JUDGMENT OF THE COURT
9 July 1992 *

In Case C-2/90,

Commission of the European Communities, represented by Maria Condou-Durande and Xavier Lewis, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Roberto Hayder, a representative of its Legal Service, Wagner Centre, Kirchberg,

applicant,

v

Kingdom of Belgium, represented by Robert Hoebaer, Director of Administration in the Ministry of Foreign Affairs, Foreign Trade and Cooperation with Developing Countries, acting as Agent, assisted by P. Cartuyvels, Attaché in the Office of the Minister of Agriculture, Environment and Housing for Wallonia, with an address for service in Luxembourg at the Belgian Embassy, 4 Rue des Girondins,

defendant,

APPLICATION for a declaration that by prohibiting the storage, tipping or dumping or causing the storage, tipping or dumping in Wallonia of waste originating in another Member State or in a region of Belgium other than Wallonia, the Kingdom of Belgium has failed to fulfil its obligations under Council Directive 75/442/EEC of 15 July 1975 on waste (OJ 1975 L 194, p. 39), Council Directive 84/631/EEC of 6 December 1984 on the supervision and control within the European Community of the transfrontier shipment of hazardous waste (OJ 1984 L 326, p. 31), and Articles 30 and 36 of the EEC Treaty,

* Language of the case: French.

THE COURT,

composed of: O. Due, President, R. Joliet, F. A. Schockweiler, F. Grévisse and P. J. G. Kapteyn (Presidents of Chambers), G. F. Mancini, C. N. Kakouris, J. C. Moitinho de Almeida, G. C. Rodríguez Iglesias, M. Díez de Velasco and M. Zuleeg, Judges,

Advocate General: F. G. Jacobs,
Registrar: H. A. Rühl, Principal Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearings on 27 November 1990, 4 July 1991 and 28 January 1992,

after hearing the Opinion of the Advocate General at the sittings on 10 January 1991, 19 September 1991 and 29 January 1992,

gives the following

Judgment

1 By application lodged at the Court Registry on 3 January 1990, the Commission of the European Communities brought an action under Article 169 of the EEC Treaty for a declaration that by prohibiting the storage, tipping or dumping or causing the storage, tipping or dumping in Wallonia of waste originating in another Member State or in a region of Belgium other than Wallonia, the Kingdom of Belgium had failed to fulfil its obligations under Council Directive 75/442/EEC of 15 July 1975 on waste (OJ 1975 L 194, p. 39), Council Directive 84/631/EEC of 6 December 1984 on the supervision and control within the European Community of the transfrontier shipment of hazardous waste (OJ 1984 L 326, p. 31), and Articles 30 and 36 of the EEC Treaty.

2 It is apparent from the case-file that the basic measure dealing with waste management in Wallonia is the Decree of the Walloon Regional Council of 5 July 1985 on waste (*Moniteur Belge*, 14 December 1985), whose objective is to prevent waste accruing, encourage recycling and recovery of energy and materials, and make arrangements for waste disposal (Article 1).

3 Pursuant to Article 19(6) of that decree, which gave the Walloon Regional Executive power to make special rules governing the use of authorized tips, depots and treatment installations for waste originating in foreign countries or other regions of Belgium, the executive adopted the Decree of 19 March 1987 on the dumping of certain waste products in Wallonia (*Moniteur Belge*, 28 March 1987, p. 4671).

4 Under Article 1 of that decree, as amended by the Decrees of 9 and 23 July 1987,

'The storage, tipping or dumping, or causing the storage, tipping or dumping of waste from a foreign State in waste depots, stores and tips which require authorization ... except in depots annexed to an installation for the destruction, neutralization and disposal of toxic waste, shall be prohibited.

Operators of the installations referred to in the first paragraph shall be prohibited from permitting or tolerating the tipping or dumping of waste from a foreign State in the installations operated by them.'

5 Article 2 of the decree provides that derogations from Article 1 may be granted on request by a foreign public authority. However, a derogation can be granted only for a specified period and must be justified by serious and exceptional circumstances.

6 Under Article 3, the prohibition in Article 1 applies also to waste originating in a region of Belgium other than Wallonia. Exceptions may be made in accordance with agreements between Wallonia and the other regions of Belgium.

7 Article 5 of the decree reads as follows:

'Waste not produced in Wallonia shall be deemed to be waste from a foreign State or a region of Belgium other than Wallonia.

If the waste results from a process in which two or more States or regions have taken part, it originates in the State or region where the last substantial processing, carried out for economic reasons in an undertaking equipped for that purpose, takes place ...'

8 The Commission took the view that the Belgian legislation was contrary to Community law, in so far as it prohibited the dumping in Wallonia of waste from other Member States and the effect of Article 3 in conjunction with Article 5 of the Decree of 19 March 1987 was to prohibit the dumping in Wallonia of waste from other Member States which had undergone substantial processing for economic reasons in another region of Belgium. It therefore initiated the procedure under Article 169 of the Treaty against the Kingdom of Belgium.

9 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the procedure and the pleas in law and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

10 The Commission contends that the Belgian rules are contrary to Directives 75/442/EEC and 84/631/EEC and Articles 30 and 36 of the Treaty.

Directive 75/442/EEC

11 The Commission argues that no provision in Directive 75/442/EEC on waste authorizes a general prohibition of the kind laid down in the Belgian legislation. Furthermore, such a prohibition would be contrary to the objectives of the directive and the structure of its provisions, whose aim is to ensure the free movement of waste under conditions which are not harmful to human health or the environment.

12 Directive 75/442/EEC sets out certain principles with reference to waste disposal and contains provisions of a general nature.

13 Thus it provides for Member States to take appropriate steps to encourage the prevention, recycling and processing of waste, and also such measures as are necessary to ensure that waste is disposed of without endangering human health or the environment. It also requires Member States to designate the competent authorities for the planning, organization, authorization and supervision of waste disposal operations, and provides that undertakings transporting, collecting, storing, tipping or treating their own waste or that of third parties must obtain a permit to do so or be subject to supervision by the competent authorities.

14 It follows from the foregoing that neither the general scheme introduced by the directive in question nor any of its provisions refers specifically to trade in waste between Member States, nor is there any specific prohibition against adopting measures such as those laid down by the contested legislation. It must therefore be held that no breach of Directive 75/442/EEC as alleged by the Commission has been established.

15 Furthermore, the contested legislation applies to waste generally, without distinguishing between hazardous and non-hazardous waste. However, since the

category of hazardous waste is specifically regulated in Community law by Directive 84/631/EEC, the system introduced by that directive must be examined first.

Directive 84/631/EEC

16 Directive 84/631/EEC, as amended by Council Directive 86/279/EEC of 12 June 1986 (OJ 1986 L 181, p. 13) and adapted to technical progress by Commission Directive 87/112/EEC of 23 December 1986 (OJ 1987 L 48, p. 31), refers in the first recital in its preamble to the programmes of Community action designed to control the disposal of hazardous waste. The second recital notes that Member States are required to take the necessary measures to ensure that toxic and dangerous waste is disposed of without endangering human health and without harming the environment. The third recital states that shipment of waste between Member States may be necessary in order to dispose of it under the best possible conditions, and the seventh recital notes the necessity for supervision and control of hazardous waste from the moment of its formation until its treatment or ultimate safe disposal.

17 In the context of those objectives, the directive lays down conditions with respect to the disposal of the waste in question to ensure that such disposal does not endanger human health or the environment, provides for a system of permits for the storage, treatment or tipping of such waste, and obliges Member States to forward to the Commission certain data on the installations, establishments or undertakings holding a permit.

18 As regards transfrontier shipments of hazardous waste with a view to its disposal, the directive states that where the holder of the waste intends to ship it from one Member State to another or to have it routed through one or more Member States, he must notify the competent authorities of the Member States concerned by means of a uniform 'consignment note' containing *inter alia* information on the source and composition of the waste, the provisions made for routes and insurance, and the measures to be taken to ensure safe transport (Article 3).

19 A transfrontier shipment may not be executed until the competent authorities of the Member States concerned have acknowledged receipt of the notification. Those authorities may raise objections, which must be substantiated on the basis of laws and regulations relating to environmental protection, safety and public policy or health protection which are in accordance with the directive, with other Community instruments or with international conventions on this subject concluded by the Member State concerned (Article 4).

20 It follows that Directive 84/631/EEC introduced a comprehensive system which relates *inter alia* to transfrontier shipments of hazardous waste with a view to its disposal in defined establishments and is based on the obligation on the part of the holder of the waste to give prior notification in detail. The relevant national authorities have the right to raise objections, and hence to prohibit a particular shipment of hazardous waste (as opposed to general plans for shipments of hazardous waste), in order to deal with problems relating to environmental and health protection as well as to public safety and public policy. This system thus leaves no scope for Member States to prohibit such shipments generally.

21 It must therefore be held that the contested Belgian rules, in so far as they preclude the application of the procedure laid down in the directive and introduce an absolute prohibition on the import into Wallonia of hazardous waste, are not consistent with the directive in question even though they provide that certain derogations may be granted by the relevant authorities.

Articles 30 and 36 of the Treaty

22 It remains to consider the Belgian rules in question from the point of view of Articles 30 and 36 of the Treaty, in so far as those rules relate to waste which is not covered by Directive 84/631/EEC.

23 It is not disputed that recyclable and reusable waste has an intrinsic commercial value, possibly after being treated, constitutes 'goods' for the purposes of the Treaty, and consequently comes under Article 30 et seq. of the Treaty.

24 With respect to non-recyclable and non-reusable waste, the Court heard argument as to whether such waste also comes under Article 30 et seq.

25 The Belgian Government argued that waste which was not recyclable and not reusable could not be regarded as 'goods' within the meaning of Article 30 et seq. of the Treaty. It had no intrinsic commercial value and thus could not be the subject of a sale. Operations for the disposal or tipping of such waste came under the Treaty provisions on the freedom to provide services.

26 In response to that argument, suffice it to note that objects which are shipped across a frontier for the purposes of commercial transactions are subject to Article 30, whatever the nature of those transactions.

27 As was explained to the Court, moreover, the distinction between recyclable and non-recyclable waste is particularly difficult to apply in practice, especially with respect to controls at frontiers. That distinction is based on factors which are uncertain and liable to change in the course of time according to technical progress. Furthermore, whether waste is recyclable or not also depends on the cost of the recycling process and consequently on whether its proposed reutlization is viable, with the result that classification of waste is necessarily subjective and depends on variable factors.

28 It must therefore be concluded that waste, whether recyclable or not, is to be regarded as 'goods' the movement of which, in accordance with Article 30 of the Treaty, must in principle not be prevented.

29 To justify the restrictions placed on the movement of waste, the defendant State argues that the contested legislation meets imperative requirements relating to environmental protection and the objective of protection of health, which takes precedence over the objective of freedom of movement for goods, and constitutes an exceptional and temporary protective measure to counter the inflow into Wallonia of waste from neighbouring countries.

30 With respect to the environment, it is important to note that waste is matter of a special kind. Accumulation of waste, even before it becomes a health hazard, constitutes a danger to the environment, regard being had in particular to the limited capacity of each region or locality for waste reception.

31 In the instant case the Belgian Government argued, without being contradicted by the Commission, that in view of the abnormal large-scale inflow of waste from other regions for tipping in Wallonia, there was a real danger to the environment, having regard to the limited capacity of that region.

32 It follows that the argument that the contested measures were justified by imperative requirements of environmental protection must be considered to be well founded.

33 The Commission argues, however, that those imperative requirements cannot be relied upon in the present case, given that the measures in question discriminate against waste originating in other Member States, which is no more harmful than waste produced in Wallonia.

34 Imperative requirements can indeed be taken into account only in the case of measures which apply without distinction to both domestic and imported products (see *inter alia* the judgment in Joined Cases C-1/90 and C-176/90 *Aragonesa de Publicidad Exterior and Publivía* [1991] ECR I-4151). However, in assessing whether or not the barrier in question is discriminatory, account must be taken of the particular nature of waste. The principle that environmental damage should as a matter of priority be remedied at source, laid down by Article 130r (2) of the Treaty as a basis for action by the Community relating to the environment, entails that it is for each region, municipality or other local authority to take appropriate steps to ensure that its own waste is collected, treated and disposed of; it must accordingly be disposed of as close as possible to the place where it is produced, in order to limit as far as possible the transport of waste.

35 Moreover, that principle is consistent with the principles of self-sufficiency and proximity set out in the Basel Convention of 22 March 1989 on the control of transboundary movements of hazardous wastes and their disposal, to which the Community is a signatory (see *International Environmental Law*, Kluwer, Deventer and Boston, 1991, p. 546).

36 It follows that having regard to the differences between waste produced in different places and to the connection of the waste with its place of production, the contested measures cannot be regarded as discriminatory.

37 The application must therefore be dismissed to the extent that it relates to waste which is not covered by Directive 84/631/EEC.

Costs

38 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 Kingdom of Belgium has failed only on some heads, the parties must be ordered to bear their own costs, in accordance with Article 69(3) of the Rules of Procedure.

On those grounds,

THE COURT

hereby:

1. **Declares that by imposing an absolute prohibition on the storage, tipping or dumping in Wallonia of hazardous waste originating in another Member State and thereby precluding the application of the procedure laid down in Council Directive 84/631/EEC of 6 December 1984 on the supervision and control within the European Community of the transfrontier shipment of hazardous waste, the Kingdom of Belgium has failed to fulfil its obligations under that directive;**

2. **Dismisses the remainder of the application;**

3. **Orders the parties to bear their own costs.**

Due Joliet Schockweiler Grévisse

Kapteyn Mancini Kakouris

Moitinho de Almeida Rodríguez Iglesias Díez de Velasco Zuleeg

Delivered in open court in Luxembourg on 9 July 1992.

J.-G. Giraud
Registrar

O. Due
President