ADDENDUM TO THE REPORT FOR THE HEARINGS

The *Commission* was asked by the Court to reply in writing to the following questions:

1. The Commission is asking the Court to declare that the Kingdom of Belgium has failed to fulfil its obligations because the prohibition on the dumping of waste in Wallonia concerns waste from other Member States and from the other Belgian Regions. Would the Commission please clarify its position on this point.

2. The Kingdom of Belgium contends that following the amendment to the Decree of 19 March 1987 by the Decree of 23 July 1987 (Moniteur Belge of 29 September 1987), the beginning of the first paragraph of Article 1 is worded as follows: 'The storage, tipping or dumping of waste from a foreign State in waste depots, stores and tips which require authorization pursuant to the Decree of 5 July 1985 on waste shall be prohibited ...'. The Commission is asked to state what significance that amendment might have as far as the delimitation of the subject-matter of the case is concerned.

The Commission replied as follows:

'First question

The Commission considers that a reply must deal with each of the relevant provisions of Community law.

(a) Council Directive No 75/442/EEC of 15 July 1975

1. The Commission considers that the *mere* fact that "storage (and so on) ... of waste from a foreign State in depots (and so on) shall be prohibited" (Article 1 of the Decree of the Walloon Regional Executive of 19 March 1987) in Wallonia constitutes a failure by the Kingdom of Belgium to fulfil its obligations under the directive.

The purpose of the directive is to encourage the prevention, recycling and processing of waste (Article 3(1), while not obstructing intra-Community trade or affecting conditions of competition (fifth recital). Such a prohibition clearly obstructs intra-Community trade and affects the conditions of competition. The Commission considers that the mere fact that the prohibition was issued *at regional rather than national level* does not affect its assessment as regards Belgium's failure to fulfil its obligations (see below, paragraph (7)).

2. The prohibition contained in Article 1 of the above decree *in conjunction* with the prohibition in Article 3 of the same decree on storage (and so on) of waste from a region of Belgium other than Wallonia also constitutes a breach of Directive 75/442/EEC for the reasons stated briefly in paragraph (1) above. The prohibition contained in Article 3 must be understood in the light of Article 5 of the decree which provides that "if the waste

results from a process in which two or more States or regions have taken part, it is deemed to originate in the State or region where the last substantial processing, carried out for economic reasons in an undertaking equipped for that purpose, took place ...": (second paragraph). Accordingly, there is a prohibition on dumping in Wallonia waste of foreign origin which has been substantially processed on economic grounds (within the meaning of the second paragraph of Article 5 of the decree) in another Belgian region.

3. On the other hand, if the prohibition contained in Article 3 existed *without* the prohibition on tipping (and so on) in Wallonia of waste from other Member States, the Commission would take the view that a purely *inter-regional* prohibition was not contrary to Directive 75/442/EEC. In that case waste from other Member States could be dumped in Wallonia without hindrance. That directive seeks only to protect trade between the Member States while ensuring rational waste disposal.

(b) Directive 84/631/EEC

4. The prohibition contained in Article 1 of the decree cited above taken alone constitutes, in the Commission's view, a failure by Belgium to fulfil its obligations under Directive 84/631/EEC. That directive is aimed at introducing a Community system of supervision and control of the transfrontier shipment of hazardous waste while avoiding differences between national provisions that distort competition and directly affect the functioning of the common market (fourth recital). The directive even postulates that "shipment of waste between Member States ... may be necessary in order to dispose of it under the best possible conditions" (third recital). As stated under paragraph (1) above, the mere fact that this is a prohibition at regional rather than national level does not affect the Commission's assessment.

5. With regard to the prohibition contained in Article 1 of the decree *in conjunction* with the prohibition contained in Article 3, the same reasoning as that set out in paragraph (2) applies *mutatis mutandis* to Directive 84/631/EEC.

6. With regard to the prohibition contained in Article 3 of the decree, examined in isolation as if the prohibition contained in Article 1 did not exist, the Commission considers that Directive 84/631/EEC does not apply to a purely inter-regional prohibition in so far as waste from another Member State may be tipped without hindrance in Wallonia.

(c) Article 30 of the EEC Treaty

7. The Commission considers that a prohibition on dumping in Wallonia waste from other Member States, as formulated in Article 1 of the decree, constitutes a measure having an effect equivalent to a quantitative restriction prohibited by Article 30 of the EEC Treaty. The fact that it is a prohibition laid down solely at regional rather than national level does not affect that conclusion, which is supported by the Court's judgment in Case C-21/88 *Du Pont de Nemours Italia SpA* v *Unità Sanitaria Locale No 2 di Carrara* [1990] ECR I-889. In that case the Court held that Article 30 of the EEC Treaty precludes rules whose effect is solely to benefit undertakings established in a particular region. The Commission considers that there is no need to distinguish between national

rules which have purely regional effects and regional rules having the same effects.

8. The prohibition contained in Article 3 of the decree reinforces the prohibition contained in Article 1, as indicated at paragraph (2) above. The fact that the two prohibitions taken together do not seem to distinguish in principle between waste from other Belgian regions and waste from other Member States cannot exempt the measure in question from the prohibition set out in Article 30 (paragraph 13 of the judgment in Case C-21/88 *Du Pont de Nemours Italiana*, cited above). In reality the decree in question provides, in the third paragraph of Article 3, for the possibility that only Belgian regions may conclude agreements with Wallonia in order to organize the tipping and dumping of waste from those regions in Wallonia.

9. On the other hand, the Commission considers that if only the prohibition in Article 3 of the decree were at issue, such a purely interregional prohibition would not be contrary to Article 30 of the EEC Treaty. That would be the case only in so far as there was no hindrance to trade in waste between the other Member States and Wallonia.

10. However, it should be noted that the prohibition in Article 3 of the decree standing alone is not at issue in this case. The prohibitions at issue are those contained in Article 1 of the decree taken in isolation or the prohibition in Article 1 viewed in conjunction with that in Article 3.

Second question

The Court asks the Commission to define its position on the significance, as regards the delimitation of the subject-matter of the proceedings, of the wording of the first paragraph of Article 1 of the Decree of 19 March 1987, as amended by the Decree of 23 July 1987.

11. Before it was amended, Article 1 of the Decree of 19 March 1987 was worded as follows:

"The storage, tipping or dumping, or causing the storage, tipping or dumping of waste from a foreign State in the depots *referred to in the General Rules for the Protection of Workers, Title 1, Chapter II, List A, No 140 ter. 1, and List B, No. 7 and in the Royal Decree of 9 February 1976 laying down general rules on toxic waste, Article 4, except in depots annexed to an installation for the destruction, neutralization and disposal of toxic waste*, shall be prohibited."

Article 130 of the Decree of 23 July 1987 amended the wording of Article 1 cited above as follows:

"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 pursuant to the Decree of 5 July 1985 on waste or to the Law of 22 July 1974 on toxic waste, except in depots annexed to an installation for the destruction, neutralization and disposal of toxic waste*, shall be prohibited."

12. The Commission takes the view that that change in wording does not affect the delimitation of the subject-matter of the proceedings in any material way.

13. The prohibition on storage, tipping (and so on) is still framed in the same terms. The only difference is the description of the depots and tips to which the article refers where it is forbidden to dump foreign waste. According to Article 18 of the Decree of the Walloon Regional Council of 5 July 1985 on waste, "the setting up and operation of any disposal plant other than a controlled tip shall be prohibited ...". Article 19 provides that "the setting up and operation of a controlled tip, depot or waste treatment installation are subject to authorization being obtained ..."; The effect of those provisions remains the same: "it is forbidden to dump in Wallonia waste from another Member State whatever the legal status or designation of the depots referred to."

The *Belgian Government* was asked by the Court to reply in writing to the following question:

The Kingdom of Belgium states that following the amendment to the Decree of 19 March 1987 by the Decree of 23 July 1987 (Moniteur Belge of 29 September 1987), the beginning of the first paragraph of Article 1 is worded as follows: "The storage, tipping or dumping of waste from a foreign State in depots, stores and tips which require authorization pursuant to the Decree of 5 July 1985 on waste shall be prohibited...". The Belgian Government is asked to define its position with regard to the significance of that amendment so far as the delimitation of the subject-matter of the proceedings is concerned.

The Belgian Government replied as follows:

The exact wording of the amendment to the Decree of 19 March 1987 introduced by Article 130 of the Decree of 23 July 1987 is as follows:

"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 pursuant to the Decree of 5 July 1985 on waste or the Law of 22 July 1974 on toxic waste, neutralization and disposal of toxic waste, shall be prohibited ...". (The citation in the defence is inaccurate.)

That amendment has no effect in substantive terms.

The reason why an amendment was introduced is that the reference to the legal basis was incorrect. In the previous version, the General Rules for the Protection of Workers and the Royal Decree of 9 February 1976 laying down general rules on toxic waste were referred to, whilst the new version refers to the Decree of 5 July 1985 on waste or to the Law of 22 July 1974 on toxic waste.

Thus the Belgian Government considers that that amendment is of no significance so far as the delimitation of the subject-matter of the case is concerned.'

C. N. Kakouris

Judge-Rapporteur