

**EUFJE Conference 2005: European Waste Law - Theory and Practice
Table of National Case Summaries from Responses to Questionnaire**

Issue and reference	National Cases	Relevant ECJ Cases	Comments
1. Definition of waste			
1.1 Generally			
1.1.1	<p>England and Wales: <i>R (on the application of Paul Rackham Limited) v. Swaffham Magistrates' Court and the Environment Agency [2004] EWHC 1417 (Admin)</i>, Application to stay a prosecution for a waste offence on the basis that the definition is so uncertain as to be incompatible with Article 7 of the ECHR. The application in that case failed.</p>	<p>Case C-417/98 <i>Arco Chemie</i></p>	
1.1.2	<p>France: <i>(Rennes Court of Appeal, 13 February 2002, application N° 00/08026)</i> - Abandonment must be deliberate for a wreck to be defined as waste. Fuel oil that escapes from a wrecked vessel is not waste.</p>	<p>Case C-1/03 <i>Van de Walle</i></p>	
1.1.3	<p>Hungary: The imposition of new environmental duties has left many companies arguing against retrospective application. Waste accumulated by state companies in earlier decades is not their responsibility. They bought contaminated land but they themselves haven't handled the waste.</p>	<p>Case C-1/03 <i>Van de Walle</i></p>	<p>The Commission is proposing excluding unexcavated contaminated soil from the Directive but only once alternative Community legislation is in place.</p>

1.1.4	<p>Italy: <i>Marretti (III Criminal Division, Cass. No. 18836/2005)</i> The Courts must apply Italian Regulations even when they contrast with EU Directives because the Directives are not directly applicable in Italy.</p>	Case C-457/02 <i>Niselli</i>	The approach in Italy has been to legislate to narrow the scope of waste and to exclude certain materials (eg secondary raw materials). This has been rejected by the ECJ – though there remain questions for Italian Courts where there is still a divergence between European and domestic law.
1.1.5	<p>Spain: <i>Judgment of the Administrative Division of the Supreme Court of 24 October 2001</i> Spent oil was waste and the activities carried out by garages in relation to spent oils amount to "management" within the meaning of the Directive.</p>		
1.2 By-products			
1.2.1	<p>Austria: <i>Judgment of the Supreme Court of Administration, July 4th 2001, 99/07/0177-7</i> The Court had to determine whether filter residues from the recovery of wolfram (tungsten) are or are not waste. The Environment Ministry had determined the filter residues were waste. The Court however did not share this opinion. If the residues were given to another company for conversion into a product, the residues were not to be regarded as waste.</p>	Case C-9/00 <i>Palin Granit</i>	

1.2.2	<p>Denmark: <i>The Supreme Court of Denmark, May 17th. 2004 (No 428/2003 2nd. Section) –</i> Sand from a cast iron foundry used for landfill cover is waste.</p>	Case C-9/00 <i>Palin Granit</i>	The Commission to issue guidance explaining the ECJ Case law on by-products.
1.2.3	<p>Finland: <i>SAC 20.9.2005 nr2413 – Nickel slag which is dried and sifted is not to be regarded as waste.</i></p>	Case C-417/98 <i>Arco Chemie</i>	
1.2.4	<p>Finland: <i>SAC 2004:60</i> The domestic court applied the tests set down by the ECJ in <i>Palin Granit</i> and <i>Avestapolarit</i> to a series of cases on leftover rock. It held that boulders with a volume of 1,5-5 m³ which were stockpiled in an area belonging to the mining site about one year as a maximum and immediately thereafter used for production, were not to be classified as waste.</p>	Case C-9/00 <i>Palin Granit</i> , Case C-114/01 <i>Avestapolarit</i> .	
1.2.5	<p>France: <i>Cour de Cassation, Criminal Division, 17 January 1995, No 93-84, 699 – Clinker (ash and residue) from a household refuse incineration plant used in road construction is waste.</i></p>	Case C-9/00 <i>Palin Granit</i> .	

1.2.6	<p><i>Council of State, 23 May 2001, n° 201938</i> – Impoverished uranium oxide, is capable of being enriched for re-use. Even if this process is deferred for <i>inter alia</i> economic considerations, that does not mean that this substance is to be regarded as waste.</p>	<p>Case C-9/00 <i>Palin Granit.</i></p>	
1.2.7	<p><i>Netherlands:</i> <i>Aviko/Gedeputeerde van Gelderland</i> – “Tarraground” (potato washings) used as soil are waste. They fall to be regarded as a residue of the process and cannot be seen as being used as a continuing part of the production process.</p>	<p>Case C-9/00 <i>Palin Granit,</i> Case C-416/02 <i>Commission v Spain.</i></p>	
1.2.8	<p><i>Spain</i> <i>Judgment of the Administrative Division of the Higher Court of Justice of the Valencian Community of 10 October 2003</i> The court considered whether authorisation was required for the marketing of a hydrosoluble acid with many uses. The Court considered the substance was a waste based on considerations of the Court in <i>Arco</i></p>	<p>Case C-417/98 <i>Arco Chemie</i></p>	

1.3 Waste Ceasing to be Waste			
1.3.1	<p>Austria <i>Judgment of the Supreme Court of Administration, July 25th2002, 2001/07/0043</i></p> <p>The Environment Ministry had determined the material in question (waste from grinding plexiglass, die-casting residues, plastic bottles etc being sorted, milled and melted to a size of 8mm) used as fuel was waste. The Ministry had reasoned that the input of packaging waste can lead to a high aluminium content in the incineration residues. The Court however declared that the material could be regarded as results of a complete recovery operation that ceased to be regarded as waste.</p>	Case C-417/98 <i>Arco Chemie</i>	
1.3.2	<p>England and Wales <i>Castle Cement</i>([2001] EWHC Admin 224) The Court considered it was not enough to simply compare the substance with a primary raw material that could be used instead. Even if such a comparison reveals no obvious additional dangers, there may be other circumstances which suggest the substance is waste after all.. In taking into account all these circumstances, the Court held that substitute liquid fuel was waste when burnt in a cement kiln.</p>	Case C-417/98 <i>Arco Chemie</i>	The Commission has proposed a Comitology procedure to clarify when certain waste streams are to be considered re-cycled. It also raises questions as to how any decision would relate to existing judgments (scrap metal being the obvious example – see <i>Mayer Parry</i> Case C-444/00). Will future judgments in relation to other waste streams be affected by decisions made pursuant to this process?

1.3.3	<p><i>Mayer Parry Recycling</i> - a long history of litigation has now been settled in the ECJ. Scrap metal is not considered recycled (and hence remains waste) until incorporated in a new product which possesses characteristics comparable to those of the original product (scrap metal used as feed stock is therefore waste).</p>	<p>Case C-444/00 <i>Mayer Parry</i></p>	
1.3.4	<p><i>Finland</i> SAC, of Finland, 9.9.2005 nr 2292 – Grant of a permit for a power plant and a gasification plant shortly before the transposition date for the Waste Incineration Directive. The fuel burnt in the power plant would be generated by the gasification plant from waste wood. The Court in the event did not take a position on whether the plants in question would fall to be regulated as a waste incineration plant. The indications are though that the Court was not minded to regard the waste derived fuel as waste (it could be compared to commercial fuels) and it did not consider it appropriate to repeal the permits on the basis that stricter WID compliant ones should have been issued.</p>	<p>Case C-417/98 <i>Arco Chemie</i></p>	
1.3.5	<p><i>Netherlands</i> Icopower case – Energy pellets derived from industrial waste were not waste. The pellets were composed and shaped according to criteria shaped by the electricity plant where they were burnt and that the pellets could be used under the same conditions and circumstances as original fuel and that no special circumstances or precautions were required</p>	<p>Case C-417/98 <i>Arco Chemie</i></p>	

1.3.6	<p>Scotland: <i>(Scottish Power Generation Ltd v Scottish Environment Protection Agency)</i>. The case considered the status of pellets derived from sewage sludge used as a fuel in a power plant The court considered whether the material could and would be used without further processing in the same way as a non-waste material, and whether it could be used under the same conditions of environmental protection as the non-waste material with which it was otherwise comparable, without any greater danger of harm to human health or the environment. The conclusion was that the pellets were indeed waste.</p>	Case C-417/98 <i>Arco Chemie</i>	
2. Waste Plans			
2.1	<p>Austria <i>Judgment of the Supreme Court of Administration, Oct 18th 2001 2000/07/0229</i> The Court determined that the permit for a waste incineration plant cannot be denied on the ground that the site of the plant is not specified or mentioned in the federal waste management plan.</p>	C-53/02 and C-217/02 <i>Biffa Tilleut.</i>	
2.2	<p>England and Wales <i>Derbyshire Waste Limited v Blewitt.</i> Found that the Landfill Directive requirement for the permit to be in line with the plan was no stricter than the Waste Framework Directive requirement for the permit to implement the plan. Fulfilment of article 4 is an objective to aim for which is reflected in planning and permitting decisions.</p>	C-53/02 and C-217/02 <i>Biffa Tilleut.</i>	

2.3	<p>France Montpellier Administrative-Law Court, 20 May 1998 - The Government cannot authorise the operation of a household refuse incinerator if the departmental disposal plan provides that every unit must have a treatment capacity corresponding to a specific geographical area (in this case 50,000 tonnes per annum) and the disputed plan related to an incinerator with a capacity of 120,000 tonnes per annum</p>		
3. Recovery/Disposal and Proximity			
3.1	<p>Austria <i>Judgment of the Supreme Court of Administration, 2003/07/0012</i> The Court determined that if waste is disposed in a mine, where there is no duty to fill up the mine, the disposal can not be determined as recovery operation. If on the contrary there is a legal duty to fill up a disused mine, the deposit of waste in the mine is to be determined as a recovery operation.</p>	Case C-6/00 <i>Abfall A.S.A</i>	
3.2	<p>Sweden M 5567-00, 26 November 2004 <i>Ingesta Plant Case</i> The Company wished to obtain permission to burn 10,000 tonnes of contaminated solvents and 20,000 tonnes of waste oils per year in its combustion plant. The Court found that the operation constituted waste recovery and hence given the principle waste should move freely, the permit could not be restricted to waste which originated from the local area.</p>	C 203/96 <i>Dusseldorp</i>	

4. Enforcement			
4.1	<p>Norway Norsk Retstidende (Rt.) 2004 – The Supreme Court increased the sentence for a directive from 60 days suspended to 45 days unconditional imprisonment.</p>		<p>Clearly enforcement is key to effective environmental protection. How does this compare across the Community?</p>
5. Waste Shipments/ Other legislation			
5.1	<p>France The importation of sewage sludge by a German company for use on an area of farmland in France. The authorities objected on the basis that the area of farmland was insufficient for the volume proposed. The Court held that although the waste was excluded from the Waste Framework Directive when it is being used as a fertiliser by virtue of Directive 86/278, the same does not apply during its transport. The transfer of the waste was therefore subject to the requirements of the Waste Shipment Regulation.</p>	<p>Case C-114/01 <i>Avestapolarit</i>, Case C-416/02 <i>Commission v Spain</i> (other legislation).</p>	