

Provisional text

JUDGMENT OF THE COURT (Grand Chamber)

25 January 2022 (*)

(Reference for a preliminary ruling – Environment – Directive 2012/19/EU – Waste electrical and electronic equipment – Obligation to finance the costs relating to the management of waste from photovoltaic panels – Retroactive effect – Principle of legal certainty – Incorrect transposition of a directive – Liability of the Member State)

In Case C 181/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Nejvyšší soud (Supreme Court, Czech Republic), made by decision of 12 March 2020, received at the Court on 24 April 2020, in the proceedings

VYSOČINA WIND a.s.

v

Česká republika – Ministerstvo životního prostředí,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, L. Bay Larsen, Vice-President, A. Arabadjiev (Rapporteur), A. Prechal, K. Jürimäe, C. Lycourgos, E. Regan, N. Jääskinen, I. Ziemele and J. Passer, Presidents of Chambers, M. Ilešič, T. von Danwitz, M. Safjan, A. Kumin and N. Wahl, Judges,

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- VYSOČINA WIND a.s., by M. Flora, advokát,
- the Czech Government, by M. Smolek, J. Vláčil and L. Dvořáková, acting as Agents,
- the German Government, by J. Möller and S. Heimerl, acting as Agents,
- the European Commission, by L. Haasbeek and P. Ondrůšek, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 15 July 2021,

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 13 of Directive 2012/19/EU of the European Parliament and of the Council of 4 July 2012 on waste electrical and electronic equipment (WEEE) (OJ 2012 L 197, p. 38).
- 2 The request has been made in proceedings between an undertaking operating a solar power plant, VYSOČINA WIND a.s., and Česká republika – Ministerstvo životního prostředí (Ministry of the Environment, Czech Republic) concerning a claim for compensation brought by that company in respect of the damage said to have been suffered by it owing to the allegedly incorrect transposition of Directive 2012/19.

Legal context

European Union law

Directive 2002/96/EC

- 3 Directive 2002/96/EC of the European Parliament and of the Council of 27 January 2003 on waste electrical and electronic equipment (WEEE) (OJ 2003 L 37, p. 24) provided in Article 7(3) that Member States are to ensure that, for the purpose of calculating the targets for recovery of waste electrical and electronic equipment (WEEE), producers or third parties acting on their behalf keep records on the mass of WEEE, their components, materials or substances when entering (input) and leaving (output) the treatment facility and/or when entering (input) the recovery or recycling facility.

- 4 Article 9 of Directive 2002/96, entitled ‘Financing in respect of WEEE from users other than private households’, stated:

‘Member States shall ensure that, by 13 August 2005, the financing of the costs for the collection, treatment, recovery and environmentally sound disposal of WEEE from users other than private households from products put on the market after 13 August 2005 is to be provided for by producers.

For WEEE from products put on the market before 13 August 2005 (historical waste), the financing of the costs of management shall be provided for by producers. Member States may, as an alternative, provide that users other than private households also be made, partly or totally, responsible for this financing.

Producers and users other than private households may, without prejudice to this Directive, conclude agreements stipulating other financing methods.’

- 5 Article 13 of Directive 2002/96, as amended by Directive 2008/34/EC of the European Parliament and of the Council of 11 March 2008 (OJ 2008 L 81, p. 65), provided:

‘Any amendments which are necessary in order to adapt Article 7(3), Annex IB (in particular with a view to possibly adding luminaires in households, filament bulbs and photovoltaic products, i.e. solar panels), Annex II (in particular taking into account new technical developments for the treatment of WEEE), and Annexes III and IV to scientific and technical progress shall be adopted. Those measures, designed to amend non-essential elements of this Directive, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 14(3).

Before the annexes are amended the [European] Commission shall, inter alia, consult producers of electrical and electronic equipment, recyclers, treatment operators and environmental organisations and employees’ and consumer associations.’

Directive 2003/108/EC

- 6 Recital 3 of Directive 2003/108/EC of the European Parliament and of the Council of 8 December 2003 amending Directive 2002/96 (OJ 2003 L 345, p. 106) states:

‘In accordance with the Joint Declaration, the Commission has examined the financial implications for producers following from the actual wording of Article 9 of Directive [2002/96], and has found that the take-back obligation for WEEE put on the market in the past creates a retroactive liability for which no provision was made and which is likely to expose certain producers to serious economic risks.’

7 Directive 2003/108 replaced Article 9 of Directive 2002/96 with the following wording:

‘1. Member States shall ensure that, by 13 August 2005, the financing of the costs for the collection, treatment, recovery and environmentally sound disposal of WEEE from users other than private households from products put on the market after 13 August 2005 is to be provided for by producers.

Member States shall ensure that, by 13 August 2005, for WEEE from products put on the market before 13 August 2005 (historical waste), the financing of the costs of management is as set out in the third and fourth subparagraphs.

For historical waste being replaced by new equivalent products or by new products fulfilling the same function, the financing of the costs shall be provided for by producers of those products when supplying them. Member States may, as an alternative, provide that users other than private households also be made, partly or totally, responsible for this financing.

For other historical waste, the financing of the costs shall be provided for by the users other than private households.

2. Producers and users other than private households may, without prejudice to this Directive, conclude agreements stipulating other financing methods.’

Directive 2008/98/EC

8 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) defines ‘waste’ in Article 3(1) as ‘any substance or object which the holder discards or intends or is required to discard’.

9 Article 14 of Directive 2008/98 provides:

‘1. In accordance with the polluter-pays principle, the costs of waste management shall be borne by the original waste producer or by the current or previous waste holders.

2. Member States may decide that the costs of waste management are to be borne partly or wholly by the producer of the product from which the waste came and that the distributors of such product may share these costs.’

Directive 2012/19

10 Directive 2012/19 repealed Directive 2002/96.

11 Recitals 9, 12 and 23 of Directive 2012/19 read as follows:

‘(9) This Directive should cover all [electrical and electronic equipment (EEE)] used by consumers and EEE intended for professional use. This Directive should apply without prejudice to Union legislation on safety and health requirements protecting all actors in contact with WEEE, as well as specific Union waste management legislation ... and Union product design legislation ... The objectives of this Directive can be achieved without including large-scale fixed installations such as oil platforms, airport luggage transport systems or elevators within its scope. However, any equipment which is not specifically designed and installed as part of those installations, and which can fulfil its function even if it is not part of those installations, should be included in the scope of

this Directive. This refers for instance to equipment such as lighting equipment or photovoltaic panels.

...

- (12) The establishment, by this Directive, of producer responsibility is one of the means of encouraging design and production of EEE which take into full account and facilitate its repair, possible upgrading, re-use, disassembly and recycling.

...

- (23) ... Member States should encourage producers to take full responsibility for the WEEE collection, in particular by financing the collection of WEEE throughout the entire waste chain, ... in line with the “polluter pays” principle. In order to give maximum effect to the concept of producer responsibility, each producer should be responsible for financing the management of the waste from his own products. The producer should be able to choose to fulfil this obligation either individually or by joining a collective scheme. Each producer should, when placing a product on the market, provide a financial guarantee to prevent costs for the management of WEEE from orphan products from falling on society or the remaining producers. The responsibility for the financing of the management of historical waste should be shared by all existing producers through collective financing schemes to which all producers that exist on the market when the costs occur contribute proportionately. ... In the case of products which have a long life cycle and which are now covered by this Directive, such as photovoltaic panels, the best possible use should be made of existing collection and recovery systems, provided that they meet the requirements laid down in this Directive.’

- 12 Article 1 of Directive 2012/19 states that the directive ‘lays down measures to protect the environment and human health by preventing or reducing the adverse impacts of the generation and management of [WEEE] and by reducing overall impacts of resource use and improving the efficiency of such use in accordance with Articles 1 and 4 of Directive [2008/98], thereby contributing to sustainable development’.

- 13 Article 2(1) of Directive 2012/19 provides:

‘This Directive shall apply to [EEE] as follows:

- (a) from 13 August 2012 to 14 August 2018 (transitional period), subject to paragraph 3, to EEE falling within the categories set out in Annex I. Annex II contains an indicative list of EEE which falls within the categories set out in Annex I;
- (b) from 15 August 2018, subject to paragraphs 3 and 4, to all EEE. All EEE shall be classified within the categories set out in Annex III. Annex IV contains a non-exhaustive list of EEE which falls within the categories set out in Annex III (open scope).’

- 14 Article 3(1)(a) of Directive 2012/19 defines ‘electrical and electronic equipment’ or ‘EEE’ as ‘equipment which is dependent on electric currents or electromagnetic fields in order to work properly and equipment for the generation, transfer and measurement of such currents and fields and designed for use with a voltage rating not exceeding 1 000 volts for alternating current and 1 500 volts for direct current’.

- 15 In addition, under Article 3(1)(e) of Directive 2012/19, ‘waste electrical and electronic equipment’ or ‘WEEE’ is ‘electrical or electronic equipment which is waste within the meaning of Article 3(1) of Directive [2008/98], including all components, sub-assemblies and consumables which are part of the product at the time of discarding’.

- 16 Article 4 of Directive 2012/19 provides:

‘Member States shall, without prejudice to the requirements of Union legislation on the proper functioning of the internal market and on product design, ... encourage cooperation between producers and recyclers and measures to promote the design and production of EEE, notably in view of facilitating re-use, dismantling and recovery of WEEE, its components and materials. ...’

17 Article 12 of Directive 2012/19, entitled ‘Financing in respect of WEEE from private households’, provides in paragraph 4 that WEEE from products placed on the market on or before 13 August 2005 must be regarded as ‘historical waste’.

18 Article 13 of Directive 2012/19, entitled ‘Financing in respect of WEEE from users other than private households’, is worded as follows:

‘1. Member States shall ensure that the financing of the costs for the collection, treatment, recovery and environmentally sound disposal of WEEE from users other than private households resulting from products placed on the market after 13 August 2005 is to be provided for by producers.

For historical waste being replaced by new equivalent products or by new products fulfilling the same function, the financing of the costs shall be provided for by producers of those products when supplying them. Member States may, as an alternative, provide that users other than private households also be made, partly or totally, responsible for this financing.

For other historical waste, the financing of the costs shall be provided for by the users other than private households.

2. Producers and users other than private households may, without prejudice to this Directive, conclude agreements stipulating other financing methods.’

19 Article 24(1) of Directive 2012/19 states as follows:

‘Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 14 February 2014. They shall immediately communicate to the Commission the text of those provisions.’

20 Photovoltaic panels are referred to in Annex I to Directive 2012/19, entitled ‘Categories of EEE covered by this Directive during the transitional period as provided for in Article 2(1)(a)’. They are also referred to in Annex II to the directive, containing an indicative list of EEE which falls within the categories of Annex I, and in Annex IV, setting out a non-exhaustive list of EEE which falls within the categories listed in Annex III.

Czech law

21 The Czech Republic implemented its obligations under Directive 2002/96 inter alia by enacting zákon č. 185/2001 Sb., o odpadech a o změně některých dalších zákonů (Law No 185/2001 on waste and amending certain other laws; ‘the Law on waste’).

22 On 30 May 2012, a new Paragraph 37p, establishing a mechanism for financing the costs relating to the management of waste from photovoltaic panels, was inserted in that law. Under that paragraph, the operator of a solar power plant has the obligation, by means of recycling contributions, to finance the costs relating to the management of waste from photovoltaic panels placed on the market by 1 January 2013. To that end, an obligation was imposed requiring such an operator to conclude by 30 June 2013 an agreement ensuring a collective financing system, in order that the financing be provided by 1 January 2019. In the case of photovoltaic panels placed on the market after 1 January 2013, the obligation falls on their producer.

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

- 23 VYSOČINA WIND operates a solar power plant, which was put into service in 2009 and is equipped with photovoltaic panels that were placed on the market after 13 August 2005 but before 1 January 2013.
- 24 In accordance with the obligation laid down in Paragraph 37p of the Law on waste, that company participated in the financing of the costs relating to the management of waste from photovoltaic panels and, for that purpose, paid contributions totalling 1 613 773.24 Czech koruny (CZK) (approximately EUR 59 500) in the course of 2015 and 2016.
- 25 Since VYSOČINA WIND took the view that that obligation resulted directly from an incorrect transposition of Directive 2012/19 by the Czech Republic and that the payment of those contributions constituted harm, it brought an action for damages against that Member State before the Obvodní soud pro Prahu 10 (District Court, Prague 10, Czech Republic). In particular, it takes the view that Paragraph 37p of the Law on waste is contrary to Article 13(1) of Directive 2012/19 which makes the producer of EEE, and not its user, responsible for the financing of the costs relating to the management of waste from photovoltaic panels placed on the market after 13 August 2005.
- 26 By judgment of 6 April 2018, that court upheld the action in its entirety. The Czech Republic brought an appeal against that judgment before the Městský soud v Praze (Prague City Court, Czech Republic), which dismissed the appeal as unfounded by judgment of 14 November 2018. According to that court, it is clear from the wording of Article 13(1) of Directive 2012/19 that the financing of the costs relating to the management of waste from photovoltaic panels placed on the market after 13 August 2005 must be provided for by producers, with the result that Paragraph 37p of the Law on waste, by continuing to impose that obligation on users, is incompatible with that directive.
- 27 The Czech Republic accordingly appealed on a point of law to the Nejvyšší soud (Supreme Court, Czech Republic), contending, first, that the effect of that interpretation of Article 13(1) of Directive 2012/19 is to render that provision unlawfully retroactive. Second, a number of producers who placed photovoltaic panels on the market between 2005 and 2013 are no longer in business, preventing provision being made for the financing of the costs relating to the management of waste from those panels. Third, the Czech Republic is of the view that the lack of observations on the part of the Commission in the EU pilot procedure concerning the transposition of Directive 2012/19 into national law and the lack of an infringement procedure initiated by the Commission against it show that it transposed Directive 2012/19 correctly, as the Commission allegedly confirmed at a bilateral meeting that was held on 1 October 2018.
- 28 The referring court is uncertain, in that context, as to the interpretation of Article 13(1) of Directive 2012/19 inasmuch as, whilst it is not in dispute that that provision obliges the Member States to require producers to finance the costs relating to the management of waste from photovoltaic panels provided that they are panels placed on the market after the expiry of the period for transposition of that directive on 14 February 2014, and that, for ‘historical waste’, from photovoltaic panels placed on the market before 13 August 2005, the Member States may impose that obligation on users, the question arises, on the other hand, as to the application of that financing obligation in the case of waste from photovoltaic panels placed on the market between 13 August 2005 and 14 February 2014.
- 29 According to the referring court, it is necessary, first of all, to determine when the obligation to finance the costs relating to the management of waste from photovoltaic panels arises. In that regard, it shares the view of the applicant in the main proceedings that that obligation is deemed to arise only when the waste is generated and not, as the Czech Republic contends, when the panels are placed on the market. Consequently, photovoltaic panels which were placed on the market before the period for transposition of Directive 2012/19 expired, on 14 February 2014, and which give rise to waste after that date fall within the material scope of that directive, meaning that the obligation thus imposed by Article 13(1) of the directive is not in any way retroactive.
- 30 Next, the referring court is uncertain whether Directive 2012/19 was correctly transposed into Czech law given that, first, the Commission itself found, at the time of adoption of Directive 2003/108 amending Directive 2002/96, that the obligation to finance the costs relating to the management of waste from

products placed on the market before the period for transposition of the latter directive expired created a retroactive liability likely to expose producers to serious economic risks, as such a finding may be applied in a similar manner to the photovoltaic panels newly included within the scope of EU legislation by Directive 2012/19. Second, the legitimate expectations of producers of photovoltaic panels who could not suppose that such a financing obligation would be imposed on them in respect of waste from panels already placed on the market in the past and who accordingly would not have factored the costs of such financing in the price of their products would be undermined. Third, a difference in treatment would be created between users who were already fulfilling the financing obligation laid down by national law before the expiry of the period for transposition of Directive 2012/19 and those who were not. The referring court observes, fourth, that the Federal Republic of Germany, the Hellenic Republic and the Republic of Austria likewise did not transpose the directive by maintaining the obligation on producers to finance the costs relating to the management of waste from products placed on the market after 13 August 2005.

- 31 Finally, the referring court wonders whether the national legislation conflicts with EU law in that, after the adoption of Directive 2012/19, the agreements which the operators of solar power plants were required to conclude in order to provide for the financing of the costs relating to the management of waste from photovoltaic panels and which stipulated payment of the related contributions in instalments were preserved even though that financing falls to the producer under that directive.
- 32 In those circumstances, the Nejvyšší soud (Supreme Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- ‘(1) Must Article 13 of Directive [2012/19] be interpreted as meaning that it prevents a Member State from imposing the obligation to finance the costs of the collection, treatment, recovery, and environmentally sound disposal of WEEE coming from photovoltaic panels placed on the market [by] 1 January 2013 on their users, rather than their producers?
- (2) If the first question is answered in the affirmative, is the evaluation of the conditions for the liability of a Member State for damage caused to an individual due to a breach of EU law influenced by the fact – which is the case in the main proceedings – that the Member State itself regulated the method of financing of waste from photovoltaic panels prior [even] to the adoption of [Directive 2012/19], which newly included photovoltaic panels in the scope of EU regulation and imposed the obligation to finance the costs on producers, including in relation to panels placed on the market prior to the expiry of the directive’s implementation period (and the adoption of regulation at European Union level)?’
- 33 In accordance with Article 61(1) of its Rules of Procedure, the Court invited the parties to the main proceedings and the other interested persons referred to in Article 23 of the Statute of the Court of Justice of the European Union to answer in writing certain questions relating, in particular, to the validity of Article 13(1) of Directive 2012/19.

Consideration of the questions referred

The first question

- 34 By its first question, the referring court asks, in essence, whether Article 13(1) of Directive 2012/19 must be interpreted as precluding national legislation which imposes the obligation to finance the costs relating to the management of waste from photovoltaic panels placed on the market by 1 January 2013 on the users of those panels and not on their producers.
- 35 First of all, it must be stated that, whilst this question formally relates solely to the interpretation of Article 13(1) of Directive 2012/19, it is apparent from the grounds of the request for a preliminary ruling that the referring court also raises the issue of that provision’s validity given that it might have retroactive

effect. In essence, that court notes that such an effect could arise from the fact that, under that provision, the financing of the costs relating to the management of waste from photovoltaic panels must be borne by producers where the waste results from products placed on the market after 13 August 2005, a date on which the period for transposition prescribed by the directive had not yet expired. Thus, that provision could create retroactive liability capable of exposing producers to serious economic risks.

36 Although, within the framework of the distribution of tasks between the national courts and the Court of Justice for the implementation of Article 267 TFEU, it is for the national courts to decide the relevance of the questions referred for a preliminary ruling, it remains, however, the task of the Court of Justice to derive from all the information provided by the national court those aspects of EU law which, having regard to the subject matter of the dispute, require interpretation, or whose validity requires appraisal (judgment of 17 September 2020, *Compagnie des pêches de Saint-Malo*, C 212/19, EU:C:2020:726, paragraph 27 and the case-law cited).

37 Consequently, in order to give the referring court a complete answer, it is appropriate also to examine the validity of Article 13(1) of Directive 2012/19 in the light of the principle of legal certainty in so far as that provision requires the financing of the costs relating to the management of waste from photovoltaic panels to be provided for by producers in respect of waste from such panels placed on the market after 13 August 2005, that is to say, on a date before that directive entered into force.

38 Thus, as a first step, Article 13(1) of Directive 2012/19 is to be interpreted, as requested by the referring court. If that provision is interpreted as precluding national legislation which imposes the obligation to finance the costs relating to the management of waste from photovoltaic panels placed on the market after 13 August 2005 on their users and not on producers, it will be necessary, as a second step, to examine that provision's validity.

39 In that regard, first, in accordance with settled case-law, an interpretation of a provision of EU law cannot have the result of depriving the clear and precise wording of that provision of all effectiveness (judgment of 6 September 2012, *Czop and Punakova*, C 147/11 and C 148/11, EU:C:2012:538, paragraph 32 and the case-law cited). Thus, where the meaning of a provision of EU law is absolutely plain from its very wording, the Court cannot depart from that interpretation.

40 Pursuant to Article 13(1) of Directive 2012/19, Member States are to ensure that the financing of the costs for the collection, treatment, recovery and environmentally sound disposal of WEEE from users other than private households resulting from products placed on the market after 13 August 2005 is to be provided for by producers.

41 According to the definition set out in Article 3(1)(e) of that directive, the term 'WEEE' covers electrical or electronic equipment which is waste within the meaning of Article 3(1) of Directive 2008/98, including all components, sub-assemblies and consumables which are part of the product at the time of discarding.

42 In particular, in accordance with Article 2(1)(a), Directive 2012/19 is to apply, from the transitional period running from 13 August 2012 to 14 August 2018, to EEE falling within the categories set out in Annex I thereto, which expressly include photovoltaic panels. Photovoltaic panels are also referred to in Annex II to the directive, which details those categories of EEE, and in recitals 9 and 23, which state inter alia that products which have a long life cycle, such as photovoltaic panels, are now covered by the directive.

43 As the Advocate General has observed, in essence, in point 29 of her Opinion, the EU legislature thereby expressed its intention, entirely unambiguously, that photovoltaic panels are to be regarded as EEE, within the meaning of Article 3(1)(a) of Directive 2012/19, and that they are therefore to fall within the scope of that directive.

44 Accordingly, it must be held that Article 13(1) of Directive 2012/19 requires the Member States to adopt the laws, regulations and administrative provisions necessary to place responsibility for the financing of the

costs relating to the management of waste from photovoltaic panels on producers thereof and not on the users, if the panels were placed on the market after 13 August 2005.

- 45 Consequently, without prejudice to the examination of validity referred to in paragraph 38 of the present judgment, Article 13(1) of Directive 2012/19 must be interpreted as precluding national legislation which imposes the obligation to finance the costs relating to the management of waste from photovoltaic panels placed on the market after 13 August 2005 on the users of those panels and not on their producers.
- 46 In the light of that interpretation, it is necessary, second, as mentioned in paragraphs 37 and 38 of the present judgment, also to assess the validity of that provision.
- 47 In that regard, it should be recalled that the principle of legal certainty, which is one of the general principles of EU law, requires that rules of law be clear, precise and predictable in their effect, especially where they may have negative consequences for individuals and undertakings, so that persons may ascertain unequivocally what their rights and obligations are and may take steps accordingly (see, to that effect, judgments of 28 March 2017, *Rosneft*, C 72/15, EU:C:2017:236, paragraph 161, and of 30 April 2019, *Italy v Council (Fishing quota for Mediterranean swordfish)*, C 611/17, EU:C:2019:332, paragraph 111 and the case-law cited). In addition, in accordance with settled case-law, whilst the principle of legal certainty precludes a new legal rule from applying retroactively, namely to a situation established prior to its entry into force, that same principle requires that any factual situation should normally, in the absence of any express contrary provision, be examined in the light of the legal rules existing at the time when the situation obtained (see, to that effect, judgments of 3 September 2015, *A2A*, C 89/14, EU:C:2015:537, paragraph 37, and of 26 March 2020, *Hungeod and Others*, C 496/18 and C 497/18, EU:C:2020:240, paragraph 94 and the case-law cited).
- 48 Furthermore, a new legal rule applies immediately to the future effects of a situation which arose under the old law, as well as to new legal situations (judgments of 15 January 2019, *E.B.*, C 258/17, EU:C:2019:17, paragraph 50, and of 14 May 2020, *Azienda Municipale Ambiente*, C 15/19, EU:C:2020:371, paragraph 57 and the case-law cited). It may be otherwise, however, subject to the principle of the non-retroactivity of legal acts, if the new rule is accompanied by special provisions which specifically lay down the conditions for its temporal application (judgments of 16 December 2010, *Stichting Natuur en Milieu and Others*, C 266/09, EU:C:2010:779, paragraph 32; of 26 March 2015, *Commission v Moravia Gas Storage*, C 596/13 P, EU:C:2015:203, paragraph 32; and of 15 January 2019, *E.B.*, C 258/17, EU:C:2019:17, paragraph 50).
- 49 It may also exceptionally be otherwise, as the Advocate General has observed, in essence, in point 63 of her Opinion, where an aim in the public interest so demands and where the legitimate expectations of those concerned are duly respected (judgments of 26 April 2005, '*Goed Wonen*', C 376/02, EU:C:2005:251, paragraph 33, and of 19 March 2009, *Mitsui & Co. Deutschland*, C 256/07, EU:C:2009:167, paragraph 32).
- 50 In the present instance, it is apparent from Article 2(1)(a) of Directive 2012/19 that that directive applies to the equipment referred to in Annex I thereto, including photovoltaic panels, from 13 August 2012, a date which moreover coincides with the date of the directive's entry into force, that is to say, in accordance with Article 26 thereof, the 20th day after its publication in the *Official Journal of the European Union* on 24 July 2012. On the other hand, under Article 24(1) of the directive, the Member States had to comply with the directive's provisions by 14 February 2014.
- 51 Thus, the legal rule laid down in Article 13(1) of Directive 2012/19 applies, *ratione temporis*, only in so far as the operations listed therein for the collection, treatment, recovery and environmentally sound disposal of waste from photovoltaic panels are carried out from 13 August 2012. Where such operations were carried out before that date, the panels in question no longer existed on that date, and the costs relating to those operations were already incurred on the date on which Directive 2012/19 entered into force, meaning that Article 13(1) cannot apply to those operations.

- 52 In the light of the case-law cited in paragraphs 47 and 48 of the present judgment, it should therefore be determined whether application of the legal rule, laid down in Article 13(1) of Directive 2012/19, that producers are required to provide for the financing of the costs relating to the management of waste from photovoltaic panels placed on the market after 13 August 2005, where those panels have, or will, become waste from 13 August 2012, is such as to affect adversely a situation established before that directive entered into force or whether its application serves, on the contrary, to govern the future effects of a situation which arose before that directive entered into force.
- 53 It should be recalled that, under the EU legislation which existed before Directive 2012/19 was adopted, the obligation to finance the costs relating to the management of waste from photovoltaic panels was governed by Article 14 of Directive 2008/98, which left the Member States the choice of requiring the waste management costs to be borne either by the current or previous waste holders or by the producer or distributor of the photovoltaic panels.
- 54 Consequently, where a Member State had chosen, before the adoption of Directive 2012/19, to require the costs relating to the management of waste from photovoltaic panels to be borne by the users of those panels and not their producers, as was the case in the Czech Republic, the entry into force of Article 13(1) of Directive 2012/19, accompanied by the obligation to transpose that provision into national law, affected – as the Advocate General has observed in points 53 and 57 of her Opinion – situations established before that directive entered into force.
- 55 Such an alteration of the allocation of the costs relating to the management of waste from photovoltaic panels which was applied under the legislation existing on the date when those panels were placed on the market and sold at a particular price – a date and a commercial transaction whose subsequent alteration by the producer is not possible – cannot be regarded as amounting to the application of a new rule to the future effects of a situation which arose under the old rule since the effects in question are already certain in all respects and therefore established, unlike the effects which were at issue in the case that gave rise to the judgment of 14 May 2020, *Azienda Municipale Ambiente* (C 15/19, EU:C:2020:371), which related to an alteration, on a date when the landfill at issue was still operational, of the after-care period for the landfill after its closure.
- 56 It is true that the validity of a provision of EU law cannot depend on the position in national law. However, where the EU legislature first gives the Member States a choice in determining the allocation of the costs relating to the management of waste from certain products and decides, subsequently, to establish a rule under which those costs must, in all Member States, be borne by producers, including in relation to products already placed on the market by the latter at a time when that earlier EU legislation was in force, that rule must be regarded as applying retroactively, within the meaning of the case-law cited in paragraph 47 of the present judgment, and is therefore liable to infringe the principle of legal certainty.
- 57 That being so, it must be determined whether Article 13(1) of Directive 2012/19, in view of the fact that it applies to photovoltaic panels placed on the market between 13 August 2005 and the date on which Directive 2012/19 entered into force, namely 13 August 2012, and that it therefore governs situations established before the latter date, complies with the conditions resulting from the case-law recalled in paragraphs 48 and 49 of the present judgment.
- 58 It is true that that new rule is accompanied by special provisions which specifically lay down the conditions for its temporal application, within the meaning of that case-law, since it expressly and unambiguously covers waste from photovoltaic panels placed on the market after 13 August 2005. However, a new legal rule which applies to previously established situations cannot be regarded as complying with the principle of the non-retroactivity of legal acts in so far as it alters, subsequently and unforeseeably, the allocation of costs the incurring of which can no longer be avoided, since operators could legitimately rely in the context of commercial transactions on the allocation of those costs that was provided for in the legislation existing at the time, and thus denies those operators any real possibility of taking appropriate steps following its entry into force.

- 59 Furthermore, in so far as, in accordance with the case-law cited in paragraph 49 of the present judgment, retroactive application of a new rule may also be justified where an aim in the public interest so demands and where the legitimate expectations of those concerned are duly respected, it must be stated that, in the present instance, the retroactive application of Article 13(1) of Directive 2012/19 would be contrary to the objective set out in recital 12 of that directive of encouraging producers to take into full account and facilitate, when designing their products, the repair, possible upgrading, re-use, disassembly and recycling of those products. Indeed, as the German Government submitted in its replies to the Court's questions to be answered in writing, the achievement of such an objective seems difficult since producers were unable to foresee, when designing the photovoltaic panels, that they would subsequently be required to provide for the financing of the costs relating to the management of waste from those panels.
- 60 The fact, noted by the Parliament, the Council of the European Union and the Commission in their replies to the Court's questions to be answered in writing, that under Article 13 of Directive 2002/96 photovoltaic panels could possibly be added to Annex IB to that directive, in the context of the amendments necessary for the purpose inter alia of adapting Article 7(3) of the directive, concerning calculation of the WEEE recovery targets which producers were required to meet, to scientific and technical progress, cannot invalidate the reasoning set out in paragraphs 47 to 59 of the present judgment. It is true that that provision gave notice back in 2002 that producers of photovoltaic panels might be called upon to bear the costs relating to the management of waste from panels placed on the market from a future date that would be laid down, should the need arise, in a new directive. However, it cannot serve as a basis for the conclusion that those producers should have expected that the obligation to finance the costs relating to the management of waste from EEE, as laid down in Article 13(1) of Directive 2012/19, would be imposed upon them in respect of photovoltaic panels already placed on the market between 13 August 2005 and 13 August 2012.
- 61 Accordingly, the retroactive application of Article 13(1) of Directive 2012/19 infringes the principle of legal certainty.
- 62 It follows that that provision must be held to be invalid in so far as it imposes on producers the obligation to finance the costs relating to the management of waste from photovoltaic panels placed on the market between 13 August 2005 and 13 August 2012.
- 63 In the light of all the foregoing considerations, the answer to the first question is as follows:
- Article 13(1) of Directive 2012/19 is invalid in so far as it imposes on producers the obligation to finance the costs relating to the management of waste from photovoltaic panels placed on the market between 13 August 2005 and 13 August 2012;
 - Article 13(1) of Directive 2012/19 must be interpreted as precluding national legislation which imposes on users of photovoltaic panels, and not on producers of those panels, the obligation to finance the costs relating to the management of waste from such panels placed on the market from 13 August 2012, the date on which that directive entered into force.

The second question

- 64 By its second question, the referring court asks, in essence, whether EU law must be interpreted as meaning that the fact that a Member State's legislation that is contrary to an EU directive was adopted prior to the adoption of that directive affects the assessment of the conditions governing liability of that Member State for damage caused to an individual resulting from the breach of EU law.
- 65 First of all, it is clear from the request for a preliminary ruling that this question has been asked in case Article 13(1) of Directive 2012/19 were to require the obligation to finance the costs relating to the management of waste from photovoltaic panels to be borne by producers in respect of panels placed on the market by 1 January 2013. Therefore, since it is apparent from the answer to the first question asked by the referring court that that obligation must be imposed in respect of photovoltaic panels placed on the market from the entry into force of Directive 2012/19, that is to say, 13 August 2012, the referring court must be

regarded as seeking, in essence, to ascertain by its second question whether the fact that the Czech waste legislation contrary to EU law was adopted before that directive affects the assessment of the conditions governing liability of the Czech Republic for damage caused to a user of photovoltaic panels placed on the market in the period from 13 August 2012 to 1 January 2013.

- 66 It is apparent from the material in the file submitted to the Court that, as the Advocate General has observed in point 94 of her Opinion, there are doubts as to whether the dispute in the main proceedings in fact concerns photovoltaic panels placed on the market in the period from 13 August 2012 to 1 January 2013.
- 67 However, the Court may refuse to rule on a question referred for a preliminary ruling by a national court only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgment of 2 July 2020, *Magistrat der Stadt Wien (European hamster)*, C 477/19, EU:C:2020:517, paragraph 40 and the case-law cited).
- 68 That said, since it is conceivable that VYSOČINA WIND did acquire and use, in the course of operating the solar power plant put into service in 2009, photovoltaic panels placed on the market in the period from 13 August 2012 to 1 January 2013, a matter which will be for the referring court to establish, it is appropriate, in order to give that court a useful answer, to reply to the second question.
- 69 In that context, it must be recalled that the Court has repeatedly held that, under EU law, a right to reparation is conferred where three conditions are met: the rule of law infringed must be intended to confer rights on individuals; the breach must be sufficiently serious; and there must be a direct link between the breach of the obligation resting on the Member State and the damage sustained by the injured parties (judgments of 5 March 1996, *Brasserie du pêcheur and Factortame*, C 46/93 and C 48/93, EU:C:1996:79, paragraph 51, and of 8 July 2021, *Koleje Mazowieckie*, C 120/20, EU:C:2021:553, paragraph 61).
- 70 In addition, it is clear from settled case-law that it is, in principle, for the national courts to apply the conditions mentioned in the previous paragraph for establishing the liability of a Member State for damage caused to individuals by breaches of EU law for which the State can be held responsible, acting in accordance with the guidelines laid down by the Court for the application of those conditions (judgment of 29 July 2019, *Hochtief Solutions Magyarországi Fióktelepe*, C 620/17, EU:C:2019:630, paragraph 40 and the case-law cited).
- 71 As regards, in particular, the second of those conditions, it should be noted that, in order to determine whether a sufficiently serious breach of EU law has occurred, the national court before which a claim for compensation has been brought must take account of all the factors which characterise the situation put before it (judgment of 29 July 2019, *Hochtief Solutions Magyarországi Fióktelepe*, C 620/17, EU:C:2019:630, paragraph 42).
- 72 In the present instance, it is apparent from the documents before the Court that, more than a month before Directive 2012/19 was adopted, namely on 30 May 2012, the Czech legislature inserted in the Law on waste Paragraph 37p which establishes the responsibility of users for the financing of the costs relating to the management of waste from photovoltaic panels placed on the market by 1 January 2013. In that context, the referring court seeks, in particular, to ascertain whether the fact that the Czech Republic amended its waste legislation before Directive 2012/19 was even adopted can be raised against it in order to give rise to liability on its part because that national legislation conflicts with the directive.
- 73 In order to answer that question, it should be noted that Directive 2012/19 itself prescribes in Article 24(1) a period on the expiry of which the laws, regulations and administrative provisions necessary to comply with the directive must have entered into force in the Member States, that is to say, by 14 February 2014.

- 74 In that regard, whilst Directive 2012/19 in itself applies, *ratione temporis*, from 13 August 2012, it should be pointed out that, in accordance with settled case-law of the Court, since the period referred to in the previous paragraph is intended in particular to give the Member States the time necessary to adopt the measures transposing a directive, they cannot be faulted for not having transposed it into their internal legal order before expiry of that period. Nevertheless, it is during the period for transposition of the directive that the Member States must take the measures necessary to ensure that the result prescribed by it is achieved at the end of that period (judgments of 18 December 1997, *Inter-Environnement Wallonie*, C 129/96, EU:C:1997:628, paragraphs 43 and 44, and of 27 October 2016, *Milev*, C 439/16 PPU, EU:C:2016:818, paragraphs 30 and 31).
- 75 It follows, in accordance with equally settled case-law, that, during the period for transposition of a directive, the Member States to which it is addressed must refrain from taking any measures liable seriously to compromise the achievement of the result prescribed by that directive (see, to that effect, judgments of 18 December 1997, *Inter-Environnement Wallonie*, C 129/96, EU:C:1997:628, paragraph 45, and of 13 November 2019, *Lietuvos Respublikos Seimo narių grupė*, C 2/18, EU:C:2019:962, paragraph 55).
- 76 In the present case, Paragraph 37p of the Law on waste was adopted even before Directive 2012/19 was adopted and published in the *Official Journal of the European Union*, meaning that the period for transposition had not yet started to run, and even before that directive was capable of producing legal effects vis-à-vis the Member States to which it is addressed.
- 77 Therefore, the Czech Republic cannot be found to have acted contrary to the case-law recalled in paragraph 75 of the present judgment.
- 78 It follows that the insertion in the Law on waste, more than a month before Directive 2012/19 was adopted, of Paragraph 37p, which establishes the responsibility of users for the financing of the costs relating to the management of waste from photovoltaic panels placed on the market by 1 January 2013, is not, in itself, capable of constituting a sufficiently serious breach of EU law.
- 79 In the light of all the foregoing considerations, the answer to the second question is that EU law must be interpreted as meaning that the fact that a Member State adopted legislation contrary to an EU directive prior to the adoption of that directive does not constitute, in itself, a breach of EU law, since the achievement of the result prescribed by the directive cannot be regarded as seriously compromised before the directive forms part of the EU legal order.

Costs

- 80 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 cost of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

- 1. Article 13(1) of Directive 2012/19/EU of the European Parliament and of the Council of 4 July 2012 on waste electrical and electronic equipment (WEEE) is invalid in so far as it imposes on producers the obligation to finance the costs relating to the management of waste from photovoltaic panels placed on the market between 13 August 2005 and 13 August 2012.**

Article 13(1) of Directive 2012/19 must be interpreted as precluding national legislation which imposes on users of photovoltaic panels, and not on producers of those panels, the obligation to finance the costs relating to the management of waste from such panels placed on the market from 13 August 2012, the date on which that directive entered into force.

- 2. EU law must be interpreted as meaning that the fact that a Member State adopted legislation contrary to an EU directive prior to the adoption of that directive does not constitute, in itself, a breach of EU law, since the achievement of the result prescribed by the directive cannot be regarded as seriously compromised before the directive forms part of the EU legal order.**

[Signatures]

* Language of the case: Czech.