Reports of Cases

JUDGMENT OF THE COURT (Sixth Chamber)

18 December 2014*

(Reference for a preliminary ruling — Directive 2008/98/EC — Article 15 — Waste management — Possibility for the waste producer to carry out the waste treatment independently — National transposition law adopted, but not yet in force — Expiry of the transposition period — Direct effect)

In Case C-551/13,

REQUEST for a preliminary ruling under Article 267 TFEU from the Commissione tributaria provinciale di Cagliari (Italy), made by decision of 17 May 2013, received at the Court on 25 October 2013, in the proceedings

Società Edilizia Turistica Alberghiera Residenziale (SETAR) SpA

v

Comune di Quartu S. Elena,

THE COURT (Sixth Chamber),

composed of A. Borg Barthet, Acting President of the Sixth Chamber, E. Levits and F. Biltgen (Rapporteur), Judges,

Advocate General: Y. Bot,

Registrar: L. Carrasco Marco, Administrator,

having regard to the written procedure and further to the hearing on 8 October 2014,

after considering the observations submitted on behalf of:

— Società Edilizia Turistica Alberghiera Residenziale (SETAR) SpA, by A. Fantozzi, R. Altieri and G. Mameli, avvocati,

— the Italian Government, by G. Palmieri, acting as Agent, and C. Colelli, avvocato dello Stato,

— the Polish Government, by B. Majczyna, acting as Agent,

— the European Commission, by E. Sanfrutos Cano, L. Cappelletti and D. Loma-Osorio Lerena, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

* Language of the case: Italian.

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (OJ 2003 L 312, p. 3).

2 The request has been made in proceedings between Società Edilizia Turistica Alberghiera Residenziale (SETAR) SpA ('SETAR'), proprietor of a hotel complex in the locality of S'Oru e Mari (Italy) in the Comune di Quartu S. Elena, concerning SETAR's refusal to pay the municipal tax for the disposal of solid urban waste (tassa per lo smaltimento dei rifiuti solidi urbani; 'the TARSU').

Legal context

EU law

3 Recitals 25, 28 and 41 in the preamble to Directive 2008/98 are worded as follows:

'(25) It is appropriate that costs be allocated in such a way as to reflect the real costs to the environment of the generation and management of waste.

…

(28) This Directive should help move the EU closer to a "recycling society", seeking to avoid waste generation and to use waste as a resource. In particular, the Sixth Community Environment Action Programme calls for measures aimed at ensuring the source separation, collection and recycling of priority waste streams. In line with that objective and as a means to facilitating or improving its recovery potential, waste should be separately collected if technically, environmentally and economically practicable, before undergoing recovery operations that deliver the best overall environmental outcome. Member States should encourage the separation of hazardous compounds from waste streams if necessary to achieve environmentally sound management.

…

(41) In order to move towards a European recycling society with a high level of resource efficiency, targets for preparing for re-use and recycling of waste should be set. Member States maintain different approaches to the collection of household wastes and wastes of a similar nature and composition. It is therefore appropriate that such targets take account of the different collection systems in different Member States. Waste streams from other origins similar to household waste include waste referred to in entry 20 of the list established by 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 (OJ 1991 L 226, p. 3)].'

4 Article 1 of Directive 2008/98 provides:

'This Directive lays down measures to protect the environment and human health by preventing or reducing the adverse impacts of the generation and management of waste and by reducing overall impacts of resource use and improving the efficiency of such use.'

5 Article 4 of that directive provides:

‘1. The following waste hierarchy shall apply as a priority order in waste prevention and management legislation and policy:

(a) prevention;

(b) preparing for re-use;

(c) recycling;

(d) other recovery, e.g. energy recovery; and

(e) disposal.

2. When applying the waste hierarchy referred to in paragraph 1, Member States shall take measures to encourage the options that deliver the best overall environmental outcome. This may require specific waste streams departing from the hierarchy where this is justified by life-cycle thinking on the overall impacts of the generation and management of such waste.

...’

6 Article 13 of that directive provides:

‘Member States shall take the necessary measures to ensure that waste management is carried out without endangering human health, without harming the environment and, in particular:

(a) without risk to water, air, soil, plants or animals;

(b) without causing a nuisance through noise or odours; and

(c) without adversely affecting the countryside or places of special interest.’

7 Article 14 of Directive 2008/98 provides:

‘1. In accordance with the polluter-pays principle, the costs of waste management shall be borne by the original waste producer or by the current or previous waste holders.

2. Member States may decide that the costs of waste management are to be borne partly or wholly by the producer of the product from which the waste came and that the distributors of such product may share these costs.’

8 Under Article 15 of that directive:

‘1. Member States shall take the necessary measures to ensure that any original waste producer or other holder carries out the treatment of waste himself or has the treatment handled by a dealer or an establishment or undertaking which carries out waste treatment operations or arranged by a private or public waste collector in accordance with Articles 4 and 13.

2. When the waste is transferred from the original producer or holder to one of the natural or legal persons referred to in paragraph 1 for preliminary treatment, the responsibility for carrying out a complete recovery or disposal operation shall not be discharged as a general rule.

Without prejudice to 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)], Member States may specify the conditions of responsibility and decide in which cases the original producer is to retain responsibility for the whole treatment chain or in which cases the responsibility of the producer and the holder can be shared or delegated among the actors of the treatment chain.

3. Member States may decide, in accordance with Article 8, that the responsibility for arranging waste management is to be borne partly or wholly by the producer of the product from which the waste came and that distributors of such product may share this responsibility.

...'

Italian law

9 Article 188(2) of Legislative Decree No 152 laying down rules concerning the environment (Decreto legislativo n. 152 — Norme in materia ambientale) of 3 April 2006 (Ordinary Supplement to GURI No 88, of 14 April 2006; 'Legislative Decree No 152/2006') provides:

'The producer or holder of special waste shall discharge its obligation according to the following order of priority:

(a) it carries out the disposal of the waste itself;

(b) the waste is handed over to third parties, authorised under the provisions in force;

(c) the waste is handed over to public service bodies responsible for municipal waste collection, with whom a specific agreement has been concluded for this purpose;

(d) it makes use of the rail network for the transport of hazardous waste for distances greater than 350 kilometres and for quantities exceeding 25 tonnes;

(e) it exports the waste in accordance with the procedures laid down in Article 194.'

10 In order to ensure the transposition of Directive 2008/98 into Italian law, Article 16(1) of Legislative Decree No 205 laying down provisions for the implementation of Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives. (decreto legislativo n. 205 — Disposizioni di attuazione delle direttiva 2008/98/CE del Parlamento europeo e del Consiglio del 19 novembre 2008 relativa ai rifiuti e che abroga alcune direttive) of 3 December 2010 (Ordinary Supplement to GURI No 288, of 10 December 2010; 'Legislative Decree No 205/2010') amended Article 188(1) of Legislative Decree No 152/2006 as follows:

'1. The original producer or other holder of waste shall carry out the treatment directly, or shall hand over the waste to an intermediary or to a dealer or to a body or undertaking which carries out waste treatment operations or to a private or public body responsible for waste collection, in accordance with Articles 177 and 179. Without prejudice to the provision made under the subsequent paragraphs of the present Article, the original producer or other holder shall remain responsible for the entire treatment chain, it being understood that where the original producer or holder transfers the waste to one of the entities referred to in the present paragraph for preliminary treatment, that responsibility nevertheless subsists.'

11 Article 16(1) of Legislative Decree No 205/2010 also inserted, after Article 188, Articles 188a and 188b, respectively entitled 'Monitoring of the traceability of waste' and 'Waste traceability monitoring system (SISTRI)'.

12 Article 188a of Legislative Decree No 152/2006 provides:

'1. In implementation of Article 177(4), the traceability of waste must be ensured from the time of its production until its final destination.

2. To that end, the management of waste must be conducted in accordance with:

(a) the obligations put in place in connection with the waste traceability monitoring system (SISTRI) referred to in Article 14a of Decree-Law No 78 of 1 July 2009, converted into law, with amendments, by Law No 102 of 3 August 2009, and laid down in the Decree of the Minister for the Environment, the Protection of Natural Resources and the Sea of 17 December 2009 [Ordinary Supplement to GURI No 9, of 13 January 2010, p. 1]; or

(b) the obligations relating to the keeping of records of loading and unloading as well as the identification form referred to in Articles 190 and 193.

…'

13 Article 16(2) of Legislative Decree No 205/2010 provides that 'the provisions of the present Article shall enter into force with effect from the day after the deadline referred to in Article 12(2) of the Decree [of the Minister for the Environment, the Protection of Natural Resources and the Sea] of 17 December 2009'.

14 Under Article 12(2) of the Decree of the Minister for the Environment, the Protection of Natural Resources and the Sea of 17 December 2009, 'in order to ensure compliance with statutory obligations and to ensure the correct functioning of the SISTRI, the bodies referred to in those provisions are, however, bound by the provisions referred to in Articles 190 and 193 of [Legislative Decree No 152/2006] for one month following the implementation of the SISTRI, as stated in Articles 1 and 2'.

15 Under Article 1(1) and (4) of the Decree of the Minister for the Environment, the Protection of Natural Resources and the Sea of 17 December 2009:

'1. The waste traceability monitoring system, hereinafter also referred to as 'the SISTRI', managed by the Environmental Protection Division of the Carabinieri (Comando carabinieri per la Tutela dell'Ambiente), shall apply:

(a) with effect from the one hundred and eightieth day following the entry into force of the present Decree, to original producers of hazardous waste — including that referred to in Article 212(8) of Legislative Decree [No 152/2006] — with more than 50 employees; to undertakings and bodies that are original producers of non-hazardous waste, as referred to in Article 184(3)(c), (d) and (g) of Legislative Decree [No 152/2006], with more than 50 employees; to dealers and intermediaries; to consortia established for the recovery and recycling of particular types of waste which handle the management of such waste on behalf of the consortia members; to the undertakings referred to in Article 212(5) of Legislative Decree [No 152/2006] which collect and transport special waste; to the undertakings and bodies which carry out waste recovery and disposal operations; and to the persons referred to in Article 5(10) of the present Decree,

(b) from the two hundred and tenth day following the entry into force of the present Decree, to the undertakings and bodies which are original producers of hazardous waste — including those referred to in Article 212(8) of Legislative Decree [No 152/2006] — which have up to 50 employees and to original producers of non-hazardous waste as referred to in Article 184(3)(c), (d) and (g) of Legislative Decree [No 152/2006] which have between 11 and 50 employees.

...

4. Undertakings and bodies which are original producers of non-hazardous waste as referred to in Article 184(3)(c), (d) and (g) of Legislative Decree [No 152/2006] which do not have more than 10 employees, undertakings which collect and transport their own non-hazardous waste as referred to in Article 212(8) of Legislative Decree [No 152/2006] and farmers as referred to in Article 2135 of the Civil Code who produce non-hazardous waste and undertakings and bodies which are original producers of non-hazardous waste derived from activities other than those referred to in Article 184(3)(c), (d) and (g) of Legislative Decree [No 152/2006] may participate on a voluntary basis in the SISTRI from the date referred to in paragraph 1(b).'

16 The deadline for the implementation of the SISTRI, referred to in the Decree of the Minister for the Environment, the Protection of Natural Resources and the Sea of 17 December 2009, was subsequently fixed as 30 June 2012 by Decree-Law No 138 of 13 August 2011 (GURI No 188 of 13 August 2011, p. 1), converted with amendments by Law No 148 of 14 September 2011 (GURI No 216 of 16 September 2011, p. 1), as amended by Decree-Law No 216 of 29 December 2011 (GURI No 302 of 29 December 2011, p. 8), converted with amendments by Law No 14 of 24 February 2012 (Ordinary Supplement to GURI No 48, of 27 February 2012).

17 Under Article 52(1) and (2) of Decree-Law No 83 laying down urgent measures for the growth of the country (decreto-legge n. 83 — Misure urgenti per la crescita del Paese) of 22 June 2012 (Ordinary Supplement to GURI No 147, of 26 June 2012), converted with amendments by Law No 134 of 7 August 2012 (Ordinary Supplement to GURI No 187, of 11 August 2012), deferred the implementation deadline for the SISTRI to 30 June 2013 and prescribed that the new deadline be set by Decree of the Minister for the Environment, the Protection of Natural Resources and the Sea.

18 Article 1 of the Decree of the Minister for the Environment, the Protection of Natural Resources and the Sea concerning the progressive re-implementation deadlines for the SISTRI (decreto — Termini di riavvio progressivo del Sistri) of 20 March 2013 (GURI No°92 of 19 April 2013, p. 16), fixed 1 October 2013 as the implementation deadline for the SISTRI for original producers of special hazardous waste who employ more than 10 employees and for undertakings and bodies which manage special hazardous waste (paragraph 1) and as 3 March 2014 for the other undertakings or businesses that are required to register under the SISTRI (paragraph 2), it being possible for the latter to join the SISTRI voluntarily from 1 October 2013 (paragraph 3).

19 Lastly, Article 11(3a) of Decree-Law No 101 laying down urgent measures for achieving rationalisation objectives in relation to the public administrative authorities (decreto-legge n. 101 — Disposizioni urgenti per il perseguimento di obiettivi di razionalizzazione nelle pubbliche amministrazioni) of 31 August 2013 (GURI No 204 of 31 August 2013, p. 1), converted with amendments by Law No 125 of 30 October 2013 (GURI No 255 of 30 October 2013, p. 1), provides:

'Within the 10 months following the date of 1 October 2013, the provisions and obligations referred to in Articles 188, 189, 190 and 193 of Legislative Decree [No 152/2006] shall continue to apply in accordance with the text in force before the incorporation of the amendments made by Legislative Decree [No 205/2010] and the related penalties …'

The dispute in the main proceedings and the question referred for a preliminary ruling

20 On 30 November 2010, SETAR informed the Comune di Quartu S. Elena (Municipality of Quartu S. Elena; 'the Municipality') that, as from 1 January 2011, it would no longer pay the TARSU for management of the municipal waste disposal service, since, with effect from that date, it would be using a specialised firm for the disposal of the waste produced by its hotel complex, in accordance with Article 188 of Legislative Decree No 152/2006 and Article 15 of Directive 2008/98.

21 By decision of 7 December 2010, the Municipality informed SETAR that it was still liable for payment of the TARSU for the year 2011 as the fact that SETAR was going to deal with its waste disposal independently was entirely irrelevant in that regard.

22 By way of a preventive measure, SETAR brought an action before the Tribunale amministrativo regionale per la Sardegna (Regional Administrative Court, Sardinia; 'the administrative court') for annulment of the decision by which the Municipality had approved the TARSU tax rates for 2011. That court upheld SETAR's action.

23 While awaiting the decision of the administrative court, SETAR received the tax assessment — in the amount of EUR 171 216 — at issue in the main proceedings, which was based on the TARSU rates for 2011.

24 On 20 November 2012, acting in accordance with the findings of the judgment handed down by the administrative court, the Municipality granted SETAR partial relief and, through a new tax assessment, reduced the amount claimed by EUR 74 193.

25 On the substance of the case, SETAR brought an action before the Commissione tributaria provinciale di Cagliari (Provincial Tax Court, Cagliari; or 'the referring court') for annulment of the tax assessments issued by the Municipality. In support of its action, it submitted that those tax assessments were contrary, inter alia, to Article 15 of Directive 2008/98 and the principle of 'the polluter pays', recognised in EU law, and that, in accordance with that provision and that principle, it should be exempted from the TARSU, as it had made direct arrangements for the disposal of the waste that it had produced.

26 It emerges from the order for reference that the referring court takes the view that a measure has been adopted for the transposition of Article 15 of Directive 2008/98 into national law, even if that measure has not yet entered into force. However, the referring court is uncertain whether, in terms of its content, Article 15 can be regarded as unconditional and sufficiently precise to be capable of direct application to the dispute before that court. The referring court is also uncertain whether rules such as those at issue in the case before it properly implement Article 15 of Directive 2008/98, under which it is also permissible for a private party — using suitable means and the professional expertise available to it — to organise the disposal of its waste independently and thereby to be exempted from payment of the related costs, save for the 'social management' cost, a percentage of which it would have to pay in any event, in order to support the continuation of the universal service.

27 In those circumstances, the Commissione tributaria provinciale di Cagliari decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'Does Community law preclude the rules laid down in Article 188 of Legislative Decree No 152/2006 and Decree of the Minister for the Environment, the Protection of Natural Resources and the Sea of 17 [December] 2009, under which the entry into force of the legislation transposing Directive [2008/98] into national law is to be delayed pending the adoption of a ministerial decree laying down the related technical rules and specifying the time-limits within which that implementing legislation is to enter into force?'

Consideration of the question referred

Admissibility

28 According to the Italian Government, the question referred is inadmissible. In the first place, that question concerns the interpretation of provisions of national law, not of EU law. In any event, moreover, that question is unrelated to the purpose of the dispute before the referring court, which falls to be decided on the basis of the relevant national legislation and, supposing that the relevant EU legislation is directly applicable, on the basis of that legislation. On the other hand, the issue as to whether the correct view in the circumstances is that Directive 2008/98 has not been transposed into national law, or that it has been transposed too late, is irrelevant for the purposes of deciding the dispute before the referring court.

29 Although the Commission does not plead the inadmissibility of the question referred, it proposes that the question be framed differently so as to ask, in essence, whether it is permissible under Directive 2008/98 — and, more specifically, under Article 15 of that directive — for a private party to organise the disposal of its waste independently and accordingly to be exempted from liability for payment of the related municipal tax, and whether EU law precludes national legislation transposing Article 15(1) of Directive 2008/98 into national law in respect of which the entry into force is delayed pending the adoption of new national legislation laying down the technical rules and specifying the deadline for its entry into force.

30 The first point to note is that, by its question, the referring court is asking the Court of Justice to rule on the compatibility with EU law of certain provisions of national law.

31 In that regard, it should be noted that the Court has consistently held that, in proceedings under Article 267 TFEU, it may not rule on the compatibility with EU law of a provision of national law or interpret national legislation or rules (see, to that effect, the judgment in *Vueling Airlines*, C-487/12, EU:C:2014:2232, paragraph 26 and the case-law cited).

32 However, the Court does have jurisdiction to provide the referring court with all the guidance as to the interpretation of EU law necessary to enable that court to make its own ruling on whether or not such provisions are compatible with EU law for the purposes of resolving the dispute before it (see, inter alia, the judgment in *Lombardini and Mantovani*, C-285/99 and C-286/99, EU:C:2001:640, paragraph 27 and the case-law cited).

33 It should be added that, in the present case, it can be seen from the order for reference that one of the points on which the referring court is uncertain is whether, in the event that EU law falls to be construed as precluding national rules such as those at issue in the proceedings before it, Article 15(1) of Directive 2008/98 confers rights on individuals upon which they are entitled to rely directly before the national courts of a Member State. It cannot therefore be validly argued that the dispute is wholly unrelated to EU law.

34 That being so, the objections raised by the Italian Government regarding the admissibility of the request for a preliminary ruling must be rejected.

Substance

35 By its question, the referring court asks, in essence, whether,

— EU law and Directive 2008/98 must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which transposes into national law a provision of that directive, but the entry into force of which is deferred pending the adoption of a subsequent internal measure

laying down the related technical rules and specifying the date for its entry into force, even though the period prescribed for the transposition into national law of that directive has expired; and whether

— Article 15(1) of Directive 2008/98, read in conjunction with Articles 4 and 13 of that directive, must be interpreted as precluding national legislation under which no provision is made permitting a waste producer or waste holder to dispose of that waste independently and accordingly to be exempted from liability for payment of a municipal tax for the disposal of waste.

36 In order to answer the first part of the question, thus reformulated, it must be borne in mind that the obligation on a Member State to take all the measures necessary to achieve the result prescribed by a directive is a binding obligation imposed by the third paragraph of Article 288 TFEU and by Directive 2008/98 itself. That duty to take all appropriate measures, whether general or particular, is binding on all the authorities of Member States including, for matters within their jurisdiction, the courts (see, inter alia, the judgment in *Waddenvereniging and Vogelbeschermingsvereniging*, C-127/02, EU:C:2004:482, paragraph 65).

37 It is also settled law that, even in cases where Member States have a broad discretion, when transposing directives, as to the choice of method, they are nevertheless under a duty to ensure that the directive is fully effective and to meet the deadlines set therein, so that implementation is achieved uniformly throughout the European Union (see, to that effect, the judgment in *Commission* v *Italy*, 10/76, EU:C:1976:125, paragraph 12).

38 In the present case, it was clear from Article 40(1) of Directive 2008/98 that Member States had to bring into force the laws, regulations and administrative provisions necessary to comply with that directive by 12 December 2010.

39 It should be added that Directive 2008/98 does not allow either a derogation relating to the entry into force of measures transposing Article 15(1) thereof into national law, or a more general derogation under the terms of which Member States may lawfully defer to a date subsequent to 12 December 2010 the entry into force of transposition measures adopted before that date.

40 It follows that the answer to the first part of the question referred is that EU law and Directive 2008/98 must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which transposes into national law a provision of that directive, but the entry into force of which is deferred pending the adoption of a subsequent internal measure, if that entry into force takes place after the end of the transposition period prescribed by the directive.

41 Secondly, it must be pointed out, as regards the question whether Article 15(1) of Directive 2008/98 obliges Member States to make provision permitting an original waste producer or waste holder to dispose of that waste independently and accordingly to be exempted from liability for payment of a municipal tax for the disposal of waste, that it is clear from the wording of that provision that it does not place Member States under any such obligation.

42 In accordance with Article 15(1) of Directive 2008/98, Member States must take the necessary measures to ensure that the original waste producer or waste holder carries out the treatment of that waste independently or has the treatment handled by a dealer or an establishment or undertaking which carries out waste treatment operations or by a private or public waste collector in accordance with Articles 4 and 13 of that directive.

43 Thus, Article 15(1) of Directive 2008/98 allows Member States to choose between a number of options and the reference to Articles 4 and 13 of Directive 2008/98 cannot — contrary to the assertions made by SETAR — be construed as narrowing the discretion thereby conferred on Member States so as to

compel them to recognise that an original waste producer or waste holder has the right to carry out the treatment of that waste independently and accordingly to be relieved of the obligation to contribute to the funding of the waste management system established by the public services.

44 In particular, Article 4(1) of Directive 2008/98, which establishes the waste hierarchy as it should be applied in waste prevention and management legislation and policy, does not support the inference that priority must be accorded to a system which permits waste producers to dispose of that waste independently. On the contrary, waste disposal is placed last in that order of precedence.

45 Moreover, the interpretation to the effect that Article 15(1) of Directive 2008/98 leaves a broad discretion to Member States and does not oblige them to permit the original waste producer or waste holder to dispose of that waste independently is the only interpretation that makes it possible to take useful account of the fact, referred to in recital 41 to the directive, that Member States maintain different approaches to the collection of waste and their waste collection systems differ substantially.

46 The correctness of that interpretation is also borne out by Article 14 of Directive 2008/98, concerning the distribution of waste management costs. That provision, which is in all essential respects identical to Article 15 of Directive 2006/12/EC of the European Parliament and of the Council of 5 April 2006 on waste (OJ 2006 L 114, p. 9), which it replaced, places Member States under a duty to ensure that all waste producers and waste holders collectively bear the cost of a waste management system (see, to that effect, the judgment in *Futura Immobiliare and Others*, C-254/08, EU:C:2009:479, paragraph 46). The interpretation advocated by SETAR, on the other hand, would deprive Article 14 of Directive 2008/98 of practical effect, since it would enable waste producers and waste holders to avoid funding the waste management system that the Member States are obliged to establish.

47 In that respect, it should be noted that, in the absence of any rules of EU law imposing a specific method upon the Member States for financing the cost of waste management, that cost may, in accordance with the choice of the Member State concerned, equally well be financed by means of a tax or a charge or in any other manner, and that national legislation, which, for the purposes of financing the management of such a system, for example, provides for a tax calculated on the basis of an estimate of the volume of waste generated and not on the basis of the quantity of waste actually produced and presented for collection, cannot be considered contrary to Directive 2008/98 (see, to that effect, as regards Directive 2006/12, the judgment in *Futura Immobiliare and Others*, EU:C:2009:479, paragraphs 52 to 54).

48 However, while it is true that, in consequence, the competent national authorities have a broad discretion in determining the manner in which a tax such as that at issue in the main proceedings is to be calculated, the fact remains that the tax so determined must not go beyond what is necessary in order to achieve the objective pursued (see, to that effect, the judgment in *Futura Immobiliare and Others*, EU:C:2009:479, paragraph 55).

49 In the present case, it is for the referring court to determine, on the basis of the factual and legal information placed before it, whether the TARSU leads the original waste producer or waste holder, such as SETAR, to be allocated costs which are manifestly disproportionate to the quantities or the nature of the waste produced and/or introduced into the waste management system.

50 Consequently, the answer to the second part of the question referred is that Article 15(1) of Directive 2008/98, read in conjunction with Articles 4 and 13 thereof, must be interpreted as not precluding national legislation under which no provision is made permitting a waste producer or waste holder to dispose of that waste independently and accordingly to be exempted from liability for payment of a municipal tax for the disposal of waste, provided that that legislation meets the requirements entailed by the principle of proportionality.

51 In the light of all the foregoing considerations, the answer to the questions referred is:

— first, that EU law and Directive 2008/98 must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which transposes into national law a provision of that directive, but the entry into force of which is deferred pending the adoption of a subsequent internal measure, if that entry into force takes place after the end of the transposition period prescribed by the directive; and

— secondly, that Article 15(1) of Directive 2008/98, read in conjunction with Articles 4 and 13 thereof, must be interpreted as not precluding national legislation under which no provision is made permitting a waste producer or waste holder to dispose of that waste independently and accordingly to be exempted from liability for payment of a municipal tax for the disposal of waste, provided that that legislation meets the requirements entailed by the principle of proportionality.

Costs

52 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.

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

EU law and Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which transposes into national law a provision of that directive, but the entry into force of which is deferred pending the adoption of a subsequent internal measure, if that entry into force takes place after the end of the transposition period prescribed by the directive.

Article 15(1) of Directive 2008/98, read in conjunction with Articles 4 and 13 of that directive, must be interpreted as not precluding national legislation under which no provision is made permitting a waste producer or waste holder to dispose of that waste independently and accordingly to be exempted from liability for payment of a municipal tax for the disposal of waste, provided that that legislation meets the requirements entailed by the principle of proportionality.

[Signatures]