[2020] UKFTT 263 (TC)

TC07747

Procedure –Appeals against assessments to Landfill Tax – applications for directions by parties – Whether to list hearings to determine two separate preliminary issues – Wrottesley v HMRC applied – Application allowed in part

FIRST-TIER TRIBUNAL
TAX CHAMBER

Appeal numbers: TC/2018/07241
TC/2019/01281

BETWEEN

(1) AUGEAN NORTH LIMITED

(2) AUGEAN SOUTH LIMITED **Appellants**

-and-

THE COMMISSIONERS FOR
HER MAJESTY'S REVENUE AND CUSTOMS **Respondents**

TRIBUNAL: JUDGE BROOKS

The applications were determined on 17 June 2020 without a hearing on the basis of the written submissions of the appellants dated 5 May 2020 and 9 June 2020 and written submissions of the respondents dated 27 May 2020

Sam Grodzinski QC, instructed by Simmons & Simmons LLP, for the Appellant

James Puzey, counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

INTRODUCTION

1. Augean North Limited ("ANL") and Augean South Limited ("ASL") operate a waste management business from UK sites involving the disposal of various different kinds of industrial and demolition waste materials, including ash from combustion processes, dredging spoils and radioactive waste. Their appeals before the Tribunal concern landfill tax assessments issued, on 5 October 2018 and 12 February 2019 respectively, by HM Revenue and Customs ("HMRC") amounting to over £28 million (which do not include further assessments of £9.3 million which are currently under review by HMRC, but which raise similar substantive issues).

2. I am told that these assessments have placed a very considerable degree of financial uncertainty and strain on ANL and ASL and the wider Augean group which, understandably, seeks for the appeals to be determined as expeditiously as possible. While HMRC do not disagree with that objective, the parties take a significantly different approach as to how it can best be achieved. This has resulted in several applications to the Tribunal which have yet to be determined.

3. On 2 December 2019 HMRC made an application for case management directions which included the joining of the appeals of ANL and ASL to proceed together to a single hearing together with proposals for the service of lay and expert evidence by 3 August 2020.

4. However, before HMRC's application could be considered, ANL and ASL applied, on 6 December 2019, for case management directions under which the Tribunal would separately case manage, hear and determine their appeals in relation to the following five separate categories of waste with Category 5 being stayed pending the determination of the other Categories:

> Category 1: Fly ash and air pollution control residues,
>
> Category 2: Bottom ash and furnace slags,
>
> Category 3: Drill cuttings,
>
> Category 4: Mixed loads with hazardous properties,
>
> Category 5: Other low value disposals;

5. ANL and ASL made a further application, also on 6 December 2019, for the determination of the following question, in relation to one aspect of the issues relating to Category 4, the hazardous mixed load ("HML") issue, as a preliminary issue:

> "Did the Respondents' introduction of the following wording into Excise Notice LFT1 with effect from 16 December 2015 represent a change in the law:
>
>> If the amount of non-qualifying material in a load of mainly qualifying material is such as to classify the load as hazardous, the amount of the non-qualifying material can never be regarded as small and the total load is taxable at the standard rate."

6. On 10 January 2020 HMRC filed a Notice of Objection to both of the 6 December 2019 applications. The proposal to divide the appeals into five separate categories is, HMRC say, unnecessarily complicated and unwieldy and they contend that if there was a separate hearing for each category the proceedings would not be resolved for several years and would consume a "disproportionate amount of the parties' and [the] Tribunal's time and resources".

7. In relation to the preliminary issue, HMRC contend, citing *Wrottesley v HMRC* [2016] STC 1123 (see below), that this would not dispose of the case or significant aspect of it as the issues in these appeals are predominantly fact-based.

8. On 26 March 2020 ANL made two further applications.

9. The first sought further and better particulars of HMRC's statement of case with respect to the "Ironbridge Issue". This is described by ANL as question of fact regarding the processes carried on at the Ironbridge Power Station and the nature of the combustion residues produced at that plant particularly whether the air pollution control processes carried on at the Ironbridge Power Station at the time when the Ironbridge Fly Ash was produced involved the addition of any chemical reagents and/or gave rise to any changes in the chemical composition of the Ironbridge Fly Ash. The second application was for a direction that the Ironbridge Issue be determined as a standalone issue at a separate hearing.

10. HMRC served a Notice of Objection to both applications on 7 April 2020 contending that the case had been pleaded with the required particularity which had been supplemented in correspondence in May 2019. With regard to the Ironbridge Issue being treated separately, HMRC submit that this is a change from ANL's earlier application for all the material in each category to be considered together and was, in effect, a request for an additional category which would further delay any hearing.

11. As is clear from their written arguments, ANL and ASL are no longer pursing all of the above applications. While maintaining the applications for two preliminary issues a "compromise" is suggested under which the Tribunal would delay its decision in relation to the segmentation of the categories thus enabling the parties to concentrate their resources on the resolution of the preliminary issues which will, ANL and ASL contend, "go a long way to demonstrating the merit" of separating each category.

12. HMRC do not agree and contend that I should adopt the approach advanced in in their application of 2 December 2019 and deal with all matters in issue together, at the earliest opportunity. This, it is said, not only provides a more efficient, cost effective and expeditious means of resolving these appeals but is the conventional approach to hearing a case.

13. In normal times a hearing would be listed to determine these issues. However, these are not normal times. Because of the covid-19 pandemic there are presently no physical hearings being listed before the Tribunal. In the circumstances, the parties have agreed for the applications to be determined on the basis of their written submissions. I am grateful to Sam Grodzinski QC for ANL and ASL and James Puzey for HMRC for their thorough and helpful submissions. I should add that, although I have carefully considered these in reaching my conclusions, it has not been necessary to refer to each and every argument advanced on behalf of the parties.

14. Before turning to the applications, and to better understand the issues between the parties, it is necessary to first briefly describe the statutory background to the appeals.

STATUTORY BACKGROUND

15. Landfill tax is charged by reference to the weight of waste disposed of at a landfill site at two rates, the standard rate and the lower rate. Since its introduction in 1996 these rates have changed but there has always been a difference between them, eg from 1 April 2017 to 31 March 2018 the standard rate was £86.10 per tonne and the lower rate £2.70 per tonne.

16. Under s 42(2) of the Finance Act 1996 ("FA 96") the lower rate of landfill tax is charged on the disposal of material that consists "entirely" of "qualifying material". "Qualifying material" is defined by s 42(3) FA 96 as "material for the time being listed for the purposes of this section in an order".

17. The relevant order is the Landfill Tax (Qualifying Material) Order 2011 ("QMO"). The schedule to the QMO (which is set out in Appendix 1, below) contains a table setting out eight different groups of qualifying materials, and contains various notes relevant to each group.

18. Section s 42(4) FA 96 provides that the Treasury "must" :

> (a) set criteria to be considered in determining from time to time what material is to be listed
>
> (b) keep those criteria under review, and
>
> (c) revise them whenever they consider they should be revised.

HMRC are required, by s 42(5) FA 96, to publish the criteria (and any revised criteria) set by the Treasury.

19. Although s 42(2) FA 96 provides that the lower rate of landfill tax applies to a disposal consisting "entirely" of "qualifying material", s 63(2) FA 96, provides that HMRC:

> … may direct that where material is disposed of it must be treated as qualifying material if it would in fact be such material but for a small quantity of non-qualifying material; and whether a quantity of non-qualifying material is small must be determined in accordance with the terms of the direction."

HMRC have published such directions in *Excise Notice LFT1: a general guide to Landfill Tax* ("LFT1") which has been revised from time to time, most recently on 9 April 2020 to take account of the coronavirus situation.

20. Article 3 of the Waste Framework Directive 2008/98/EC defines "hazardous waste" as "waste which displays one or more of the hazardous properties listed in Annex III" which I have set out in Appendix 2, below.

APPLICATIONS

21. It is convenient to first set out the following "key principles" to be considered in determining whether a preliminary hearing should be ordered, as summarised by the Upper Tribunal at [28] of *Wrottesley v HMRC*:

> "(1) The matter should be approached on the basis that the power to deal with matters separately at a preliminary hearing should be exercised with caution and used sparingly.
>
> (2) The power should only be exercised where there is a "succinct, knockout point" which will dispose of the case or an aspect of the case. In this context an aspect of the case would normally mean a separate issue rather than a point which is a step in the analysis in arriving at a conclusion on a single issue. In addition, if there is a risk that determination of the preliminary issue may prove to be irrelevant then the point is unlikely to be a "knockout" one.
>
> (3) An aspect of the requirement that the point must be a succinct one is that it must be capable of being decided after a relatively short hearing (as compared to the rest of the case) and without significant delay. This is unlikely if (a) the issue cannot be entirely divorced from the evidence and submissions relevant to the rest of the case, or (b) if a substantial body of evidence will require to be considered. This point explains why preliminary questions will usually be points of law. The tribunal should be particularly cautious on matters of mixed fact and law.
>
> (4) Regard should be had to whether there is any risk that determination of the preliminary issue could hinder the tribunal in arriving at a just result at a subsequent hearing of the remainder of the case. This is clearly more likely if the issues overlap in some way – (3)(a) above.

> (5) Account should be taken of any potential for overall delay, making allowance for the possibility of a separate appeal on the preliminary issue.
>
> (6) The possibility that determination of the preliminary issue may result in there being no need for a further hearing should be considered.
>
> (7) Consideration should be given to whether determination of the preliminary issue would significantly cut down the cost and time required for pre-trial preparation or for the trial itself, or whether it could in fact increase costs overall.
>
> (8) The tribunal should at all times have in mind the overall objective of the tribunal rules, namely to enable the tribunal to deal with cases fairly and justly."

22. I now turn to whether, in the light of these principles, it is appropriate to direct that the HML issue and Ironbridge issue be determined as preliminary issues

HML issue

23. In relation to the HML issue, ANL and ASL say that the disposals with which the appeals are concerned took place before 16 December 2015 and comprise a mixture of lower rated qualifying materials (mainly in Groups 1 and 2 of the schedule to the QMO) mixed with small amounts, no greater than 5% of the overall load, of non-qualifying materials classified as "hazardous" within the meaning of EU waste legislation.

24. HMRC's direction in relation to such disposals was, until 16 December 2015, contained in paragraph 3.3 of LFT1 under the heading 'Mixed Loads'. This stated:

> "Where a disposal to landfill contains both standard rated and lower rated materials, tax is due on the whole load at the standard rate. However, you may ignore the presence of an incidental amount of standard rated waste in a mainly lower rated load, and treat the whole load as taxable at the lower rate."

However, on 15 December 2015 LFT1, having not previously contained any reference to hazardous material, was amended to include, at paragraph 7:

> "If the amount of non-qualifying material in a load of mainly qualifying material is such as to classify the load as hazardous, the amount of the non-qualifying material can never be regarded as small and the total load is taxable at the standard rate."

25. This, ANL and ASL contend, "obviously represented a change in the relevant legal provisions; and cannot be characterised as simply making explicit that which was previously implicit". Neither, it is argued, can HMRC say, as they do in the statement of case, that the Treasury criteria always excluded hazardous material especially when, as HMRC accept, the QMO itself includes material that is hazardous.

26. As such, it is submitted, first, that the construction of the legislation and effect of the December 2015 change to LFT1 can be resolved on the basis of submissions as neither factual nor expert evidence is required; second, HMRC would be bound to succeed on this issue if they are correct that HMLs could never have been lower rated no matter how small the quantity of hazardous material concerned; and third, it would not be necessary to consider whether the quantities of non-qualifying hazardous materials in the relevant disposals before December 2015 were "small" in the context of the load overall.

27. This would, it is said, determine a large element of the appeals (the amount of landfill tax at stake in relation to this issue is approximately £16.4 million) without the need to call evidence. Moreover, in relation to the *Wrottesley* principles, ANL and ASL contend that the HML issue is a "succinct, knockout point" which may dispose entirely of an aspect of the

appeal; that it is "capable of being decided after a relatively short hearing (as compared to the rest of the case) and without significant delay"; that there is no "risk that determination of the preliminary issue could hinder the tribunal in arriving at a just result at a subsequent hearing of the remainder of the case "; and "determination of the preliminary issue would significantly cut down the cost and time required for pre-trial preparation or for the trial itself".

28. HMRC do not agree that the HML issue is a "succinct, knockout point". This is because the assessments in relation to this issue cover the entire period from 31 October 2014 to 31 July 2017 and therefore includes sums to which both the "old" and "new" versions of LFT1 are relevant. As a result if ANL and ASL succeed on this issue, ie that there was a change in law as a result of the post-15 December 2015 change to LFT1, HMRC contend that it will still be necessary to determine whether the hazardous element was "small" or not in terms of the proportion within a HML prior to that date for which it will be necessary to call evidence to establish one way or other.

29. In addition, HMRC contend that, even if they succeed on this issue, there is no "knockout" blow. This is, they say, clear from the grounds of appeal advanced by ANL and ASL and cite by way of an example paragraph 8.2(2) of ANL's first Notice of Appeal which states:

> "The disposals comprised qualifying material listed in the schedule to the QMO as 'qualifying material' for the purpose of s 42 FA 96 with incidental non-qualifying contamination that was 'small' in amount for the purposes of s 63(2) FA 96 and LFT1 **and** that incidental contamination did not cause the loads in question to be characterised as hazardous waste applies to all of these disposals.

30. However, ANL and ASL make clear in their response to HMRC's submissions that, although it is not disputed that the assessments include disposals made before and after 15 December 2015, the HML issue only arises in respect of disposals prior to that date as it is accepted that it was necessary to account for landfill tax at the standard rate on all subsequent disposals of such loads. It is also accepted that it would be the end of their case on this issue if hazardousness was determinative prior to 16 December 2015. It is submitted that the paragraph cited by HMRC from ANL's Notice of Appeal does not affect this as the only category of disputed disposal in which the separate question of whether the relevant amount of non-qualifying material was "small" and/or "incidental" would arise concerns disposals of non-hazardous (and not hazardous) mixed loads which has "nothing to do" with the HML issue.

31. Given the position taken by ANL and ASL, it is clear that the HML issue only concerns disposals that took place before 15 December 2015. As such, I agree for the reasons they advance that the determination of this issue is likely to dispose of a relevant issue which will not hinder, even if it does not entirely remove the need for, a further hearing. Also, as it is capable of determination on the basis of legal submissions and does not require evidence, it would be possible to list a relatively short (video) hearing without significant delay. Such a preliminary hearing would, in my judgment and especially given the potential for more delay arising out of the covid-19 pandemic, further the overriding objective of the tribunal rules to deal with cases fairly and justly. It would also provide an opportunity to consider what further case management directions are necessary to progress the appeal to a substantive hearing.

32. Therefore, taking these matters into consideration, notwithstanding the caution urged in *Wrottesley* and the warning of Lord Scarman in *Tilling v Whiteman* [1979] 1 All ER 737 at 744, that, preliminary points of law "are too often treacherous short cuts" and their price can be, "delay, anxiety, and expense", I consider that, on balance, it is appropriate to direct that the HML be determined as a preliminary issue.

Ironbridge issue

33. As noted above (in paragraph 9) the Ironbridge issue concerns the disposal of fly ash from the Ironbridge Power Station.

34. Although "ash" is included as qualifying material in the schedule to the QMO, to which Note 5 applies, "fly ash" it is not defined in the legislation. However, ANL say it is generally understood to be the fine particulate matter which rises up from the combustion bed of an incinerator when material (wood, waste etc) is burned. Approximately £9.2 million of the landfill tax in dispute in these appeals relates to the disposal of fly ash.

35. HMRC's position, as described in the amended statement of case in the ANL appeal, is that the fly ash disposed of should have been classified as "partly stabilised hazardous waste" and/or "Air Pollution Control Residues" which are not within the QMO and that as the combustion gas containing the ash had to be treated by adding lime to neutralise the acid and then adding carbon to remove dioxins and heavy metals, the resulting mixture would no longer be "fly ash". ANL, however, contends that the air pollution control system it operated prior to the closure of the Ironbridge Power Station, which ceased operation in 2015, was based solely on electrostatic precipitation and did not involve the addition of lime or carbon, did not alter the chemical composition of the ash, and did not produce additional residues.

36. In the absence of any further information from HMRC and having provided its own further and better particulars, ANL seeks by way of a preliminary hearing the determination of the question of whether the air pollution control processes carried out at the Ironbridge Power Station did or did not involve the addition of any chemical reagents and/or gave rise to any changes in the chemical composition of the fly ash.

37. However, in making that application ANL recognises that the determination of this issue, unlike the HML issue, will require evidence, factual and possibly expert, to be adduced in relation to the air pollution control systems that were in operation at the Ironbridge Power Station prior to its closure and whether they involved the addition of lime and activated carbon.

38. The exchange and consideration of such evidence, even if as ANL says it is limited, will inevitably delay listing a hearing (it is not possible to estimate how long a hearing will take if the amount of evidence to be adduced is unknown) be it in relation to a preliminary issue or the substantive hearing. In my judgment to direct a preliminary hearing in such circumstances would be contrary to the *Wrottesley* principles.

DIRECTIONS

39. Given my conclusions it is necessary to make further directions for the progress of these appeals which should also include, as is common ground between the parties, the joining of the appeals of ANL and ASL.

40. I therefore direct that:

(1) The appeals of ANL and ASL be joined and heard together.

(2) The following issue be determined as a preliminary issue with a time estimate of 1 day:

> This preliminary issue relates to the taxable disposals of mixed loads of materials which included a quantity of non-qualifying material (i.e. material not included in the Schedule to the Landfill Tax (Qualifying Material) Order 2011), the presence of which caused the load to be hazardous within the meaning of Waste Framework Directive 2008/98/EC ("Hazardous Mixed Loads").

Prior to 16 December 2015, was it possible for disposals of Hazardous Mixed Loads to be taxed at the lower rate set out in s.42 Finance Act 1996? In particular, did the addition of the direction at paras 7.3 and 7.4 to LFT1, concerning the inclusion of small quantities of non-qualifying materials, change the law on Hazardous Mixed Loads, or did it only make explicit that which had previously been implicit in the legislation, including LFT1?

(3) Liberty to apply.

41. The Tribunal will provide additional written instructions to the parties in relation to the listing of the preliminary issue.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

42. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

JOHN BROOKS

TRIBUNAL JUDGE

RELEASE DATE: 17 JUNE 2020

APPENDIX 1

Schedule to Landfill Tax (Qualifying Material) Order 2011

Column 1	Column 2	Column 3
Group	Description of material	Conditions
1	Rocks and soils	Naturally occurring
2	Ceramic or concrete materials	
3	Minerals	Processed or prepared
4	Furnace slags	
5	Ash	
6	Low activity inorganic compounds	
7	Calcium Sulphate	Disposed of in landfills for non-hazardous waste in a cell where no biodegradable waste is accepted
8	Calcium hydroxide and brine	Deposited in a brine cavity

Notes:

(1) Group 1 comprises only—

(a) rock;

(b) clay;

(c) sand;

(d) gravel;

(e) sandstone;

(f) limestone;

(g) crushed stone;

(h) china clay;

(i) construction stone;

(j) stone from the demolition of buildings or structures;

(k) slate;

(l) sub-soil;

(m) silt;

(n) dredgings.

(2) Group 2 comprises only—

(a) glass, including fritted enamel;

(b) ceramics, including bricks, bricks and mortar, tiles, clay ware, pottery, china and refractories;

(c) concrete, including reinforced concrete, concrete blocks, breeze blocks and aircrete blocks.

(3) Group (2) does not include—

(a) glass fibre and glass-reinforced plastic; and

(b) concrete plant washings.

(4) Group 3 comprises only—

(a) moulding sands, including used foundry sand;

(b) clays, including moulding clays and clay absorbents (including Fuller's earth and bentonite);

(c) mineral absorbents;

(d) man-made mineral fibres, including glass fibres;

(e) silica;

(f) mica;

(g) mineral abrasives;

(5) Group 3 does not include—

(a) moulding sands containing organic binders;

(b) man-made mineral fibres made from glass-reinforced plastic and asbestos.

(6) Group 4 comprises only—

(a) vitrified wastes and residues from thermal processing of minerals where, in either case, the residue is both fused and insoluble, and

(b) slag from waste incineration.

[(7) Subject to Note (8), Group 5 comprises—

(a) bottom ash and fly ash produced only from the combustion of wood, of waste or of both;

(b) bottom ash and fly ash from the combustion of coal, of petroleum coke or of both, deposited in a cell containing the product of that combustion alone; and

(c) bottom ash and fly ash from the combustion of coal, of petroleum coke or of both, burnt together with biomass and deposited in a cell containing the product of that combustion and burning alone.]*

(8) Group 5 does not include fly ash from sewage sludge, municipal, clinical and hazardous waste incinerators.

(9) Group 6 comprises only—

(a) calcium based reaction wastes from titanium dioxide production;

(b) calcium carbonate;

(c) magnesium carbonate;

(d) magnesium oxide;

(e) magnesium hydroxide;

(f) Iron oxide;

(g) ferric hydroxide;

(h) aluminium oxide;

(i) aluminium hydroxide;

(j) zirconium dioxide.

(10) Group 7 includes calcium sulphate, gypsum and calcium sulphate based plasters but does not include plasterboard.

* Note (7) substituted by the Landfill Tax (Qualifying Material) (Amendment) Order, SI 2012/940 article 2 with effect in relation to disposals made or treated as made on or after 1 April 2012. The original Note (7) provided:

> (7) Group 5 comprises only—
>
> (a) bottom ash and fly ash from wood or waste combustion; and
>
> (b) bottom ash and fly ash from coal or petroleum coke combustion (including when burnt together with biomass).

APPENDIX 2

Annex III to Waste Framework Directive 2008/98/EC

H1 'Explosive': substances and preparations which may explode under the effect of flame or which are more sensitive to shocks or friction than dinitrobenzene

H2 'Oxidizing': substances and preparations which exhibit highly exothermic reactions when in contact with other substances, particularly flammable substances

H3-A 'Highly flammable'

- liquid substances and preparations having a flash point below 21 °C (including extremely flammable liquids), or
- substances and preparations which may become hot and finally catch fire in contact with air at ambient temperature without any application of energy, or

— solid substances and preparations which may readily catch fire after brief contact with a source of ignition and which continue to burn or to be consumed after removal of the source of ignition, or

— gaseous substances and preparations which are flammable in air at normal pressure, or

— substances and preparations which, in contact with water or damp air, evolve highly flammable gases in dangerous quantities.

H3-B “Flammable’: liquid substances and preparations having a flash point equal to or greater than 21 °C and less than or equal to 55 °C.

H4 ‘Irritant’: non-corrosive substances and preparations which, through immediate, prolonged or repeated contact with the skin or mucous membrane, can cause inflammation.

H5 ‘Harmful’: substances and preparations which, if they are inhaled or ingested or if they penetrate the skin, may involve limited health risks.

H6 ‘Toxic’: substances and preparations (including very toxic substances and preparations) which, if they are inhaled or ingested or if they penetrate the skin, may involve serious, acute or chronic health risks and even death.

H7 ‘Carcinogenic’: substances and preparations which, if they are inhaled or ingested or if they penetrate the skin, may induce cancer or increase its incidence.

H8 ‘Corrosive’: substances and preparations which may destroy living tissue on contact.

H9 ‘Infectious’: substances and preparations containing viable micro-organisms or their toxins which are known or reliably believed to cause disease in man or other living organisms.

H10 ‘Toxic for reproduction’: substances and preparations which, if they are inhaled or ingested or if they penetrate the skin, may induce non-hereditary congenital malformations or increase their incidence.

H11 ‘Mutagenic’: substances and preparations which, if they are inhaled or ingested or if they penetrate the skin, may induce hereditary genetic defects or increase their incidence.

H12 Waste which releases toxic or very toxic gases in contact with water, air or an acid.

H13 ‘Sensitizing’: substances and preparations which, if they are inhaled or if they penetrate the skin, are capable of eliciting a reaction of hypersensitization such that on further exposure to the substance or preparation, characteristic adverse effects are produced.

H14 ‘Ecotoxic’: waste which presents or may present immediate or delayed risks for one or more sectors of the environment.

H15 Waste capable by any means, after disposal, of yielding another substance, e.g. a leachate, which possesses any of the characteristics listed above.

Notes

1. Attribution of the hazardous properties ‘toxic’ (and ‘very toxic’), ‘harmful’, ‘corrosive’, ‘irritant’, ‘carcinogenic’, ‘toxic to reproduction’, ‘mutagenic’ and ‘eco-toxic’ is made on the basis of the criteria laid down by Annex VI, to Council Directive 67/548/EEC of 27 June 1967 on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances.

2. Where relevant the limit values listed in Annex II and III to Directive 1999/45/EC of the European Parliament and of the Council of 31 May 1999 concerning the approximation of the laws, regulations and administrative provisions of the Member States relating to the classification, packaging and labelling of dangerous preparations shall apply