

1. The fact that Articles 169 and 170 of the Treaty enable the Commission and the Member States to bring before the Court a State which has failed to fulfil one of its obligations under the Treaty does not mean that individuals cannot plead those obligations, should the occasion arise, before a national court, which may refer the matter to this Court under Article 177 of the Treaty.

Although in the context of proceedings under Article 177 of the Treaty the Court may not rule on the compatibility of the provisions of a national law with the Treaty, it has jurisdiction to provide the national court with all the criteria of interpretation relating to Community law which may enable it to assess such compatibility.

2. The prohibition in Article 34 of the Treaty concerns all national measures which have as their specific object or effect the restriction of patterns of exports and thereby the establishment of a difference in treatment between the domestic trade of a Member State

and its export trade, in such a way as to provide a special advantage for national products or for the domestic market of the State in question.

3. The grant by a Member State of an exclusive right within the meaning of Article 90 (1) of the Treaty does not exempt the Member State from the obligation to respect other provisions of Community law, particularly those relating to the free movement of goods.
4. Article 90 (2) of the Treaty cannot at this stage create individual rights which the national courts must protect.
5. The Community rules on free movement of goods and Council Directive 75/439 on the disposal of waste oils do not allow a Member State to organize a system for the collection and disposal of waste oils within its territory in such a way as to prohibit exports to an authorized disposal or regenerating undertaking in another Member State.

In Case 172/82

REFERENCE to the Court under Article 177 of the EEC Treaty by the Tribunal de Grande Instance [Regional Court], Versailles, for a preliminary ruling in the action pending before that court between

SYNDICAT NATIONAL DES FABRICANTS RAFFINEURS D'HUILE DE GRAISSAGE AND OTHERS

and

GROUPEMENT D'INTÉRÊT ÉCONOMIQUE "INTER-HUILES" AND OTHERS,

on the interpretation of Articles 30 and 34 of the EEC Treaty,

THE COURT (Third Chamber)

composed of: U. Everling, President of Chamber, Lord Mackenzie Stuart and Y. Galmot, Judges,

Advocate General: S. Rozès

Registrar: H. A. Rühl, Principal Administrator

gives the following

## JUDGMENT

### Facts and issues

#### I — Facts and procedure

The disposal of waste oils is the subject of Council Directive 75/439/EEC of 16 June 1975 (Official Journal 1975, L 194, p. 23).

The directive provides that Member States must take the necessary measures to ensure the safe collection and disposal of waste oils, preferably by recycling (Articles 2 to 4). Article 5 of the directive provides that "where the aims defined in Articles 2, 3 and 4 cannot otherwise be achieved, Member States shall take the necessary measures to ensure that one or more undertakings carry out the collection and/or disposal of the

products offered to them by holders, where appropriate in the zone assigned to them by the competent authorities".

The French Republic implemented the directive in Decree No 79-981 of 21 November 1979 "laying down rules for the recovery of waste oils" (Journal Officiel de la République Française of 23 November 1979, p. 2900), and further by the Order of 21 November 1979 on the "conditions for the collection of waste oils in pursuance of Decree No 79-981 of 21 November 1979 laying down rules for the recovery of waste oils" (Journal Officiel de la République Française of 23 November 1979, p. 2901) and by the Order of 21 November 1979 on the "conditions for the disposal of waste oils in pursuance of Decree No 79-981 of

21 November 1979 laying down rules for the recovery of waste oils" (Journal Officiel de la République Française of 23 November 1979, p. 2903).

In its observations to the Court the French Government stated, *inter alia*, that the French legislation provided that:

Holders who accumulate waste oils as a result of their business activities must either deliver their waste oils to approved collectors, or dispose themselves of the waste oils which they produce, provided that they have been issued with an approval from the Ministry of the Environment;

In order to ensure that all waste oils are collected the whole country is partitioned into geographical zones (generally the départements), in each of which an approved collector has been appointed by the Minister for the Environment on the basis of an invitation to tender and the opinion of an inter-departmental committee of approval;

The approved collector is responsible for the collection of all waste oils produced in the zone for which the approval has been granted;

The disposal of waste oils is likewise subject to an approval issued by the Minister for the Environment.

The Syndicat National des Fabricants Raffineurs d'Huile de Graissage, together with 13 other plaintiffs, brought an action before the Tribunal de Grande

Instance, Versailles, seeking essentially to have the Groupement d'Intérêt Économique "Inter-Huiles" ["Inter-Huiles"] restrained from collecting waste oils in a certain number of geographical zones. In support of their application, the plaintiffs in the main action claim that the defendants set up the group Inter-Huiles for the purpose of evading the law by enabling its organizers, who had not been approved by the administration for the collection of waste oils, to continue their former activities of collecting waste oils without approval. The plaintiffs in the main action also maintain that Inter-Huiles sets aside a considerable quantity of the oils which it collects for export to Belgium and the Federal Republic of Germany.

Before the national court Inter-Huiles submitted, in particular, that application of the French national legislation constituted a measure having an effect equivalent to quantitative restrictions on exports and imports contrary to Article 30 of the EEC Treaty and, moreover, was not justified under the derogations permitted by Article 36 of the Treaty. In consequence, the Tribunal de Grande Instance, Versailles, decided by judgment of 9 June 1982 to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

"Is the fact that collectors of waste oils may not lawfully deliver them to a disposal or regenerating undertaking of a Member State of the EEC because of the restrictions imposed upon them by Decree No 79-981 of 21 November 1979 compatible with the provisions of Articles 30 and 34 of the Treaty establishing the European Communities, which prohibit quantitative restrictions on exports and all measures having an equivalent effect?"

The judgment making the reference was lodged at the Court Registry on 25 June 1982.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC written observations were lodged by the Syndicat National des Fabricants Raffineurs d'Huile de Graissage and Others, represented by J. F. Renaud and A. Desmazières de Séchelles of the Paris Bar; by the Groupement d'Intérêt Économique "Inter-Huiles" and Others, represented by J. Thérard of the Paris Bar; by the Commission of the European Communities, represented by its Legal Adviser, R. Wägenbaur; and by the French Government, represented by J. P. Costes of the General Secretariat of the Comité Interministériel pour les Questions de Co-opération Économique Européenne [Inter-departmental Committee for Questions on European Economic Cooperation].

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry and to assign the case to the Third Chamber. However, it requested the French Government to reply in writing to the following two questions before 25 November 1982:

Does the French legislation allow collectors approved by the French authorities to sell the waste oils which they hold to disposal undertakings approved by other Member States?

Does the same legislation allow disposal undertakings approved by the French authorities to sell the waste oils which have been delivered to them to other

approved disposal undertakings or to other traders in other Member States?

## II — Summary of the observations submitted to the Court

The Syndicat National des Fabricants Raffineurs d'Huile de Graissage suggests, by way of a preliminary observation, that the Court should consider the admissibility of the reference. It submits that the reference was made on the basis of a memorandum, produced by the co-defendants, addressed to the President of the European Parliament by the Directorate General of Research and Documentation of that institution, concerning the appropriateness of a question to be submitted to the Commission with the intention of raising doubts as to the validity of the legislation of a Member State and prompting the Commission to initiate against that State the procedure provided for under Article 169 of the Treaty of Rome. In view of that fact in particular, and in the light of the circumstances of the case the reference for a preliminary ruling has the same purpose as an action against the Commission for failure to act in refusing to initiate the above-mentioned procedure against the Member State, and as such is inadmissible.

As regards the question itself, the plaintiff in the main action notes first that it ought to be phrased in more precise and more comprehensive terms. It should refer not to disposal undertakings of "a" Member State but to those of "another" Member State and it should cover not only the case of collectors but also that of holders of waste oils who decide to transport the oils themselves, in

accordance with Article 3 of Decree No 79-981. In any event, the alleged restrictions should be examined not in relation to Article 30 et seq. of the EEC Treaty, but in the context of Council Directive 75/439/EEC, which provided for the harmonization of legislation with regard to the disposal of waste oils. The plaintiffs maintain that the French legislation is lawful in the context of that directive. The national provisions have the same fundamental objectives as the Community directive, namely the protection of the environment and the recycling of waste oils. Furthermore, the requirement of not obstructing Community trade is only a secondary objective which may be subordinated to the achievement of others and the restrictions challenged by the defendants are among the possibilities envisaged by the directive and, more specifically, by Article 5 thereof.

As regards the conformity of the French provisions with Articles 85 and 90 of the Treaty of Rome, the plaintiffs refer to the reply given by the Commission of the European Communities to a question put by Mr Galland, a Member of the European Parliament (Official Journal 1981, C 205, p. 10).

Finally, the plaintiffs list a certain number of negative consequences which are the result, in its opinion, of the artificial export patterns which the defendants have created by infringing the French legislation. Such negative effects are the following:

1. French waste oils are exported to Belgium where they are burnt to the detriment of the Belgian environment;

2. French waste oils are exported to the Federal Republic of Germany where they are regenerated or burnt, whereas the collection of German waste oils is subsidized by the State;

3. The approved French regenerating undertakings, who are not subsidized, have insufficient raw material to carry out the task which is entrusted to them in a manner which is profitable and in conformity with the clauses and conditions which are imposed on them. The operation and the aims of the energy policy of a Member State are being jeopardized;

4. In addition, the approved French collectors, who are not subsidized, are unable to carry out their task of collecting *all* waste oils in a manner which is profitable. As a result, some waste oils are not collected, to the detriment of the French environment.

The Groupement d'Intérêt Économique "Inter-Huiles" submits in its observations that Article 10 of Title II of the Annex to the Order on the conditions for the collection of oils, in so far as it states that the collector must deliver the oils collected to approved disposal undertakings and therefore prevents their exportation, constitutes a measure having an effect equivalent to a quantitative restriction on exports, which is prohibited by Article 30 of the EEC Treaty. As regards Council Directive 75/439, Inter-Huiles points out that it does not allow Member States to restrict

or suppress intra-Community trade in waste oils and that, on the contrary, the seventh recital in the preamble thereto envisages the introduction of a system which does not create barriers to intra-Community trade or affect competition. Furthermore, Inter-Huiles maintains that Article 36 of the EEC Treaty may not be relied upon in this case, because the requirements of the protection of public health and the environment are satisfied if, in accordance with Directive 75/439/EEC, all the disposal undertakings within the European Economic Community are required to obtain an authorization and are therefore subject to control.

In a supplementary statement, Inter-Huiles drew the Court's attention to the fact that the main action concerns, in its view, not collectors of waste oils, but holders who have decided to transport the oils themselves pursuant to Article 3 of the Decree.

The *Commission* considers that, in so far as it compels the collector of waste oils to deliver such oils to an approved French disposal undertaking and therefore indirectly prohibits him from exporting waste oils to other Member States, the French legislation entails a difference of treatment liable to confer a special advantage on the national market and that it therefore constitutes a breach of Article 34 of the Treaty. The fact that the French legislation implements Council Directive 75/439/EEC is irrelevant, because the directive does not compel Member States to adopt such a system. On the contrary, Article 5 of the directive specifies that the measures referred to in that provision should be adopted only if the aims of the directive cannot otherwise be achieved. No other legislation adopted by a Member State

for the implementation of Directive 75/439/EEC establishes a comparable system and restricts trade within the Community to such an extent as the French system. The aims of the directive, and those of the protection of the health and life of humans, animals and plants referred to in Article 36 of the EEC Treaty may equally well be attained if waste oils may be delivered to a disposal undertaking of another Member State which has obtained, in that Member State, the authorization provided for by Article 6 of Directive 75/439/EEC.

Accordingly, the Commission proposes that the Court give the following reply to the Tribunal de Grande Instance, Versailles:

"Articles 34 and 36 are to be interpreted as prohibiting a Member State from organizing on its territory a system for the collection and the disposal of waste oils which excludes delivery to a disposal or regenerating undertaking authorized by another Member State."

The French Government emphasizes first that notwithstanding the wording of the reference, which questions the validity of the national legislation, the Court of Justice should, in accordance with its own case-law, refrain from ruling on the compatibility of that legislation with Community law but should provide the national court with criteria for the interpretation of Articles 30 and 34 of the Treaty. It then states that, in its view, the main action is concerned in substance solely with an infringement of the exclusive right of collection and disposal,

and not the unlawful import or export of waste oils. The case therefore discloses no grounds on which the national court may apply Articles 30 and 34 of the Treaty. That conclusion is reinforced by the fact that as a result of the Council's adoption of Directive 75/439/EEC in that sector, any such restrictions must now be considered not in relation to Articles 30 and 34, but in the context of the directive. The Government describes the French system for the collection and disposal of waste oils and then points out that the legislation has ecological (the protection of the environment) and economic (reduced expenditure on energy) objectives which are similar to those of the Council directive and that the granting of exclusive rights which that legislation provides for is expressly envisaged by Article 5 of the directive and conforms to Article 90 (1) of the EEC Treaty, as it has been interpreted by the Court of Justice.

In conclusion, the French Government asks the Court to interpret the provisions of Council Directive 75/439/EEC as allowing a Member State to grant exclusive rights for the collection and disposal of waste oils.

In reply to the questions put by the Court of Justice, the Government of the French Republic made the following statements:

1. As regards the collection of waste oils the holders, if they choose to transport their used oils themselves, or the approved collectors are required to deliver those oils to approved disposal undertakings in accordance with the procedure laid down in Article 8 of the Decree of 21 November 1979;

2. As regards disposal, disposal undertakings which are approved within the meaning of the Decree of 21 November 1979 are required to treat waste oils in their facilities.

### III — Oral procedure

At the sitting of 9 December 1981 the plaintiffs in the main action, represented by A. Desmazières de Sécheltes and J. F. Renaud, both of the Paris Bar; the defendants in the main action, represented by D. Baudin, advocate at the Conseil d'État [State Council] and the French Cour de Cassation [Court of Cassation], and J. Thérard of the Paris Bar; and the Commission, represented by its Legal Adviser, R. Wägenbauer, presented oral argument and replied to the questions put by the Court.

The Commission proposed that the Court reply to the Tribunal de Versailles in terms slightly different to those proposed in its observations, namely "Articles 34 and 36 are to be interpreted as prohibiting a Member State from organizing on its territory a system of collection and disposal of waste oils which excludes the delivery of such oils to a collector or disposal undertaking operating lawfully in another Member State".

The Italian Government, represented by the Avvocato dello Stato, P. G. Ferri, intervened in the oral procedure in order to affirm that the effect of Articles 5 and 7 of the directive is to restrict the collection of waste oils to approved undertakings.

In reply to the question which was put to it in the course of the hearing, the Commission communicated to the Court on 22 December 1982 a summary of Member States' legislation on waste oils and an outline of trade patterns between Member States. The plaintiffs in the

main action submitted their observations in connection with that reply on 6 January 1983.

The Advocate General delivered her opinion at the sitting of 10 February 1983.

## Decision

- 1 By judgment of 9 June 1982, which was received at the Court on 25 June 1982, the Tribunal de Grande Instance [Regional Court], Versailles, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of Articles 30 and 34 of the Treaty in order to enable it to assess the compatibility with the Treaty of French Decree No 79-981 of 21 November 1979, laying down rules for the recovery of waste oils (*Journal Officiel de la République Française* of 23 November 1979, p. 2900), and the orders implementing it.
- 2 The main action is between the Syndicat National des Fabricants Raffineurs d'Huiles de Graissage, together with 13 other plaintiffs, and the Groupement d'Intérêt Économique "Inter-Huiles". The purpose of the action is to have the latter restrained from collecting waste oils in a number of geographical zones, on the ground that the group does not have the approval required by French legislation and that it exports the oils collected in breach of that legislation.
- 3 The disposal of waste oils is the subject of Council Directive 75/439/EEC of 16 June 1975 (*Official Journal* 1979, L 194, p. 23). Articles 2 to 4 of the directive provide that Member States must take the necessary measures to ensure the safe collection and disposal of waste oils, preferably by recycling. Article 5 of the directive provides that, "where the aims defined in Articles 2, 3 and 4 cannot otherwise be achieved, Member States shall take the necessary measures to ensure that one or more undertakings carry out the collection and/or disposal of the products offered to them by holders, where appropriate in the zone assigned to them by the competent authorities".



- 4 In accordance with that directive, the French Government adopted on 21 November 1979 Decree No 79-981 laying down rules for the recovery of waste oils and two implementing orders of the same date. Those provisions introduced a system of approval both for collectors of waste oil and for undertakings responsible for the disposal of those oils. Decree No 79-981 provides expressly that the collectors must deliver the waste oils collected to approved disposal undertakings. Articles 2 and 9 of the Order on the conditions for the disposal of waste oils stipulate, moreover, that the approved disposal undertakings must treat the waste oils in their own facilities or have that approval withdrawn.
  
- 5 To that extent, it is established that the French legislation prohibits, by implication, the export of waste oils to foreign countries, including other Member States of the Community. Thus no provision is made for a derogation permitting re-sale to disposal undertakings of other Member States who have obtained the authorization envisaged by Article 6 of Directive 75/439/EEC.
  
- 6 The Groupement d'Intérêt Économique "Inter-Huiles" submitted before the national court that the French legislation was incompatible with the Community rules on the free movement of goods. Accordingly, the Tribunal de Grande Instance, Versailles, stayed the proceedings and referred the following question to the Court of Justice for a preliminary ruling:

"Is the fact that collectors of waste oils may not lawfully deliver them to a disposal or regenerating undertaking of a Member State of the EEC because of the restrictions imposed on them by Decree No 79-981 of 21 November 1979 compatible with the provisions of Articles 30 and 34 of the Treaty establishing the European Communities, which prohibit quantitative restrictions on exports and all measures having an equivalent effect?"

#### The jurisdiction of the Court of Justice

- 7 The Syndicat National des Fabricants Raffineurs d'Huiles de Graissage maintains in the first place that the Court has no jurisdiction to reply to the question submitted for a preliminary ruling inasmuch as that question has the same purpose as an action against the Commission for failure to act in

refusing to initiate, in this particular case, proceedings against a Member State for failure to fulfil its obligations.

- 8 The suggestion cannot be upheld. The fact that Articles 169 and 170 of the Treaty enable the Commission and the Member States to bring before the Court a State which has failed to fulfil one of its obligations under the Treaty does not mean that individuals cannot plead those obligations, should the occasion arise, before a national court, which may refer the matter to this Court under Article 177 of the Treaty. Although in the context of proceedings under Article 177 of the Treaty the Court may not rule on the compatibility of the provisions of a national law with the Treaty, it has jurisdiction to provide the national court with all the criteria of interpretation relating to Community law which may enable it to assess such compatibility.

#### The substance

- 9 Under those circumstances, the question which has been referred to the Court for a preliminary ruling must be interpreted as seeking, in essence, to ascertain whether the Community rules on the free movement of goods and Council Directive 75/439/EEC of 16 June 1975 on the disposal of waste oils authorize a Member State to organize on its territory a system for the collection and disposal of waste oils in such a way as to prohibit export to a disposal or regenerating undertaking authorized by another Member State.
- 10 In that respect, Article 5 of the above-mentioned directive provides that Member States may grant to an undertaking an exclusive right to collect or dispose of waste oils in the zone which is assigned to them. That provision must be interpreted in the light of the purpose of the directive, expressed in the seventh recital in the preamble thereto, which refers to "an efficient and coherent system of treatment for waste oils, which will [not] create barriers to intra-Community trade . . .".
- 11 Although Article 5 of Directive 75/439/EEC may therefore be interpreted as authorizing Member States, if they so wish, to grant an exclusive right to one or more undertakings to collect or dispose of oils in the zone which is allotted to them, such a right does not automatically authorize the

governments of the Member States to establish barriers to exports. Indeed, such a partitioning of the markets is neither contemplated in the Council directive nor compatible with the objectives set out therein.

- 12 That conclusion is reinforced by Article 34 of the EEC Treaty, which prohibits all measures having an effect equivalent to quantitative restrictions on exports. As the Court has repeatedly held, the prohibition concerns all national measures which have as their specific object or effect the restriction of patterns of exports and thereby the establishment of a difference in treatment between the domestic trade of a Member State and its export trade, in such a way as to provide a special advantage for national products or for the domestic market of the State in question. Consequently, provisions which contravene those rules are also contrary to Article 34 of the Treaty.
- 13 It has also been suggested that the disputed legislation satisfies an economic requirement, since only the collection of *all* waste oils is sufficient to ensure the profitability of undertakings approved for the disposal of waste oils and, therefore, the achievement of the aims of the directive. That argument cannot be accepted. Articles 13 and 14 of the directive provide that, by way of compensation for the obligations imposed on the undertakings for the implementation of Article 5, Member States may, without placing restrictions on exports, grant to such undertakings “indemnities” financed in accordance with the principle of “polluter pays”.
- 14 The plaintiffs in the main action and the French Government maintain that the French legislation is justified by the need to protect the environment, an objective which is expressly referred to in the third recital of the preamble to the directive. That argument cannot be accepted. Clearly, the environment is protected just as effectively when the oils are sold to an authorized disposal or regenerating undertaking of another Member State as when they are disposed of in the Member State of origin.
- 15 Finally, even if the approval granted by a Member State must be regarded as the grant of an exclusive right within the meaning of Article 90 (1) of the EEC Treaty, that would not exempt the Member State from the obligation

to respect other provisions of Community law, particularly those relating to the free circulation of goods and those which result from Directive 75/439. As regards Article 90 (2), the Court has already held that it cannot at this stage create individual rights which the national courts must protect (Judgment of 14 July 1971, Case 10/71, *Hein* [1971] ECR 723).

- 16 In reply to the Tribunal de Grande Instance, Versailles, it should be stated therefore that the Community rules on free movement of goods and Council Directive 75/439 of 16 June 1975 on the disposal of waste oils do not allow a Member State to organize a system for the collection and disposal of waste oils within its territory in such a way as to prohibit exports to an authorized disposal or regenerating undertaking in another Member State.

#### Costs

- 17 The costs incurred by the French and Italian Governments and by the Commission of the European Communities, which have submitted observations to the Court, are not recoverable.
- 18 As these proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the proceedings pending before the national court, costs are a matter for that court.

On those grounds,

THE COURT (Third Chamber),

in answer to the question referred to it by the Tribunal de Grande Instance, Versailles, by judgment of 9 June 1982, hereby rules:

**The Community rules on the free movement of goods and Council Directive 75/439 of 16 June 1975 on the disposal of waste oils do not allow a Member State to organize a system for the collection and**

**disposal of waste oils within its territory in such a way as to prohibit exports to an authorized disposal or regenerating undertaking in another Member State.**

Everling

Mackenzie Stuart

Galmot

Delivered in open court in Luxembourg on 10 March 1983.

For the Registrar

H. A. Rühl

Principal Administrator

U. Everling

President of the Third Chamber

OPINION OF MRS ADVOCATE GENERAL ROZÈS  
DELIVERED ON 10 FEBRUARY 1983<sup>1</sup>

*Mr President,  
Members of the Court,*

The Court has received a reference from the Tribunal de Grande Instance [Regional Court], Versailles, for a preliminary ruling on the interpretation of Articles 34 and 36 of the EEC Treaty so as to enable that court to assess the compatibility with Community law of the French legislation on the recovery of waste oils.

I — The legislation consists of a decree of 21 November 1979 and orders of the same day, adopted in accordance with the French Law of 15 July 1975 on the

disposal of waste and the recovery of materials and with the Council Directive of 16 June 1975 on the disposal of waste oils.

The decree provided in particular for the granting of an approval which would give to collectors, whether legal or natural persons, the exclusive right to operate within a specified geographical zone.

The Syndicat National des Fabricants Raffineurs d'Huiles de Graissage and other undertakings, who had been granted such an approval, brought an action before the Tribunal de Grande Instance, Versailles, against the Groupement d'Intérêt Économique "Inter-Huiles" and 12 of its members,

<sup>1</sup> — Translated from the French.