

**Judgment of the Court (Second Chamber) of 7 March 2013
(request for a preliminary ruling from the Korkein hallinto-oikeus — Finland) — Lapin elinkeino-, liikenne- ja ympäristökeskuksen liikenne ja infrastruktuuri -vastuualue**

(Case C-358/11) ⁽¹⁾

(Environment — Waste — Hazardous waste — Directive 2008/98/EC — Old telecommunications poles treated with CCA (copper-chromium-arsenic) solutions — Registration, evaluation and authorisation of chemicals — Regulation (EC) No 1907/2006 (REACH Regulation) — List of uses for treated wood in Annex XVII to the REACH Regulation — Old telecommunications poles used as underlay for duckboards)

(2013/C 123/05)

Language of the case: Finnish

Referring court

Korkein hallinto-oikeus

Parties to the main proceedings

Applicant: Lapin elinkeino-, liikenne- ja ympäristökeskuksen liikenne ja infrastruktuuri -vastuualue

Defendants: Lapin luonnonsuojelupiiri ry and Lapin elinkeino-, liikenne- ja ympäristökeskuksen ympäristö ja luonnonvarat -vastuualue

Re:

Request for a preliminary ruling — Korkein hallinto-oikeus — Interpretation of 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) and 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 — Registration, evaluation and authorisation of chemical substances — Substance subject to a restriction under Annex XVI of that regulation — Use of old telephone poles treated with CCA (copper-chrome-arsenic) solutions for underlay for hiking trails

Operative part of the judgment

1. European Union law does not, as a matter of principle, exclude the possibility that waste regarded as hazardous may cease to be waste within the meaning of Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives if a recovery operation enables it to be made usable without endangering human health and without harming the environment and, also, if it is not found that the

holder of the object at issue discards it or intends or is required to discard it within the meaning of Article 3(1) of that directive, this being a matter for the referring court to ascertain.

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, in the version resulting from Commission Regulation (EC) No 552/2009 of 22 June 2009, in particular Annex XVII thereto, in so far as it authorises the use, subject to certain conditions, of wood treated with a 'CCA' (copper-chromium-arsenic) solution, must be interpreted as meaning that, in circumstances such as those in the main proceedings, it is relevant for the purpose of determining whether such wood may cease to be waste because, if those conditions were fulfilled, its holder would not be required to discard it within the meaning of Article 3(1) of Directive 2008/98.
3. Articles 67 and 128 of Regulation No 1907/2006, in the version resulting from Regulation No 552/2009, must be interpreted as meaning that European Union law harmonises the requirements relating to the manufacture, placing on the market or use of a substance such as that relating to arsenic compounds which is the subject of a restriction under Annex XVII to that regulation.
4. Annex XVII, point 19(4)(b), to Regulation No 1907/2006, in the version resulting from Regulation No 552/2009, which lists the applications for which, by way of derogation, wood treated with a 'CCA' (copper-chromium-arsenic) solution may be used, must be interpreted as meaning that the list in that provision is exhaustive in character and that, therefore, that derogation cannot be applied to cases other than those referred to therein. It is for the referring court to determine whether, in circumstances such as those at issue in the main proceedings, the use of the telecommunications poles concerned as an underlay for duckboards does in fact come within the scope of the applications listed in that provision.
5. The provisions of Annex XVII, point 19(4)(d), second indent, to Regulation No 1907/2006, in the version resulting from Regulation No 552/2009, according to which wood treated with a 'CCA' (copper-chromium-arsenic) solution must not be used in any application where there is a risk of repeated skin contact, must be interpreted as meaning that the prohibition at issue must apply in any situation which, in all likelihood, will involve repeated skin contact with the treated wood, such likelihood having to be inferred from the specific conditions of normal use of the application to which that wood has been put, this being a matter for the referring court to ascertain.

⁽¹⁾ OJ C 269, 10.9.2011.