JUDGMENT OF THE COURT (Sixth Chamber)

2 May 2002 *

In Case C-292/99,

Commission of the European Communities, represented by H. van Lier and L. Ström, acting as Agents, with an address for service in Luxembourg,

applicant,

v

French Republic, represented by K. Rispal-Bellanger and D. Colas, acting as Agents, with an address for service in Luxembourg,

defendant,

APPLICATION for a declaration that, by failing to draw up management plans either for the whole of its territory or for all waste, and by failing to include a chapter relating to packaging waste in all of the waste plans which it has adopted, the French Republic has failed to fulfil its obligations under Article 7(1) of Council Directive 75/442/EEC of 15 July 1975 on waste (OJ 1975 L 194, p. 39),

* Language of the case: French.

as amended by Council Directive 91/156/EEC of 18 March 1991 (OJ 1991 L 78, p. 32), under Article 6(1) of Council Directive 91/689/EEC of 12 December 1991 on hazardous waste (OJ 1991 L 377, p. 20) and under Article 14 of European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste (OJ 1994 L 365, p. 10),

THE COURT (Sixth Chamber),

composed of: F. Macken, President of the Chamber, C. Gulmann, J.-P. Puissochet, V. Skouris (Rapporteur) and J.N. Cunha Rodrigues, Judges,

Advocate General: A. Tizzano,
Registrar: H.A. Rühl, Principal Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 10 May 2001,

after hearing the Opinion of the Advocate General at the sitting on 5 July 2001,

gives the following

Judgment

1 By application lodged at the Registry of the Court of Justice on 3 August 1999, the Commission of the European Communities brought an action under Article 226 EC for a declaration that, by failing to draw up management plans either for the whole of its territory or for all waste, and by failing to include a chapter relating to packaging waste in all of the waste plans which it has adopted, the French Republic has failed to fulfil its obligations under Article 7(1) of Council Directive 75/442/EEC of 15 July 1975 on waste (OJ 1975 L 194, p. 39), as amended by Council Directive 91/156/EEC of 18 March 1991 (OJ 1991 L 78, p. 32) (hereinafter 'Directive 75/442'), under Article 6(1) of Council Directive 91/689/EEC of 12 December 1991 on hazardous waste (OJ 1991 L 377, p. 20) and under Article 14 of European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste (OJ 1994 L 365, p. 10).

Relevant law

Community legislation

Directive 75/442

2 The object of Directive 75/442 is to ensure the removal and recovery of waste and to encourage the adoption of measures aimed at restricting the production of waste, particularly by promoting clean technologies and products which can be recycled and reused.

3 Article 6 of Directive 75/442 provides that:

'Member States shall establish or designate the competent authority or authorities to be responsible for the implementation of this Directive.'

4 Article 7(1) and (2) of Directive 75/442 provides:

'1. In order to attain the objectives referred to in Articles 3, 4 and 5, the competent authority or authorities referred to in Article 6 shall be required to draw up as soon as possible one or more waste management plans. Such plans shall relate in particular to:

— the type, quantity and origin of waste to be recovered or disposed of,

— general technical requirements,

— any special arrangements for particular wastes,

— suitable disposal sites or installations.

Such plans may, for example, cover:

— the natural or legal persons empowered to carry out the management of waste,

— the estimated costs of the recovery and disposal operations,

— appropriate measures to encourage rationalisation of the collection, sorting and treatment of waste.

2. Member States shall collaborate as appropriate with the other Member States concerned and the Commission to draw up such plans. They shall notify the Commission thereof.'

5 Under the first subparagraph of Article 2(1) of Directive 91/156, Member States were to bring into force the laws, regulations and administrative provisions necessary to comply with the amendments made by it to the original version of Directive 75/442 no later than 1 April 1993 and to inform the Commission thereof forthwith.

Directive 91/689

6 According to Article 1(1) thereof, the object of Directive 91/689 is to approximate the laws of the Member States on the controlled management of hazardous waste.

7 Article 6 of Directive 91/689 provides:

'1. As provided in Article 7 of Directive 75/442/EEC, the competent authorities shall draw up, either separately or in the framework of their general waste management plans, plans for the management of hazardous waste and shall make these plans public.

2. The Commission shall compare these plans, and in particular the methods of disposal and recovery. It shall make this information available to the competent authorities of the Member States which ask for it.'

8 The first sentence of Article 10(1) of Directive 91/689 provided that the Member States were to bring into force the laws, regulations and administrative provisions necessary to comply with the directive before 12 December 1993. That deadline was postponed to 27 June 1995 by Article 1(1) of Council Directive 94/31/EC of 27 June 1994 amending Directive 91/689 (OJ 1994 L 168, p. 28).

Directive 94/62

9 According to Article 1(1) thereof, the aim of Directive 94/62 is to harmonise national measures concerning the management of packaging and packaging waste in order, on the one hand, to prevent any impact thereof on the environment of all Member States as well as of third countries or to reduce such impact, thus providing a high level of environmental protection, and, on the other

hand, to ensure the functioning of the internal market and to avoid obstacles to trade and distortion and restriction of competition within the Community.

10 Article 14 of Directive 94/62, entitled 'Management Plans', provides that:

'In pursuance of the objectives and measures referred to in this Directive, Member States shall include in the waste management plans required pursuant to Article 7 of Directive 75/442/EEC, a specific chapter on the management of packaging and packaging waste...'.

11 Article 22(1) of Directive 94/62 states that:

'Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 30 June 1996. They shall immediately inform the Commission thereof.'

National legislation

12 The measures transposing Directives 75/442, 91/689 and 94/62 into French law are to be found in Loi no 75-633, du 15 juillet 1975, relative à l'élimination des déchets et à la récupération des matériaux (Law No 75-633 of 15 July 1975 on waste disposal and the recovery of material) (*Journal officiel de la République*

française (JORF) of 16 July 1975, p. 7279), as amended and supplemented by Loi no 92-646, du 13 juillet 1992, relative à l'élimination des déchets ainsi qu'aux installations classées pour la protection de l'environnement (Law No 92-646 of 13 July 1992 on waste disposal and registered environmental protection centres (JORF of 14 July 1992, p. 9461) and Loi no 95-101, du 2 février 1995, relative au renforcement de la protection de l'environnement (Law No 95-101 of 2 February 1995 on increasing environmental protection) (JORF of 3 February 1995, p. 1840) (hereinafter 'Law No 75-633').

13 Under Article 10 of Law No 75-633:

'National waste disposal plans shall be drawn up by the Minister with responsibility for the Environment for certain categories of waste listed by décret en Conseil d'État (decree adopted after being submitted to the Council of State for its opinion) on the basis of their noxiousness or special treatment or storage requirements...'.

14 The first paragraph of Article 10-1 of Law No 75-633 reads:

'A regional or inter-regional plan for the disposal of special industrial waste shall be drawn up for every region...'.

15 The first paragraph of Article 10-2 of Law No 75-633 provides that:

'A departmental or inter-departmental plan for the disposal of domestic waste and other waste referred to in Article L. 373-3 of the Code des communes (Code governing communes) shall be drawn up for every department...'.

16 Article 10-3 of Law No 75-633 provides:

'Decisions concerning waste disposal taken by legal persons governed by public law or by their licensees for those areas where the plans mentioned in Articles 10, 10-1 and 10-2 apply... must be compatible with those plans.

...

Where plans are revised, the same procedure shall be followed as for their adoption.

...

Detailed procedures for the preparation, publication and revision of plans shall be laid down by *décret en Conseil d'État*...'.

17 Those legislative provisions were implemented by Décret no 93-139, du 3 février 1993, relatif aux plans d'élimination des déchets ménagers et assimilés (Decree No 93-139 of 3 February 1993 on plans for the disposal of domestic and similar waste) (JORF of 4 February 1993, p. 1874) and Décret no 93-140, du 3 février 1993, relatif aux plans d'élimination des déchets autres que les déchets ménagers et assimilés (Decree No 93-140 of 3 February 1993 on plans for the disposal of waste other than domestic and similar waste) (JORF of 4 February 1993, p. 1875). Those decrees were subsequently replaced by Décret no 96-1008, du 18

novembre 1996, relatif aux plans d'élimination des déchets ménagers et assimilés (Decree No 96-1008 of 18 November 1996 on plans for the disposal of domestic and similar waste) (JORF of 24 November 1996, p. 17138) and Décret no 96-1009, du 18 novembre 1996, relatif aux plans d'élimination des déchets industriels spéciaux (Decree No 96-1009 of 18 November 1996 on plans for the disposal of special industrial waste) (JORF of 24 November 1996, p. 17140). The amendments introduced by Decree No 96-1008 included the insertion of an obligation to create a specific chapter for packaging waste, in accordance with Article 14 of Directive 94/62.

The pre-litigation procedure

18 By letter of 10 April 1995 the Commission reminded the French authorities of the requirement under Article 7(2) of Directive 75/442 that waste management plans be notified to it. The French authorities replied by letters of 14 June 1995, 4 April 1996, 19 September 1996, 22 November 1996 and 26 June 1997, sending the Commission 57 departmental plans and one inter-departmental plan for the disposal of domestic and similar waste, together with 13 regional plans for the disposal of waste other than domestic and similar waste.

19 Having examined the plans and documents sent to it, the Commission gave the French Government formal notice, by letter of 19 December 1997, to submit its observations on three infringements in connection with the competent national authorities' implementation of Directives 75/442, 91/689 and 94/62.

20 The Commission claimed, first of all, that the waste management plans did not cover the whole of the national territory: there were no plans for 41 of the 100 French departments or for 13 of the 26 French regions. Secondly, the Commission observed that the plans in question did not address all of the categories of waste covered by Directives 75/442 and 91/689. It cited by way of example the lack of any plans for polychlorinated biphenyls ('PCBs'), the fact that medical waste was dealt with in some of the regional plans notified to the Commission and omitted from others on the ground that it was dealt with in special plans in the process of

being drawn up and not yet notified to the Commission, and the fact that certain types of waste were not addressed in regional plans but were instead dealt with in departmental plans which were either not in force or had not been notified to the Commission. Thirdly, the Commission observed that the plans in question did not include a specific chapter on packaging and packaging waste, contrary to both Article 14 of Directive 94/62 and Decree No 96-1008.

21 The French Government answered the letter of formal notice by letter of 24 February 1998.

22 The Commission formed the view that neither that reply nor any of the other information provided by the French authorities called into question the complaints set out in its letter of formal notice and, by letter of 5 August 1998, sent a reasoned opinion to the French Republic, calling on it to adopt the necessary measures to comply with the opinion within two months of its notification.

23 The French Government replied to the reasoned opinion by letters of 21 October 1998 and 26 February 1999, providing the Commission with additional information and sending it a further 10 departmental waste disposal plans.

24 Taking the view that that additional information did not show that the French Republic had adopted the necessary measures to fulfil its obligations under Directives 75/442, 91/689 and 94/62, the Commission decided to bring the present action.

The action

25 The Commission raises three complaints in its action. These concern the incomplete geographical coverage of the waste management plans, the incomplete material coverage of those plans and the lack of a specific chapter in the plans on packaging waste.

The complaint concerning the incomplete geographical coverage of the management plans

26 By its first complaint, the Commission alleges that the French Republic failed to fulfil its obligations under Article 7(1) of Directive 75/442 and Article 6(1) of Directive 91/689 in that it failed to draw up waste management plans for the whole of its territory.

27 Having taken into account all the information provided by the French authorities in their various letters and all the waste management plans reported by those authorities as being in force, the Commission observes that, at the time it lodged its application, there was no departmental plan for the disposal of household and similar waste for 11 of the 100 French departments (Bouches-du-Rhône, Cher, Nièvre, Indre, Paris, Meurthe-et-Moselle, Moselle, Tarn-et-Garonne, Nord, Vienne and Alpes-de-Haute-Provence). Furthermore, there was no regional plan for the disposal of waste other than household and similar waste for 6 of the 26 French regions (Midi-Pyrénées, Corsica, Martinique, Guadeloupe, Guyana and Réunion).

28 The Commission rejects the French Government's argument that the delay in drawing up waste management plans may be explained by special circumstances (technical complexity, distance or judicial annulments) and does not therefore

mean that it has failed to fulfil its obligations. The Commission also points out that a desire to include the transposition of the directives in question in more wide-ranging legislation cannot justify failure to fulfil obligations under the directives.

29 The Commission submits that, even though Article 7(1) of Directive 75/442 imposes an obligation upon the competent authorities to draw up waste management plans 'as soon as possible', those words cannot be interpreted as extending, tacitly or implicitly, the time-limit for implementation laid down in Directives 75/442 and 91/689.

30 The Commission takes the view that, since the time-limit for implementation laid down by Directive 75/442, in the original version, expired 24 months after the directive's notification, that is to say on 18 July 1977, and since Directive 91/156 ought to have been transposed by 1 April 1993, it cannot, in any event, reasonably be maintained that exceeding the time-limits for transposition laid down by those directives does not amount to a failure to fulfil obligations.

31 The French Government does not dispute the fact that, on the day it lodged its defence, there were no waste management plans for 11 departments and 4 regions. It nevertheless argues that that circumstance is not such as to constitute a failure to fulfil the obligations arising under Directives 75/442 and 91/689.

32 It points out, first of all, that the laws and regulations needed to apply Directives 75/442, 91/689 and 94/62 in France have already been adopted. Indeed, the duty to draw up waste management plans was laid down as early as 1992 and came into effect in March 1993.

33 Next, the French Government argues that Directives 75/442 and 91/689 do not specify the time-limit for their transposition in terms of a date by which departmental or regional waste management plans must be in place for the whole of the national territory. Under Article 7(1) of Directive 75/442 such plans were to be drawn up 'as soon as possible'. The Community legislature thus accepted that there need not be waste management plans for the entire country on expiry of the time-limit for transposition of Directive 75/442. The same is true of Directive 91/689.

34 The French Government maintains that the words 'as soon as possible' appearing in a provision of Community law constitutes an indication of a time-limit which replaces any general provision concerning time-limits in the instrument concerned and is not limited in time. They do, on the other hand, imply that the Member States should apply the provision diligently. Since there are already waste management plans for 89% of departments and 85% of regions and the delay in adopting certain other plans may be explained by a number of reasons, such as technical difficulties encountered in drawing up plans for remote regions or departments (the islands and overseas departments) or for places with complex geography (Paris), the fact that the plans must be of high quality and that certain plans once adopted were challenged and annulled, the French Government argues that it has been diligent in applying the relevant provisions of Directives 75/442 and 91/689. It says that it is not taking refuge behind the complexity of the procedure, but that it hopes to show that it was precisely that complexity that led the Community legislature to introduce a more flexible time-limit.

35 The French Government also points out that it set itself more ambitious objectives that those of Directive 75/442, such as the development of recycling, the reduction of fly-tipping, collection with a view to recycling and recovering materials from 50% of household waste and changing the emphasis of procedures to favour the recovery of waste, and particularly biological recovery, over storage

and incineration. These objectives, when they were set, anticipated the objectives of Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste (OJ 1999 L 182, p. 1, and corrigendum OJ 1999 L 282, p. 16).

36 Lastly, the French Government says that it is wrong to assert that there are no provisions covering those departments or regions which have not as yet finished preparing their waste management plan. Where no plan has been adopted, the area concerned will, by dint of the planning process, have finalised analytical documents which may serve to guide administrative action, such that the plan under discussion will, in a way, be applied in advance.

37 The French Government therefore invites the Court to find that the course of action prescribed by the directives concerning waste has already been commenced in all the departments and regions and that, where plans are lacking, any delay in their preparation is not the result of negligence on the part of the French authorities.

38 It must be recalled that, under Article 7(1) of Directive 75/442, the competent authorities of the Member States, referred to in Article 6 of that directive, are required to draw up as soon as possible one or more waste management plans in order to attain the objectives set out in Articles 3, 4 and 5 of that directive.

39 Plainly, the duty to draw up waste management plans, in accordance with Article 7(1) of Directive 75/442, is an obligation as to the result to be achieved. It cannot be satisfied by steps preparing for or contemplating the drafting of such plans or by the creation of an appropriate regulatory framework for attaining that objective. However, as the French Government itself acknowledges, when the two-month period laid down in the reasoned opinion expired, waste management plans had not in fact been adopted for the whole of the territory of the French Republic.

40 Nevertheless, in order to rule on the merits of the Commission's first complaint, it is necessary first to establish the period that is or was allowed to the Member States for drawing up waste management plans in accordance with Article 7(1) of Directive 75/442.

41 In this connection, it should be observed that the inclusion of the words 'as soon as possible' in Article 7(1) is an indication that the period laid down in the first subparagraph of Article 2(1) of Directive 91/156 for the transposition of that directive does not relate to the obligation to draw up waste management plans. If that were the case, the words would be meaningless. It thus follows that the words 'as soon as possible' are to be interpreted as stipulating, in principle, a reasonable period for compliance by the competent authorities of each Member State with that particular obligation, that period being unconnected with the period laid down for transposition of the directive.

42 In order to corroborate that interpretation of the words 'as soon as possible' and to establish what constitutes a reasonable period for compliance with the obligation to draw up waste management plans in accordance with Article 7(1) of Directive 75/442, consideration must be given not only to the terms of that particular provision of the directive, but also to its historical context and the objectives pursued by the legislation in which it appears.

43 It should be recalled that the duty to draw up waste management plans and programmes for the disposal of toxic and dangerous waste was introduced into Community law by Article 6 of Directive 75/442, in its original version, and Article 12(1) of Council Directive 78/319/EEC of 20 March 1978 on toxic and dangerous waste (OJ 1978 L 84, p. 43), provisions whose wording is not substantially different from that of Article 7(1) of Directive 75/442 and Article 6(1) of Directive 91/689 respectively.

44 Next, considering the objectives pursued by the obligation laid down in Article 7(1) of Directive 75/442, it is clear from the very wording of that provision that the obligation is necessary in order for the objectives set out in Articles 3, 4 and 5 of that directive to be fully attained (see, by analogy, Case C-387/97 *Commission* v *Greece* [2000] ECR I-5047, paragraph 95). Chief among those objectives is the protection of public health and the environment, which is the essence of Community legislation relating to waste. That is the reason why, according to the case-law, a failure to fulfil the obligation to draw up waste management plans must be regarded as serious, even if the failure relates to only a very small part of a Member State's territory, such as a single department (see, to that effect, *Commission* v *Greece*, cited above, paragraphs 94 or 95), or a single area within a valley (see, to that effect, Case C-365/97 *Commission* v *Italy* [1999] ECR I-7773, paragraph 69).

45 In light of those considerations, it must be held that, whilst the words 'as soon as possible' appearing in Article 7(1) of Directive 75/442 mean that the Member States must be allowed a reasonable period of time in which to prepare waste management plans, it nevertheless remains the case that, in view of the importance of those plans for attaining the directive's objectives and the fact that the obligation in question was introduced in 1975, the accumulated delays of the French Republic, in this case, cannot in any way be regarded as reasonable. Indeed, when the time-limit laid down in the reasoned opinion expired, that is to say on 5 October 1998, more than seven years had elapsed since publication in the *Official Journal of the European Communities* of Directive 91/156 and almost seven since publication therein of Directive 91/689.

46 The difficulties which the French Government claims to have encountered in preparing waste management plans are not such as to justify delays of that magnitude.

47 As regards, first of all, the judicial annulment of certain plans that had been adopted and the technical difficulties attributable to the remoteness or complex

geography of certain departments or regions, suffice it to recall that, according to settled case-law, a Member State may not plead internal circumstances, such as difficulties of implementation which emerge at the stage when a Community measure is put into effect, to justify a failure to comply with obligations and time-limits laid down by Community law (see, *inter alia*, *Commission* v *Greece*, cited above, paragraph 70).

48 Secondly, the fact that a Member State claims that it has set itself more ambitious objectives than those pursued by a given directive does not relieve that Member State of its obligation to comply, at the very least, with the requirements laid down in that directive within the period allowed.

49 Thus, having regard to all of the foregoing considerations, it must be held that the Commission's first complaint, concerning the incomplete geographical coverage of the waste management plans, is well founded.

The complaint concerning incomplete material coverage of the waste management plans and dangerous waste management plans

50 By its second complaint, the Commission claims that, by failing to draw up management plans for all waste, the French Republic has failed to fulfil its obligations under Article 7(1) of Directive 75/442 and Article 6(1) of Directive 91/689.

51 The Commission submits in its application that its view that the management plans do not cover all waste is corroborated by the French Government's responses, both to the Commission's letter of formal notice and to its reasoned

opinion, concerning the three categories of waste selected by the Commission as examples to illustrate the incomplete material coverage of the management plans (waste containing PCBs, medical waste and special domestic waste).

52 Nevertheless, in view of additional information given by the French Government in its rejoinder, the Commission stated, at the hearing, that it would limit its complaint to the three categories of waste which it was able to identify as having been omitted from management plans.

53 That restriction must therefore be taken into account when considering the Commission's second complaint.

Waste containing PCBs

54 In so far as concerns waste containing PCBs, the Commission observes that the French authorities themselves have confirmed, in their reply to the reasoned opinion, that 22 of the 26 French regions have no plan for this category of waste. According to the Commission, the lack of management plans for waste containing PCBs cannot, contrary to the French authorities' submission, be justified by reference to the transposition of Council Directive 96/59/EC of 16 September 1996 on the disposal of polychlorinated biphenyls and polychlorinated terphenyls (PCB/PCT) (OJ 1996 L 243, p. 31).

55 The French Government does not dispute that that was the position on expiry of the period laid down in the reasoned opinion. It nevertheless argues that, by November 1999, 14 regional plans expressly included specific provisions for the

management of waste containing PCBs. In the remaining regions, provisions which apply to all dangerous waste also covered PCBs, in accordance with Décret no 97-517, du 15 mai 1997, relatif à la classification des déchets dangereux (Decree No 97-517 of 15 May 1997 on the classification of dangerous waste) (JORF of 23 May 1997, p. 7764). The French Government states that Annex II to that decree, which concerns waste nomenclature, includes a heading for hydraulic oil containing PCBs and another for transformers and accumulators containing PCBs. It is therefore incorrect to assert that, in 22 French regions, there is no plan for the disposal of waste containing PCBs that satisfies the requirements of Directive 75/442.

56 The French Government adds that, since the drafting of a national plan for the disposal of waste containing PCBs and polychlorinated terphenyls is under way in satisfaction of its obligations under Directive 96/59, it serves no purpose also to revise all regional plans so as to include a specific heading for PCBs. Indeed, such revision would take longer than finalising the national plan.

57 In this connection, it should be borne in mind that, under Article 7(1) of Directive 75/442, to which Article 6(1) of Directive 91/689 refers, waste management plans must relate, *inter alia*, to the type of waste to be recovered or disposed of. That means that the categories of waste to which the plans apply must be identified in the plans themselves. Thus, the fact that Decree No 97-517, which contains two references to PCBs, applies to all dangerous waste does not remedy the lack of any reference to PCBs in the regional management plans.

58 As regards the contention that no purpose would be served by transposing Directive 91/689 given the adoption of Directive 96/59, suffice it to observe that substances containing PCBs are expressly mentioned in the first directive and, consequently, it must be transposed to deal with those substances. In any event,

Directive 96/59 contains no derogation from or limitation upon the implementation of Directive 91/689.

59 It must therefore be concluded that the Commission's second complaint is well founded in so far as it concerns waste containing PCBs.

Medical waste

60 The Commission maintains that the French Government expressly acknowledged in its reply to the reasoned opinion that, for five regions, there is no plan in force relating to medical waste.

61 The French Government accepts that five French regions have no plan for the management of medical waste, but considers that preparing a waste disposal plan is a complicated process in respect of which Directive 75/442 lays down no target date.

62 It should be observed in this connection that, for the reasons set out in paragraphs 40 to 47 of the present judgment, the French Government's argument that Directive 75/442 does not lay down a target date for the preparation of waste management plans must be rejected.

63 That being so, and given the French Government's admission that there is no plan for the disposal of medical waste for five French regions, it must be concluded that the Commission's second complaint is well founded in so far as it concerns medical waste.

Special domestic waste

64 As regards special domestic waste, the Commission maintains that the enacting terms chosen by the French Government, whereunder this category of waste need not be dealt with in regional plans which specify that its treatment will be dealt with in departmental plans, are unsatisfactory because, in some cases, the departmental plans that are supposed to cover special domestic waste have not yet been adopted and, consequently, cannot cover this category of waste.

65 The Commission acknowledges that the French authorities stated in their reply to the reasoned opinion that special domestic waste may come under both a regional plan and a departmental plan and asserted that this category of waste has been taken into account in 16 regions and 22 departments. Nevertheless, according to the Commission's estimates, on the date when it lodged its application, in the case of 18 of the 100 French departments, there was neither a regional nor a departmental plan concerning this waste.

66 The French Government maintains that the fact that regional plans may devolve the management of this type of waste to departmental plans raises no difficulty; it simply creates an option between management at regional level or at departmental level, with no possibility of any area being left without a management plan.

67 The French Government also argues that, of the 18 departments considered by the Commission as having no plan for the disposal of special domestic waste, 15 are also the subject of the Commission's first complaint. In respect of those departments, the plea should therefore be regarded as inadmissible because it overlaps with the plea under the first head of complaint. As to the three remaining departments (Oise, Haute-Loire and Puy-de-Dôme), the French Government states that the proposed new plan for Oise was adopted by the prefect on 19 October 1999 and that the plans for the departments of Haute-Loire and Puy-de-Dôme, which form part of the Auvergne region, were drawn up before the regional plan which delegated the management of special

domestic waste to the department and are thus in the process of being revised. Even in respect of those two departments, the Commission's plea should, according to the French Government, be regarded as unfounded for the same reason as that which applies to plans which have not yet been adopted, that is to say because Directives 75/442 and 91/689 do not lay down a time-limit for their adoption.

68 In its reply, the Commission acknowledges that its second complaint, in so far as it concerns special domestic waste, partially overlaps with its first complaint and states that it persists with the second complaint only in respect of the departments of Haute-Loire and Puy-de-Dôme, which have no plan for the disposal of special domestic waste.

69 Suffice it to observe in this connection that, as the French Government itself acknowledges, there is no plan for the disposal of special domestic waste for the departments of Haute-Loire and Puy-de-Dôme and that the French Government's argument that Directive 75/442 does not lay down a time-limit for the adoption of such plans must, for the reasons set out in paragraphs 40 to 47 of the present judgment, be rejected.

70 The Commission's second complaint, in so far as it concerns special domestic waste, is accordingly also well founded.

The complaint concerning the lack of a specific chapter in waste management plans on packaging waste

71 By its third complaint, the Commission argues that correspondence with the French authorities during the pre-litigation procedure confirms that the French

waste management plans do not contain a specific chapter on packaging waste. That constitutes a failure to fulfil the obligations arising under Article 14 of Directive 94/62. The Commission adds that the French Government has failed to notify it of any adopted plan that contains such a chapter.

72 The French Government states that Articles 14 and 22 of Directive 94/62 must be interpreted as meaning that the obligation to include a specific chapter on packaging waste cannot be implemented more quickly than the waste management plan in which that chapter is to be inserted. The words '*doivent être établis*' (must be prepared) (rather than '*ont été établis*' (have been prepared) or '*devraient être établis*' (were to be prepared)) (in the English version of the provision, simply 'required') used in Article 14 of Directive 94/62 in connection with waste management plans implies, according to the French Government, that the plans need not necessarily have been prepared by the end of the period allowed for transposition of Directive 75/442.

73 That argument cannot be accepted for the reasons set out in paragraphs 40 to 47 of the present judgment. Therefore, since the waste management plans adopted do not, as the French Government acknowledges, contain a specific chapter on the management of packaging waste, it must be held that the Commission's third complaint concerning the omission of such a chapter from all of France's waste management plans is also well founded.

74 That being so, and having regard to all of the foregoing considerations, it must be held that, by failing to draw up waste management plans for the whole of its territory, by failing to draw up, for certain regions or certain departments, such plans for waste containing PCBs, medical waste and special domestic waste, and by failing to include a specific chapter relating to packaging waste in all of the waste management plans which it has adopted, the French Republic has failed to fulfil its obligations under Article 7(1) of Directive 75/442, Article 6(1) of Directive 91/689 and Article 14 of Directive 94/62.

Costs

75 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for costs and the French Republic has been unsuccessful, the latter must be ordered to pay the costs.

On those grounds,

THE COURT (Sixth Chamber)

hereby:

1. **Declares that, by failing to draw up waste management plans for the whole of its territory, by failing to draw up, for certain regions or certain departments, such plans for waste containing polychlorinated biphenyls, medical waste and special domestic waste, and by failing to include a specific chapter relating to packaging waste in all of the waste management plans which it has adopted, the French Republic has failed to fulfil its obligations under Article 7(1) of Council Directive 75/442/EEC on 15 July 1975 on waste, as amended by Council Directive 91/156/EEC of 18 March 1991, under**

Article 6(1) of Council Directive 91/689/EEC of 12 December 1991 on hazardous waste and under Article 14 of European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste;

2. Orders the French Republic to pay the costs.

Macken Gulmann Puissochet

Skouris Cunha Rodrigues

Delivered in open court in Luxembourg on 2 May 2002.

R. Grass F. Macken

Registrar President of the Sixth Chamber