

C-358/11, Lapin luonnonsuojelupiiri: At crossroads of Chemicals and Waste Law

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**REPUBLIC OF SLOVENIA
MINISTRY OF JUSTICE
JUDICIAL TRAINING CENTRE**

Duckboards within a Natura Site: Waste and Chemicals

- Old telecommunication poles treated with CCA solutions were used as underlay of duckboard in a wilderness area included in the Natura 2000 network
- The Environmental Centre refused to prohibit the project → an NGO appealed to the Vaasa AC, which repealed the decision → poles hazardous waste, an environmental permit necessary



SAC: preliminary ruling

- The Road Administration responsible for the project appealed to the SAC → reuse of the poles is not against the law, CCA-impregnated wood is not waste (refers to REACH), no obligation to apply for an environmental permit
- SAC 2011:65 referred the case to the CJEU
- Preliminary ruling 7.3.2013 (Waste Directive and REACH)
 - It is not excluded that hazardous waste ceases to be waste, if a recovery operation enables it to be made usable without endangering human health and without harming the environment (not discarded)
 - REACH derogation relevant in interpreting whether wood treated with CCA solution ceases to be waste
 - REACH list of derogations exhaustive → the referring court shall determine whether the said use is within the scope of the derogation
 - Risk of repeated skin contact interpreted on the basis of normal likelihood



SAC final decision

- SAC 2013:102 repealed the Vaasa AC decision and confirmed the decision of the Environmental Centre → it was not contrary to law to use these telecommunication poles for the indicated purpose
- The Road Administration had acquired the poles to be used as underlay of duckboards → it was considered certain that the poles would be used for this purpose and the use would not endanger human health or the environment (not a groundwater area, not contrary to ban on polluting of the soil)
- The use of wood treated with CCA solution was as such provided by the REACH Annex XVII, the Road Administration did not have an obligation to discard the poles
- The poles used as underlay of duckboards were no longer considered to be waste (they had ceased to be waste, EoW), and their use was not under an obligation to apply for an environmental permit