



Press and Information

Court of Justice of the European Union

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Judgment in Case C-399/17
Commission v Czech Republic

The Court dismisses the Commission's action against the Czech Republic concerning its refusal to ensure the take-back of 20 000 tonnes of a mixture called TPS-NOLO (Geobal) shipped to Poland from the Czech Republic

The Commission has not proven that the mixture constitutes waste and, thus, that its shipment constitutes a shipment of waste in respect of which a take-back may, in certain cases, be required

At the end of 2010 or the beginning of 2011 a Czech operator shipped from Litvínov (Czech Republic) to Katowice (Poland) approximately 20 000 tonnes of TPS-NOLO (Geobal), a mixture composed of tar acid derived from petroleum refining, carbon dust and calcium oxide. The mixture was deposited, in whole or in part, on a plot of land in Katowice.

In September 2011 the Polish authorities informed the Czech Ministry of the Environment that they considered that shipment to be an illegal shipment of waste within the meaning of the Regulation on Shipments of Waste¹ on account of the absence of the notification required by that regulation in the case of such a transfer.

In January 2012 the Czech Ministry of the Environment replied to the Polish authorities, stating that, as the TPS-NOLO (Geobal) was registered under the REACH Regulation,² it did not consider it to be waste and, as a result, it refused to order the Czech sender of the mixture at issue to ensure its take-back in accordance with the Regulation on Shipments of Waste.

In 2014, having received a complaint from an environmental association concerning that shipment, the Commission opened an investigation into the matter. Subsequently, as a result of the alleged infringement by the Czech Republic of the Regulation on Shipments of Waste, on account of its refusal to ensure the shipment back to the Czech Republic of the mixture at issue by the Czech sender in question, the Commission brought an action before the Court of Justice against that Member State. The Commission states that, in accordance with the Regulation on Shipments of Waste, the subject matter of a shipment is presumed to be waste when, as in the present case, the competent authorities of dispatch and of destination cannot agree on whether it should be classified as waste, even if the subject matter of the shipment is registered as a chemical substance under the REACH Regulation.

By today's judgment, the Court notes, first of all, that in the context of proceedings for failure to fulfil obligations it is for the Commission to establish the existence of the alleged failure, and in so doing it may not rely on any presumption. Therefore, in the present case, **it is for the Commission to prove that the mixture at issue is waste**, which is a prerequisite for the shipment at issue being considered illegal under the Regulation on Shipments of Waste. In that regard the Court notes that the Commission may not merely rely on the presumption set out in that

¹ 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).

² 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 (OJ 2006 L 396, p. 1), as amended by Commission Regulation (EU) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 (OJ 2011 L 353, p. 1).

regulation that, in the case of disagreement between the competent authorities of dispatch and destination as regards whether a substance is waste, the substance must be considered to be waste. Therefore it cannot claim to rely on the mere acknowledgement of disagreement between those authorities in support of the conclusion that the mixture at issue is waste.

As regards whether the Commission has managed to demonstrate the existence of a failure, the Court observes, in the first place, that the mixture at issue was produced from waste, namely tar acid originating from an earlier refining activity on the Ostrava site in the Czech Republic. However, the fact that a substance is the result of a waste recovery operation is only one of the factors which should be taken into consideration for the purpose of determining whether that substance is still waste, and does not, in itself, permit a definitive conclusion to be drawn in that regard. As a result, **the mere fact that TPS-NOLO (Geobal) is produced from waste does not constitute a basis for finding that it, itself, is waste.**

Secondly, the Court notes that the concept of waste does not turn on the hazardous nature of a substance. As regards the hazardous nature, alleged by the Commission, of the tar acid from which TPS-NOLO (Geobal) is derived, the Court states that EU law does not exclude the possibility that waste regarded as hazardous may cease to be waste if an operation enables it to be made usable without endangering human health or harming the environment and if it is not found that the holder discards it or intends to discard it.

Thirdly, the Court observes that the Commission, first, failed to demonstrate that the mixture at issue is considered waste in the Czech Republic, and, second, did not contradict the claim made by the Czech Republic that, in Poland, at the time the shipment at issue was made, that mixture was not classified as waste the use of which as fuel was prohibited.

Fourthly, the Court considers that the fact that in 2016 the quantity of TPS-NOLO (Geobal) at Katowice was only about 6 000 tonnes of the 20 000 tonnes of that mixture shipped in 2011 could be explained by its having been used as fuel in Polish cement works while that use was permitted. Thus, the Court rejects the Commission's argument that the mixture had no economic utility in Poland and therefore could not be classified as anything but waste.

Fifthly, the Court considers that, although the registration of the mixture at issue as a chemical substance under the REACH Regulation before its shipment does not exclude the possibility that it is, in fact, waste and not a chemical substance covered by that regulation, that hypothesis, based on the existence of a wrongful registration under the REACH Regulation, cannot be taken to demonstrate that the mixture is waste.

In those circumstances, the Court concludes that **the Commission has not proven that the mixture TPS-NOLO (Geobal) is waste. As a result, the Commission has failed to establish that the shipment at issue constitutes a shipment of waste and that the Czech Republic failed to fulfil its obligations under the Regulation on Shipments of Waste. For those reasons the Court dismisses the Commission's action.**

NOTE: An action for failure to fulfil obligations directed against a Member State which has failed to comply with its obligations under European Union law may be brought by the Commission or by another Member State. If the Court of Justice finds that there has been a failure to fulfil obligations, the Member State concerned must comply with the Court's judgment without delay.

Where the Commission considers that the Member State has not complied with the judgment, it may bring a further action seeking financial penalties. However, if measures transposing a directive have not been notified to the Commission, the Court of Justice can, on a proposal from the Commission, impose penalties at the stage of the initial judgment.

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

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