste for the purposes of Directive 2008/98 . The judgment of 12 December 2013, *Ragn-Sells* (C-292/12, EU:C:2013:820 , at [56]), states that, as regards mixed municipal waste, art.11(1)(a) of Regulation No.1013/2006 , read in the light of recital 20 thereof and art.16 of Directive 2008/98 , permits Member States to adopt measures of general application restricting shipments of that waste between Member States, in the form of general or partial prohibitions of shipments, by way of implementation of the principles of proximity, priority for recovery and self-sufficiency under Directive 2008/98 .
- 24 Code 19 12 11* covering “other wastes (including mixtures of materials) from mechanical treatment of waste containing dangerous substances” or code 19 12 12 covering “other wastes (including mixtures of materials) from mechanical treatment of wastes other than those mentioned in 19 12 11”.
- 25 According to the first sentence of art.20 of Directive 2008/98 , “ Articles 17, 18, 19 and 35 shall not apply to mixed waste produced by households.”
- 26 Directive 1999/31 on landfill governs the management, the conditions relating to permits, the closure and the post-closure management of landfill sites. Decision 2003/33 stipulates the criteria for the acceptance of waste at different types of landfill, in which connection the classification of waste as hazardous or non-hazardous according to the LoW is decisive. That classification is different and must not be confused with the assessment of waste in order to verify conformity with the waste acceptance criteria laid down in Annex II to Directive 1999/31 and in Decision 2003/33 . Therefore, analyses made in the context of waste acceptance criteria cannot generally be used for the classification of waste according to the LoW. See, in that connection, Commission notice of 9 April 2018 on technical guidance on the classification of waste ([2018] OJ C 124/1), point 2.1.4.
- 27 The list of properties was subsequently further adapted by Council Regulation (EU) 2017/997 of 8 June 2017 amending Annex III to Directive 2008/98/EC of the European Parliament and of the Council as regards the hazardous property HP 14 “Ecotoxic” ([2017] OJ L 150/1). That regulation has been applicable since 5 July 2018 and is therefore not relevant *ratione temporis* to these cases.
- 28 Pursuant to art.7(2) and (3) , a Member State may reclassify hazardous waste as non-hazardous, and vice versa, where it has evidence to show that the waste concerns displays, or does not display, hazardous properties, and it must notify the Commission of this so that, where appropriate, the list may be amended. The judgment of 29 April 2004, *Commission v Austria* (C-194/01, EU:C:2004:248 , at [66]–[71]), ruled on the latitude enjoyed by the Member States.

- 29 It is possible to apply to [Directive 2008/98](#) the Court's case-law to the effect that [Directive 91/689](#) does not prevent the Member States, including, for matters within their jurisdiction, the courts, from classifying as hazardous waste other than that featuring on the list of hazardous waste laid down by [Decision 94/904](#), and thus from adopting more stringent protective measures in order to prohibit the abandonment, dumping or uncontrolled disposal of such waste (judgment of 22 June 2000, *Fornasar and Others*, C-318/98, *EU:C:2000:337*, at [51]).
- 30 [Directive 2008/98](#) and [Decision 2000/532](#) form a unit and must be interpreted together in relation to the definition of and legal arrangements for hazardous waste. See Van Calster, G., *EU Waste Law*, 2nd edn, (Oxford: Oxford University Press, 2015) p.86.
- 31 Since it is set out in an EU decision, the LoW is mandatory in all respects, is addressed to the Member States and does not require transposition.
- 32 [Regulation \(EC\) No.1907/2006](#) of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals ([REACH](#)), establishing a European Chemicals Agency, amending [Directive 1999/45/EC](#) and repealing [Council Regulation \(EEC\) No.793/93](#) and [Commission Regulation \(EC\) No.1488/94](#) as well as [Council Directive 76/769/EEC](#) and [Commission Directives 91/155/EEC](#), [93/67/EEC](#), [93/105/EC](#) and [2000/21/EC](#) ([2006] OJ L 396/1).
- 33 The LoW comprises 20 *chapters* (two-digit codes which refer to the source category) which are divided in turn into *sub-chapters* (four-digit codes which stipulate the sector of activity, the procedure or the holders creating the waste) and *entries* (six-digit codes designating the waste). For example, the code 19 12 11* is a mirror hazardous (MH) waste code, which breaks down as follows: 19 (wastes from waste management facilities, off-site waste water treatment plants and the preparation of water intended for human consumption and water for industrial use); 12 (wastes from the mechanical treatment of waste (for example sorting, crushing, compacting, pelletising) not otherwise specified); 11* other wastes (including mixtures of materials) from mechanical treatment of waste containing hazardous substances. Where the last two digits are different, there is an MNH code: 19 12 12 (other wastes (including mixtures of materials) from mechanical treatment of wastes other than those mentioned in 19 12 11).
- 34 Commission notice of 9 April 2018 on technical guidance on the classification of waste ([2018] OJ C 124/1), para.3.2.1. That document, which is not legally binding, was drawn up following wide consultation with the Member States and economic operators.
- 35 The EU Best Available Techniques Reference Documents ("BREF"), drawn up by the European Integrated Pollution Prevention and Control Bureau, are available at <http://eippcb.jrc.ec.europa.eu/reference/>
- 36 Regulation of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing [Directives 67/548/EEC](#) and [1999/45/EC](#), and amending [Regulation \(EC\) No.1907/2006](#) ([2008] OJ L 353/1).
- 37 Those two sets of provisions are not fully harmonised and the Commission refers to situations where the same material, containing a hazardous substance, can be considered to be hazardous or non-hazardous depending on whether the material is waste or a product. That discrepancy means that it cannot be assumed that materials which are reintroduced into the economy as a result of the recovery of non-hazardous waste will necessarily result in a non-hazardous product. The Commission launched an initiative to eliminate those dysfunctions in the document COM(2018) 32 final of 16 January 2018, which contains the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the implementation of the circular economy package: options to address the interface between chemical, product and waste legislation.
- 38 Thus, 16 01 11* (brake pads containing asbestos) is an MH entry, whereas 16 01 12 (brake pads other than those mentioned in 16 01 11) is an MNH entry.

- 39 Those hazardous properties are as follows: HP 1 Explosive; HP 2 Oxidising; HP 3 Flammable; HP 4 Irritant—skin irritation and eye damage; HP 5 Specific Target Organ Toxicity (STOT)/Aspiration Toxicity; HP 6 Acute Toxicity; HP 7 Carcinogenic; HP 8 Corrosive; HP 9 Infectious; HP 10 Toxic for reproduction; HP 11 Mutagenic; HP 12 Release of an acute toxic gas; HP 13 Sensitising; HP 14 Ecotoxic; HP 15 Waste capable of exhibiting a hazardous property listed above not directly displayed by the original waste.
- 40 Commission notice of 9 April 2018 on technical guidance on the classification of waste ([2018] OJ C 124/1), point 3.2.2.
- 41 Persistent organic pollutants (POPs) are organic chemicals with a certain combination of physical and chemical properties which means that, once they are released into the atmosphere, they remain there for a long time, become widely distributed throughout the environment, accumulate in the adipose tissue of living organisms, including humans, and are toxic to people and wildlife. For example: polychlorinated dibenzo-p-dioxins and dibenzofurans (PCDD/PCDF), DDT (1,1,1-trichloro-2,2-bis(4-chlorophenyl)ethane), chlordane, hexachlorocyclohexane (including lindane), dieldrin, endrin, heptachlor, hexachlorobenzene, chlordecone, aldrin, pentachlorobenzene, mirex, toxaphene, hexabromobiphenyl.
- 42 [Regulation \(EC\) No.850/2004](#) of the European Parliament and of the Council of 29 April 2004 on persistent organic pollutants and amending [Directive 79/117/EEC](#) ([2004] OJ L 158/7).
- 43 According to the Court’s settled case-law, the wording used in one language version of a provision of EU law cannot serve as the sole basis for the interpretation of that provision or be given priority over the other language versions. Provisions of EU law must be interpreted and applied uniformly in the light of the versions existing in all EU languages. Where there is divergence between the various language versions of an EU legislative text, the provision in question must be interpreted by reference to the purpose and general scheme of the rules of which it forms part (judgments of 28 July 2016, [Edilizia Mastrodonato \(C-147/15\) EU:C:2016:606](#) , at [29], and of 17 March 2016, [Kødbranchens Fællesråd \(C-112/15\) EU:C:2016:185](#) , at [36] and case-law cited).
- 44 “Solo se justifica la inclusión de un residuo en la lista armonizada de residuos marcado como peligroso y con una mención específica o general a «sustancias peligrosas», si el residuo contiene sustancias peligrosas que le confieren una o varias de las características de peligrosidad ...”
- 45 In the same vein, the Portuguese version provides: “só se justifica a inclusão de um resíduo na lista harmonizada de resíduos, assinalado como “perigoso” e com uma menção específica ou geral a “substâncias perigosas”, se o resíduo em causa contiver substâncias perigosas que lhe confirmam uma ou mais das características de perigosidade ...”
- 46 “Une référence spécifique ou générale à des «substances dangereuses» n’est appropriée pour un déchet marqué comme dangereux figurant sur la liste harmonisée des déchets que si ce déchet contient les substances dangereuses correspondantes qui lui confèrent une ou plusieurs des propriétés dangereuses ...”
- 47 “An entry in the harmonised list of wastes marked as hazardous, having a specific or general reference to ‘hazardous substances’, is only *appropriate* to a waste when that waste contains *relevant* hazardous substances that cause the waste to display one or more of the hazardous properties ...”
- 48 Commission Regulation of 30 May 2008 laying down test methods pursuant to [Regulation \(EC\) No.1907/2006](#) of the European Parliament and of the Council on the Registration, Evaluation, Authorisation and Restriction of Chemicals ([REACH](#)) ([2008] OJ L 142/1).
- 49 Chemical analysis is generally used to identify the substances present in waste, whereas testing is usually used to determine the concentration of a substance known to be present in waste.
- 50 [Annex III](#) , headed “Specific approaches to determine hazard properties (HP1 to HP15)”, to the Commission

Notice of 9 April 2018 on technical guidance on the classification of waste ([2018] OJ C 124/1), pp.87–123.

- 51 Commission Notice of 9 April 2018 on technical guidance on the classification of waste, [Annex 4](#), pp.129–131.
- 52 In the Notice of 2018, the Commission refers to the document “Characterization of waste—Determination of elements and substances in waste” described in the experimental standard AFNOR XP X30-489, which proposes an exhaustive method for the determination of elements and substances in liquid and solid waste. The Commission also refers to the United States Environmental Protection Agency Document, *Test Methods for Evaluating Solid Waste (SW - 846)*, 2014, available at: <http://www3.epa.gov/epawaste/hazard/testmethods/sw846/online/index.htm>.
- 53 The CEN technical standards are: EN 14899 Framework for the preparation and application of a sampling plan; CEN/TR 15310-1:2006 Guidance on selection and application of criteria for sampling under various conditions; CEN/TR 15310-2:2006 Guidance on sampling techniques; CEN/TR 15310-3:2006 Guidance on procedures for sub-sampling in the field; CEN/TR 15310-4:2006 Guidance on procedures for sample packaging, storage, preservation, transport and delivery; and CEN/TR 15310-5:2006 Guidance on the process of defining the sampling plan.
- 54 See Thieffry, P., *Manuel de droit européen de l’environnement*, 2nd edn., (Brussels: Bruylant, 2017) p.83, and, Esteve Pardo, J., *El desconcierto del Leviatán. Política y derecho ante las incertidumbres de la ciencia*, (Madrid: Marcial Pons, 2009) pp.141–146.
- 55 Which provides that “Member States shall take into account the general environmental protection principles of precaution and sustainability, technical feasibility and economic viability, protection of resources as well as the overall environmental, human health, economic and social impacts, in accordance with [Articles 1 and 13](#)”.
- 56 For a detailed account of the case-law of the EU courts, see Da Cruz Vilaça, J.L., “The Precautionary Principle in EC Law”, in *EU Law and Integration: Twenty Years of Judicial Application of EU Law* (Hart Publishing, 2014) pp.321–354.
- 57 See, inter alia, judgments of 28 January 2010, *Commission v France* (C-333/08, EU:C:2010:44, at [92]), and of 19 January 2017, *Queisser Pharma* (C-282/15, EU:C:2017:26, at [56]). See also the Opinion of AG Bobek in *Confédération paysanne and Others* (C-528/16, EU:C:2018:20, points [48] to [54]).
- 58 See, inter alia, judgments of 8 September 2011, *Monsanto and Others* (C-58/10 to C-68/10, EU:C:2011:553, at [77]), and of 13 September 2017, *Fidenato and Others* (C-111/16, EU:C:2017:676, at [51]).
- 59 The Court has held that “where it proves to be impossible to determine with certainty the existence or extent of the alleged risk because of the insufficiency, inconclusiveness or imprecision of the results of studies conducted, but the likelihood of real harm to public health persists should the risk materialise, the precautionary principle justifies the adoption of restrictive measures” (judgments of 2 December 2004, *Commission v Netherlands*, C-41/02, EU:C:2004:762, at [54]; of 28 January 2010, *Commission v France*, C-333/08, EU:C:2010:44, at [93]; and of 19 January 2017, *Queisser Pharma*, C-282/15, EU:C:2017:26, at [57]).