ECLI:EU:C:2017:547

Provisional text

JUDGMENT OF THE COURT (Second Chamber)

13 July 2017 (*)

(Reference for a preliminary ruling — Environment — Articles 191 and 193 TFEU — Directive 2004/35/EC — Applicability ratione materiae — Air pollution caused by illegal waste incineration — Polluter-pays principle — National legislation establishing joint liability between the owner of the land on which the pollution occurred and the polluter)

In Case C-129/16,

REQUEST for a preliminary ruling under Article 267 TFEU from the Szolnoki Közigazgatási és Munkaügyi Bíróság (Administrative and Employment Law Court, Szolnok, Hungary), made by decision of 18 February 2016, received at the Court on 1 March 2016, in the proceedings

Túrkevei Tejtermelő Kft.

v

Országos Környezetvédelmi és Természetvédelmi Főfelügyelőség,

THE COURT (Second Chamber),

composed of M. Ilešič, President of the Chamber, A. Prechal, A. Rosas, C. Toader (Rapporteur) and E. Jarašiūnas, Judges,

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– the Országos Környezetvédelmi és Természetvédelmi Főfelügyelőség, by Z. Szurovecz and L. Búsi, acting as Agents,

– the Hungarian Government, by M.Z. Fehér, G. Koós and A.M. Pálfy, acting as Agents,

– the European Commission, by E. White and A. Tokár, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 16 February 2017,

gives the following

Judgment

1 The present request for a preliminary ruling concerns the interpretation of Articles 191 and 193 TFEU and of Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage (OJ 2004 L 143, p. 56).

2 The request has been made in a dispute between Túrkevei Tejtermelő Kft. ('TTK') and the Országos Környezetvédelmi és Természetvédelmi Főfelügyelőség (National inspectorate general for the protection of the environment and nature, Hungary; 'the inspectorate') concerning a fine imposed on TTK as a result of illegal waste incineration occurring on land belonging to it and which resulted in air pollution.

Legal context

EU law

3 Directive 2004/35 was adopted on the basis of Article 175(1) EC, now Article 192(1) TFEU, which lays down the procedures for adoption of legislation by the

European Union for the purposes of achieving the environmental objectives referred to in Article 191(1) TFEU.

4 Recitals 1, 2, 4, 13, 18, 20 and 24 of Directive 2004/35 read as follows:

‘(1) There are currently many contaminated sites in the Community, posing significant health risks, and the loss of biodiversity has dramatically accelerated over the last decades. Failure to act could result in increased site contamination and greater loss of biodiversity in the future. Preventing and remedying, in so far as is possible, environmental damage contributes to implementing the objectives and principles of the Community’s environment policy as set out in the Treaty. Local conditions should be taken into account when deciding how to remedy damage.

(2) The prevention and remedying of environmental damage should be implemented through the furtherance of the “polluter pays” principle, as indicated in the Treaty and in line with the principle of sustainable development. The fundamental principle of this Directive should therefore be that an operator whose activity has caused the environmental damage or the imminent threat of such damage is to be held financially liable, in order to induce operators to adopt measures and develop practices to minimise the risks of environmental damage so that their exposure to financial liabilities is reduced.

...

(4) Environmental damage also includes damage caused by airborne elements as far as they cause damage to water, land or protected species or natural habitats.

...

(13) Not all forms of environmental damage can be remedied by means of the liability mechanism. For the latter to be effective, there needs to be one or more identifiable polluters, the damage should be concrete and quantifiable, and a causal link should be established between the damage and the identified polluter(s). Liability is therefore not a suitable instrument for dealing with pollution of a widespread, diffuse character, where it is impossible to link the negative environmental effects with acts or failure to act of certain individual actors.

...

(18) According to the “polluter-pays” principle, an operator causing environmental damage or creating an imminent threat of such damage should, in principle, bear the cost of the necessary preventive or remedial measures. In cases where a competent authority acts, itself or through a third party, in the place of an operator, that authority should ensure that the cost incurred by it is recovered from the operator. It is also appropriate that the operators should ultimately bear the cost of assessing environmental damage and, as the case may be, assessing an imminent threat of such damage occurring.

...

(20) An operator should not be required to bear the costs of preventive or remedial actions taken pursuant to this Directive in situations where the damage in question or imminent threat thereof is the result of certain events beyond the operator's control. Member States may allow that operators who are not at fault or negligent shall not bear the cost of remedial measures, in situations where the damage in question is the result of emissions or events explicitly authorised or where the potential for damage could not have been known when the event or emission took place.

...

(24) It is necessary to ensure that effective means of implementation and enforcement are available, while ensuring that the legitimate interests of the relevant operators and other interested parties are adequately safeguarded. Competent authorities should be in charge of specific tasks entailing appropriate administrative discretion, namely the duty to assess the significance of the damage and to determine which remedial measures should be taken.

...'

5 In accordance with Article 1 thereof, Directive 2004/35 establishes a framework of environmental liability based on the polluter-pays principle with a view to preventing and remedying environmental damage.

6 Article 2 of that directive contains the following definitions:

'For the purpose of this Directive the following definitions shall apply:

1. "environmental damage" means:

(a) damage to protected species and natural habitats, which is any damage that has significant adverse effects on reaching or maintaining the favourable conservation status of such habitats or species. The significance of such effects is to be assessed with reference to the baseline condition, taking account of the criteria set out in Annex I;

...

(b) water damage, which is any damage that significantly adversely affects the ecological, chemical and/or quantitative status and/or ecological potential, as defined in Directive 2000/60/EC, of the waters concerned, with the exception of adverse effects where Article 4(7) of that Directive applies;

(c) land damage, which is any land contamination that creates a significant risk of human health being adversely affected as a result of the direct or indirect introduction, in, on or under land, of substances, preparations, organisms or micro-organisms;

...

6. “operator” means any natural or legal, private or public person who operates or controls the occupational activity or, where this is provided for in national legislation, to whom decisive economic power over the technical functioning of such an activity has been delegated, including the holder of a permit or authorisation for such an activity or the person registering or notifying such an activity;

7. “occupational activity” means any activity carried out in the course of an economic activity, a business or an undertaking, irrespectively of its private or public, profit or non-profit character;

...

10. “preventive measures” means any measures taken in response to an event, act or omission that has created an imminent threat of environmental damage, with a view to preventing or minimising that damage;

11. “remedial measures” means any action, or combination of actions, including mitigating or interim measures to restore, rehabilitate or replace damaged natural resources and/or impaired services, or to provide an equivalent alternative to those resources or services as foreseen in Annex II;

...’

7 Paragraph 1 of Article 3 of that directive, entitled ‘Scope’, provides:

‘This Directive shall apply to:

(a) environmental damage caused by any of the occupational activities listed in Annex III, and to any imminent threat of such damage occurring by reason of any of those activities;

(b) damage to protected species and natural habitats caused by any occupational activities other than those listed in Annex III, and to any imminent threat of such damage occurring by reason of any of those activities, whenever the operator has been at fault or negligent.’

8 Under Article 4(5) of Directive 2004/35, that directive ‘shall only apply to environmental damage or to an imminent threat of such damage caused by pollution of a diffuse character, where it is possible to establish a causal link between the damage and the activities of individual operators’.

9 Article 5 of Directive 2004/35, entitled ‘Preventive action’, reads as follows:

‘1. Where environmental damage has not yet occurred but there is an imminent threat of such damage occurring, the operator shall, without delay, take the necessary preventive measures.

...

3. The competent authority may, at any time:

...

(b) require the operator to take the necessary preventive measures;

...

(d) itself take the necessary preventive measures.

4. The competent authority shall require that the preventive measures are taken by the operator. If the operator fails to comply with the obligations laid down in paragraph 1 or 3(b) or (c), cannot be identified or is not required to bear the costs under this Directive, the competent authority may take these measures itself.’

10 Article 6 of Directive 2004/35, entitled ‘Remedial action’, provides:

‘1. Where environmental damage has occurred the operator shall, without delay, inform the competent authority of all relevant aspects of the situation and take:

(a) all practicable steps to immediately control, contain, remove or otherwise manage the relevant contaminants and/or any other damage factors in order to limit or to prevent further environmental damage and adverse effects on human health or further impairment of services and

(b) the necessary remedial measures ...

2. The competent authority may, at any time:

(a) require the operator to provide supplementary information on any damage that has occurred;

(b) take, require the operator to take or give instructions to the operator concerning, all practicable steps to immediately control, contain, remove or otherwise manage the relevant contaminants and/or any other damage factors in order to limit or to prevent further environmental damage and adverse effect on human health, or further impairment of services;

(c) require the operator to take the necessary remedial measures;

...

(e) itself take the necessary remedial measures.

3. The competent authority shall require that the remedial measures are taken by the operator. If the operator fails to comply with the obligations laid down in paragraph 1 or 2(b), (c) ..., cannot be identified or is not required to bear the costs under this Directive, the competent authority may take these measures itself, as a means of last resort.'

11 Article 8(1) and (3) of that directive provides:

'1. The operator shall bear the costs for the preventive and remedial actions taken pursuant to this Directive.

...

3. An operator shall not be required to bear the cost of preventive or remedial actions taken pursuant to this Directive when he can prove that the environmental damage or imminent threat of such damage:

(a) was caused by a third party and occurred despite the fact that appropriate safety measures were in place; or

(b) resulted from compliance with a compulsory order or instruction emanating from a public authority other than an order or instruction consequent upon an emission or incident caused by the operator's own activities.

In such cases Member States shall take the appropriate measures to enable the operator to recover the costs incurred.'

12 Article 11(2) and (3) of that directive reads as follows:

'2. The duty to establish which operator has caused the damage or the imminent threat of damage, to assess the significance of the damage and to determine which remedial measures should be taken with reference to Annex II shall rest with the competent authority. …

3. Member States shall ensure that the competent authority may empower or require third parties to carry out the necessary preventive or remedial measures.'

13 Paragraph 1 of Article 16 of Directive 2004/35, which is entitled 'Relationship with national law', specifies that the directive 'shall not prevent Member States from maintaining or adopting more stringent provisions in relation to the prevention and remedying of environmental damage, including the identification of additional activities to be subject to the prevention and remediation requirements of this Directive and the identification of additional responsible parties'.

14 Annex III to Directive 2004/35 lists 12 activities considered by the EU legislature to be dangerous for the purpose of Article 3(1) of the directive. These activities refer to, inter alia, waste management operations subject to permit or registration in pursuance of certain relevant EU acts.

Hungarian law

Law on environmental protection

15 The provisions of the környezet védelmének általános szabályairól szóló 1995. évi LIII. törvény (Law No LIII of 1995 on general norms for environmental protection) ('the law on environmental protection') were adapted to transpose Directive 2004/35 into the Hungarian legal system.

16 Article 4 of that law includes the following definitions:

'1. "environmental compartment" means land, air, water, fauna and flora and the (artificial) environment built by man, as well as their components;

...

10. "environmental hazard" means the direct threat of environmental damage occurring;

...

12. "environmental degradation" means an act or omission which causes environmental damage;

13. "environmental damage" means a significant and measurable adverse change in the environment or in an environmental compartment or a significant and measurable deterioration of a service relating to an environmental compartment, which may arise directly or indirectly;

...'

17 Article 101(1) of that law states:

'The user of the environment shall bear the legal liability in criminal, civil and administrative law for the effects of his activity on the environment in accordance with the detailed rules set out in this law and in other legislation. ...'

18 Under Article 102(1) of that law, liability for environmental damage or an environmental hazard is — except where evidence to the contrary is provided — to be borne jointly and severally by those who, once the environmental damage or hazard has materialised, own or are in possession (the user) of the land on which the environmental damage or hazard has occurred. Under Article 102(2), the owner is relieved of joint and several liability if he identifies the actual user of the land and unequivocally proves that he cannot be held responsible.

19 Article 106 of that law provides:

‘(1) Anyone who directly or indirectly infringes a provision intended to protect the environment laid down in a regulation, an administrative decision or a directly applicable Community law act, or who exceeds relevant prescribed limits, shall be required to pay an environmental fine adjusted according to the seriousness of the behaviour constituting the infringement and, in particular, the scope, duration or repeated nature of the environmental pollution or damage of which he is the cause.

(2) The environmental fine must be paid in addition to a payment for having used environmental resources and to the charge due for burdening the environment.

...’

Government Decree on air quality protection

20 Article 2(29) of the Levegő védelméről szóló 306/2010 (XII. 23.) Korm. rendelet (Government Decree 306/2010 (XII 23) on air quality protection) categorises as an ‘air quality protection requirement’ any provision or prohibition laid down by a regulation or by a decision taken by an authority which seeks to prevent or reduce air pollution.

21 Under Article 27(2) of that decree, it is prohibited to incinerate waste either outdoors or in facilities that do not comply with the law on waste incineration; as an exception, where home-based facilities are used, the incineration of paper waste from private households or untreated wood waste is classified as not being dangerous. Incineration of waste in open spaces is deemed to occur where such waste burns for whatever reason, except as a result of natural causes.

22 Pursuant to Article 34(1) of that decree, the Environmental Protection Agency, except where otherwise provided, imposes a fine on the natural or legal person or the entity without legal personality which has breached the provisions relating to air quality and, at the same time, orders cessation of the illegal activity or rectification of the failure to act.

23 It is apparent from Article 34(3) of that decree that, when it imposes a fine, the Environmental Protection Agency is required to take account, first, of the circumstances of the breach, second, of the seriousness of the breach of obligations and, third, of the duration or repeated nature of the breach of obligations.

24 Paragraph 20 of Annex 9 to that decree prescribes the level of fines for ‘failing to prevent the spontaneous combustion or the burning of waste or materials, or for failing to do what is necessary to put an end to such burning (for quantities greater than 10 m^3)’.

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

25 On 2 July 2014 the competent Lower Environmental Protection Agency was informed that waste was being incinerated on land belonging to TTK situated in Túrkeve (Hungary).

26 According to the report drawn up during the inspection carried out by that agency, between 30 m^3 and 40 m^3 of waste, including metallic waste, had been incinerated in each of three on-site storage units, and three lorries present on the site were ready to transport the metallic waste resulting from the incineration.

27 TTK stated to that agency that it had leased the land to a natural person on 15 March 2014. However, it appeared that that person had died on 1 April 2014.

28 The Lower Environmental Protection Agency decided to impose on TTK, in its capacity as the owner of the land, a fine of 500 000 Hungarian forints (HUF) (approximately EUR 1 630) for failing to comply with the provisions of Government Decree 306/2010.

29 TTK disputed that fine before that agency, which rejected its complaint. That rejection was upheld by the inspectorate.

30 In its administrative decision to reject the complaint, the inspectorate took the view that the incineration of waste in an open space had caused an environmental hazard. However, according to the law on environmental protection, persons who own or are in possession of the property at the material time are to be held jointly and severally liable, except where the owner can prove beyond reasonable doubt that it cannot be held responsible. Given that the lessee of the land had died, the Lower Environmental Protection Agency maintained that it was fully entitled to hold TTK responsible.

31 TTK brought proceedings challenging the decision of the inspectorate before the referring court, the Szolnoki Közigazgatási és Munkaügyi Bíróság (Administrative and Employment Law Court, Szolnok, Hungary).

32 According to the referring court, the air pollution fine did not, by reason of its punitive objective, come within the scope of the ‘remedial measures’ defined in Article 2(11) of Directive 2004/35. However, that court points out that Article 16 of that directive provides that, in accordance with Article 193 TFEU, it is possible for Member States to adopt more stringent provisions in relation to the prevention and remedying of environmental damage.

33 The referring court refers to paragraph 54 of the judgment of 4 March 2015, *Fipa Group and Others* (C-534/13, EU:C:2015:140) and notes that, in order for the environmental liability mechanism implemented by Directive 2004/35 to be effective, the competent authority must establish a causal link between the activity of one or more identifiable operators and concrete and quantifiable damage, irrespective of the type of pollution caused, in order for remedial measures to be required of that operator or those operators. However, in the circumstances of the present case, the referring court maintains that there is no established causal link between TTK and the environmental damage. Therefore, that court maintains that there is no legal basis for imposing an administrative fine on the owner of the land.

34 In those circumstances the Szolnoki Közigazgatási és Munkaügyi Bíróság (Administrative and Employment Law Court, Szolnok) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Do Article 191 TFEU and the provisions of Directive [2004/35] preclude a provision of national law which — going beyond the polluter-pays principle — permits the environmental protection agency to hold specifically the owner of the property liable to pay compensation for the environmental damage caused, without it first being necessary to determine whether there is a causal link between the conduct of that person (a commercial undertaking) and the pollution caused?

(2) If the first question is to be answered in the negative and, with regard to the air pollution, it is not necessary to remedy the environmental damage, may a fine aimed at protecting air quality be imposed on the basis of legislation of the Member State which is more stringent within the meaning of Article 16 of Directive [2004/35] and Article 193 TFEU, or can that more stringent legislation not, at any rate, result in the imposition of a fine which is solely punitive in nature on the owner of the property, which is not responsible for the pollution caused?’

Consideration of the questions referred

The first question

35 By its first question, the referring court is asking, in essence, whether the provisions of Directive 2004/35, read in the light of Articles 191 and 193 TFEU, must be interpreted as meaning that they preclude national legislation, such as that at issue in the main proceedings, which identifies, in addition to operators using the land on which unlawful pollution has been produced, another category of person which is jointly liable for such environmental damage, namely the owners of the land, without it being necessary to establish a causal link between the conduct of the owners and the pollution found to have occurred.

Applicability of Article 191(2) TFEU

36 It should be observed as a preliminary point that Article 191(2) TFEU provides that EU policy on the environment is to aim at a high level of protection and is to be based on, inter alia, the polluter-pays principle. That provision thus does no more than define the general environmental objectives of the European Union, since Article 192 TFEU confers on the European Parliament and the Council of the European Union, acting in accordance with the ordinary legislative procedure, responsibility for deciding what action is to be taken in order to attain those objectives (judgment of 4 March 2015, *Fipa Group and Others*, C-534/13, EU:C:2015:140, paragraph 39 and the case-law cited).

37 Consequently, since Article 191(2) TFEU, which establishes the polluter-pays principle, is directed at action at EU level, that provision cannot be relied on as such by individuals in order to exclude the application of national legislation — such as that at issue in the main proceedings — in an area covered by environmental policy for which there is no EU legislation adopted on the basis of Article 192 TFEU that specifically covers the situation in question (see, to that effect, judgments of 9 March 2010, *ERG and Others*, C-379/08 and C-380/08, EU:C:2010:127, paragraph 39, and of 4 March 2015, *Fipa Group and Others*, C-534/13, EU:C:2015:140, paragraph 40 and the case-law cited).

38 It follows that the polluter-pays principle set out in Article 191(2) TFEU can be invoked by TTK only to the extent that the situation in the main proceedings is specifically covered by EU law adopted on the basis of Article 192 TFEU.

Applicability of Directive 2004/35

39 Subject always to the question, which has not been raised in the present reference for a preliminary ruling, of whether EU law other than Directive 2004/35, such as Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (OJ 2008 L 312, p. 3), covers a situation such as that in the main proceedings, it is necessary to examine whether Directive 2004/35 applies, taking account of the fact that it is apparent from the documents before the Court that the main proceedings relate to air pollution.

40 Article 2(1) of that directive defines ‘environmental damage’ as being damage to protected species and natural habitats or damage affecting water or land.

41 It follows that air pollution does not in itself constitute environmental damage covered by Directive 2004/35.

42 However, recital 4 of that directive states that environmental damage also includes damage caused by airborne elements as far as they cause damage to water, land or protected species or natural habitats.

43 Article 267 TFEU is based on a clear division of functions between the national courts and the Court of Justice, so that the Court may rule on the interpretation or validity of a provision of EU law only on the basis of the facts which the national court puts before it. It follows that, within the framework of the procedure under Article 267 TFEU,

it is not for the Court of Justice, but for the national court, to apply to national measures or situations the rules of EU law as interpreted by the Court of Justice (judgment of 9 March 2010, *ERG and Others*, C-379/08 and C-380/08, EU:C:2010:127, paragraph 35 and the case-law cited).

44 It is therefore for the referring court to verify, on the basis of the facts which it alone may determine, whether, in the main proceedings, air pollution was capable of causing such damage or the imminent threat of such damage as to give rise to the need to take preventive or remedial measures within the meaning of Directive 2004/35.

45 If that court should conclude that this was not the case in this instance, it will have to find that the pollution here at issue does not come within the scope of Directive 2004/35, and that such a situation is then a matter to be dealt with under national law, in compliance with the rules of the EU and FEU Treaties and without prejudice to other measures of secondary legislation (see, to that effect, judgment of 4 March 2015, *Fipa Group and Others*, C-534/13, EU:C:2015:140, paragraph 46 and the case-law cited).

46 By contrast, if the referring court should find that the air pollution at issue in the main proceedings has also caused damage or given rise to an imminent threat of such damage to water, land or protected natural species or habitats, such air pollution would come within the scope of Directive 2004/35.

Conditions for incurring environmental liability

47 It should be noted that, pursuant to Article 1 of Directive 2004/35, the purpose of that directive is to establish a framework of environmental liability based on the polluter-pays principle with a view to preventing and remedying environmental damage. In the framework of environmental liability laid down by that directive, which is founded on a high degree of environmental protection and on the polluter-pays principle, operators are under a duty both to prevent and to remedy environmental damage (see, to that effect, judgment of 9 March 2010, *ERG and Others*, C-379/08 and C-380/08, EU:C:2010:127, paragraphs 75 and 76).

48 As follows from Article 4(5) and Article 11(2) of Directive 2004/35, read in conjunction with recital 13 thereof, the environmental liability mechanism provided for by that directive requires the competent authority to establish a causal link between the activity of one or more identifiable operators and the environmental damage or the imminent threat of such damage (judgment of 4 March 2015, *Fipa Group and Others*, C-534/13, EU:C:2015:140, paragraph 54 and the case-law cited).

49 In construing Article 3(1)(a) of Directive 2004/35, the Court has held that the competent authority's obligation to establish a causal link applies in the context of the system of strict environmental liability of operators (judgment of 4 March 2015, *Fipa Group and Others*, C-534/13, EU:C:2015:140, paragraph 55 and the case-law cited).

50 As is clear from Article 4(5) of Directive 2004/35, that obligation also applies in the context of the fault-based liability system — under which liability arises from fault or negligence on the part of the operator — provided for in Article 3(1)(b) of that directive in respect of occupational activities other than those listed in Annex III thereto (see, to that effect, judgment of 4 March 2015, *Fipa Group and Others*, C-534/13, EU:C:2015:140, paragraph 56 and the case-law cited).

51 The particular importance for the application of the polluter-pays principle, and hence for the liability mechanism provided for in Directive 2004/35, of the causal link between the operator's activity and the environmental damage is also apparent from the provisions of that directive which relate to the inferences to be drawn from the fact that the operator did not contribute to the pollution or to the risk of pollution (judgment of 4 March 2015, *Fipa Group and Others*, C-534/13, EU:C:2015:140, paragraph 57).

52 In that regard, it should be borne in mind that, under Article 8(3)(a) of Directive 2004/35, read in conjunction with recital 20 thereof, the operator is not required to bear the costs if he can prove that the environmental damage was caused by a third party, and occurred despite the fact that appropriate safety measures were in place, or resulted from an order or instruction emanating from a public authority (see, to that effect, judgment of 4 March 2015, *Fipa Group and Others*, C-534/13, EU:C:2015:140, paragraph 58 and the case-law cited).

53 It is apparent from all of the foregoing that the liability mechanism established by Directive 2004/35 is founded on the precautionary principle and on the polluter-pays principle. To that end, that directive places operators under a duty both to prevent and to remedy environmental damage (see, inter alia, judgment of 9 March 2010, *ERG and Others*, C-379/08 and C-380/08, EU:C:2010:127, paragraph 75).

54 In the present case, it is not in dispute that TTK was held liable in its capacity not as operator, but as owner of the land on which the pollution occurred. It also appears — this being a matter for the referring court to verify — that the competent authority imposed a fine on TTK and did not also require it to undertake preventive or remedial measures.

55 It is therefore apparent from the documents submitted to the Court that the provisions of Hungarian legislation applied to TTK do not form part of those which implement the liability mechanism established by Directive 2004/35.

56 However, it must be noted that Article 16 of Directive 2004/35 grants Member States the power to maintain or adopt more stringent provisions in relation to the prevention and remedying of environmental damage, including the identification of additional activities to be subject to the prevention and remediation requirements of that directive and the identification of additional responsible parties.

57 Article 102(1) of the law on environmental protection provides that, in the absence of proof to the contrary, the persons who own or are in possession of the land 'on which

the environmental damage or hazard occurred' are to be held jointly and severally liable; the owner can discharge himself of his liability only if he can identify the actual user of the land and can prove beyond reasonable doubt that he did not cause the damage himself, which is such as to strengthen the liability mechanism provided for by Directive 2004/35.

58 To the extent that, without affecting the liability in principle of the operator, such national legislation seeks to prevent a lack of care and attention on the part of the owner, as well as to encourage the owner to adopt measures and develop practices likely to minimise the risk of damage to the environment, it contributes both to the prevention of such damage and, as a result, to the attainment of the objectives of Directive 2004/35.

59 The effect of this national legislation is that the owners of land in the relevant Member State are deemed to monitor the conduct of those using their property and to report such users to the competent authority in the event of environmental damage or the threat of environmental damage, failing which the owners will themselves be held jointly and severally liable.

60 Given that such legislation strengthens the mechanism set out in Directive 2004/35 by identifying a category of persons who can be held jointly liable in addition to operators, that legislation comes under Article 16 of Directive 2004/35, which, when read in combination with Article 193 TFEU, permits more stringent protection measures, provided that they are compatible with the EU and FEU Treaties and are notified to the European Commission.

61 As regards the requirement of compatibility with the Treaties, it is apparent from the Court's case-law that it is for each Member State to decide on such more stringent protection measures, which must, first, seek to attain the objective of Directive 2004/35 as defined in Article 1 thereof, namely to prevent and remedy environmental damage and, second, to comply with EU law, in particular its general principles, which include the principle of proportionality (see, to that effect, judgment of 9 March 2010, *ERG and Others*, C-379/08 and C-380/08, EU:C:2010:127, paragraph 79).

62 Finally, it should be noted that a failure to comply with the notification obligation under Article 193 TFEU does not in itself render unlawful the more stringent protective measures (judgment of 21 July 2011, *Azienda Agro-Zootecnica Franchini and Eolica di Altamura*, C-2/10, EU:C:2011:502, paragraph 53 and the case-law cited).

63 In those circumstances, the answer to the first question is that the provisions of Directive 2004/35, read in the light of Articles 191 and 193 TFEU, must be interpreted as meaning that, to the extent that the situation in the main proceedings comes within the scope of Directive 2004/35 — this being a matter for the referring court to determine — such provisions do not preclude national legislation, such as that at issue in the main proceedings, which identifies another category of persons who, in addition to those using the land on which unlawful pollution was produced, share joint and several liability for the environmental damage, namely the owners of that land, without it being necessary to

establish a causal link between the conduct of the owners and the damage established, provided that such legislation complies with the general principles of EU law, all relevant provisions of the EU and FEU Treaties and of the acts of secondary law of the European Union.

The second question

64 By its second question, the referring court seeks, in essence, to ascertain whether Article 16 of Directive 2004/35 and Article 193 TFEU must be interpreted as meaning that they do not preclude national legislation, such as that at issue in the main proceedings, pursuant to which owners of land on which unlawful pollution is produced are not only held as being jointly liable, alongside the users of such land, for such environmental damage, but may also have fines imposed upon them by the competent national administrative authority.

65 In this respect, it should be pointed out that when a Member State identifies, in accordance with Article 16 of that directive and Article 193 TFEU and in compliance with all other relevant provisions and the general principles of EU law, those owners of land as being jointly liable, it may prescribe sanctions designed to increase the effectiveness of this more stringent protection mechanism.

66 An administrative fine imposed on the owner of land as a result of unlawful pollution which he has not prevented and in respect of which he is not able to identify the party responsible can therefore come under the liability mechanism covered by Article 16 of Directive 2004/35 and Article 193 TFEU, provided that the legislation laying down such a fine is, in accordance with the principle of proportionality, appropriate for the purposes of contributing to the attainment of the objective of more stringent protection, which is the purpose of the legislation prescribing joint liability, and that the methods for determining the amount of the fine do not go beyond what is necessary to attain that objective (see, by analogy, judgment of 9 June 2016, *Nutrivet*, C-69/15, EU:C:2016:425, paragraph 51 and the case-law cited).

67 In the present case, it is for the referring court to establish whether the national legislation at issue in the main proceedings, notably Article 34(1) of Government Decree 306/2010, fulfils these conditions.

68 Accordingly, the answer to the second question is that Article 16 of Directive 2004/35 and Article 193 TFEU must be interpreted, to the extent that the situation at issue in the main proceedings comes within the scope of Directive 2004/35, as not precluding national legislation, such as that at issue in the main proceedings, pursuant to which the owners of land on which unlawful pollution has been produced are not only held to be jointly liable, alongside the persons using that land, for such environmental damage, but may also have fines imposed on them by the competent national authority, provided that such legislation is appropriate for the purpose of contributing to the attainment of the objective of more stringent protection and that the methods for determining the amount of

the fine do not go beyond what is necessary to attain that objective, this being a matter for the national court to establish.

Costs

69 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 (Second Chamber) hereby rules:

1. **The provisions of Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage, read in the light of Articles 191 and 193 TFEU, must be interpreted as meaning that, to the extent that the situation in the main proceedings comes within the scope of Directive 2004/35 — this being a matter for the referring court to determine — such provisions do not preclude national legislation, such as that at issue in the main proceedings, which identifies another category of persons who, in addition to those using the land on which unlawful pollution was produced, share joint liability for the environmental damage, namely the owners of that land, without it being necessary to establish a causal link between the conduct of the owners and the damage established, provided that such legislation complies with the general principles of EU law, all relevant provisions of the EU and FEU Treaties and of the acts of secondary law of the European Union.**

2. **Article 16 of Directive 2004/35 and Article 193 TFEU must be interpreted, to the extent that the situation at issue in the main proceedings comes within the scope of Directive 2004/35, as not precluding national legislation, such as that at issue in the main proceedings, pursuant to which the owners of land on which unlawful pollution has been produced are not only held to be jointly liable, alongside the persons using that land, for such environmental damage, but may also have fines imposed on them by the competent national authority, provided that such legislation is appropriate for the purpose of contributing to the attainment of the objective of more stringent protection and that the methods for determining the amount of the fine do not go beyond what is necessary to attain that objective, this being a matter for the national court to establish.**

[Signatures]

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* Language of the case: Hungarian.