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Advocate General's Opinion C-238/21 | Porr Bau

### **According to Advocate General Medina, uncontaminated top-quality excavated soil supplied by a construction undertaking to local farmers for improving the cultivation land may not constitute 'waste' under EU law**

*Uncontaminated top-quality excavated soil, supplied after it has been selected and undergone a quality control, constitutes a by-product provided that the conditions laid down in the Waste Directive are fulfilled*

In July 2015, certain farmers asked Porr Bau, an Austrian construction undertaking, to supply them with excavated soil in order to improve their cultivation areas. After the selection of an appropriate construction project and the extraction of soil samples, Porr Bau supplied the requested material. The soil had been controlled and qualified as being of the highest quality of uncontaminated excavated soil under Austrian law, the use of which is suitable and authorised for land development.

The national authorities found that the excavated soil at issue constituted waste within the meaning of the Austrian federal law on waste management and that it was therefore subject to the payment of a contribution on disused hazardous sites. Those authorities also considered that, at the time it was supplied, the excavated soil had not achieved end-of-waste status, essentially due to the failure to comply with certain formal requirements.

The Regional Administrative Court, Styria, (Austria), which is hearing the appeal against that decision, refers questions about the interpretation of Waste Directive regarding, first, the concept of 'waste' and, secondly, the conditions under which excavated materials – namely uncontaminated top-quality soil – achieve end-of-waste status.

In her Opinion delivered today, as a preliminary point, Advocate General Laila Medina observes that a construction undertaking which carefully selects soil, subjects it to a quality control and supplies it as uncontaminated top-quality material in order to attend to a specific request from local farmers does not intend to discard it, but rather seeks to exploit it under advantageous conditions for that undertaking. That excavated soil **should not** therefore, in the specific circumstances of the present case, **be regarded as waste** within the meaning of the Directive.

By contrast, the Advocate General considers that that uncontaminated top-quality excavated soil, supplied for the purposes of attending the specific request from local farmers, after that soil has been selected and undergone a quality control, **constitutes a by-product** provided that the conditions laid down in the Directive are fulfilled, in particular that such soil does not have any adverse impact on the environment and on human health.

Advocate General Medina recalls that, regarding the grant of end-of-waste status, Member States must ensure that national environmental legislation does not amount to an obstacle to the attainment of the objectives set by the Directive, such as encouraging the application of the waste hierarchy and the recovery of waste and the use of recovered material in order to preserve natural resources and to enable the development of a circular economy.

As to the present case, the Advocate General observes that it is certainly for a national court to assess, when necessary on the basis of a scientific and technical analysis, whether a **quality and contamination control performed on excavated soil is appropriate for the purposes of excluding any harm to the environment and human health**, and also appropriate to determining whether the conditions laid down in the Directive have been respected. If the outcome of that assessment is positive, end-of-waste status should be granted as soon as such control reveals the uncontaminated state and top-quality of an excavated soil.

Moreover, the Advocate General points out that national legislation which provides that end-of-waste status of uncontaminated top-quality excavated soil cannot be granted in the event of **non-compliance with formal obligations with no apparent environmental relevance**, such as record-keeping and documentation obligations, **prevents the objectives of the Directive** from being achieved and for that reason should be set aside.

**NOTE:** The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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

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