2. A Member State may not plead provisions, practices or circumstances existing in its internal legal system in order to justify a failure to comply with its obligations under Community law.

3. Action to comply with a judgment establishing a Member State's failure to fulfil its obligations must be commenced immediately and must be completed as soon as possible.

REPORT FOR THE HEARING
delivered in Joined Cases 227 to 230/85 *

I — Summary of the facts

1. By virtue of Council Directives:

(i) 75/439/EEC of 16 June 1975 on the disposal of waste oils (Official Journal 1975, L 194, p. 23),

(ii) 75/442/EEC of 15 July 1975 on waste (Official Journal 1975, L 194, p. 39),

(iii) 76/403/EEC of 6 April 1976 on the disposal of polychlorinated biphenyls and polychlorinated terphenyls (Official Journal 1976, L 108, p. 41), and

(iv) 78/176/EEC of 20 February 1978 on waste from the titanium dioxide industry (Official Journal 1978, L 54, p. 19),

the Member States were to bring into force the necessary measures to comply with those directives within specified periods.

By four judgments of 2 February 1982 in actions brought by the Commission, the Court held that the Kingdom of Belgium had failed to fulfil its obligations under the Treaty by not adopting within the prescribed periods the provisions needed to comply with those directives, namely:

(i) in Case 68/81, with Directive 78/176/EEC,

(ii) in Case 69/81, with Directive 75/442/EEC,

(iii) in Case 70/81, with Directive 75/439/EEC, and

(iv) in Case 71/81, with Directive 76/403/EEC.

2. Since it had received no information from the Kingdom of Belgium on the measures adopted to comply with these judgments, the Commission, in four letters dated 16 April 1984, requested the Government of the Kingdom of Belgium to submit its observations, in accordance with Article 169 of the EEC Treaty, on its failure to comply with the judgments of the Court.

Since those letters remained unanswered, the Commission delivered four reasoned opinions on 21 December 1984 in which it found that, by not adopting the laws, regu-

* Language of the Case: French.

lations and administrative provisions needed to implement the aforesaid directives, Belgium had failed to fulfil its obligations; it requested the Kingdom of Belgium to comply with those opinions within two months of the date of their notification.

The Commission received no reply to the reasoned opinions.

II — Written procedure and conclusions of the parties

1. By four applications lodged at the Court Registry on 23 July 1985, the Commission brought actions for a declaration under the second paragraph of Article 169 of the EEC Treaty that Belgium had failed to fulfil its obligations, claiming that the Court should:

(1) Declare that the Kingdom of Belgium has failed to fulfil its obligations under Article 171 of the Treaty since it has still not adopted, despite the judgments of the Court of 2 February 1982 in Cases 68 to 71/81, the measures needed to implement in national law Council Directives:

(i) 78/176/EEC of 20 February 1978 on waste from the titanium dioxide industry (judgment in Case 68/81 — Case 227/85),

(ii) 75/442/EEC of 15 July 1975 on waste (judgment in Case 69/81 — Case 228/85),

(iii) 75/439/EEC of 16 June 1975 on the disposal of waste oils (judgment in Case 70/81 — Case 229/85), and

(iv) 76/403/EEC of 6 April 1976 on the disposal of polychlorinated biphenyls and polychlorinated terphenyls (judgment in Case 71/81 — Case 230/81);

(2) Order the Kingdom of Belgium to pay the costs.

The Kingdom of Belgium has not presented any formal conclusions in its defence or rejoinder.

2. By order of 9 October 1985 the four cases were joined for the purposes of the oral procedure and the judgment.

The written procedure followed the usual course.

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 enquiry. However, it requested the parties to amplify their conclusions in the light of the evidence submitted to the Court in the written procedure and to give a brief statement of the measures still to be taken or still needed to implement each directive.

III — Submissions and arguments of the parties

1. The *Commission* claims that the failure, more than three years after the judgments of 2 February 1982, to adopt the measures implementing the directives in question in the Belgian domestic legal sytem constitutes an infringement of the obligation under Article 171 of the EEC Treaty to take the necessary measures to comply with those judgments.

The *Belgian Government* states that the delays in adopting the necessary measures are the result of special difficulties arising out of the transfer of a substantial number

of powers to the new regional institutions created in Belgium by the loi spéciale de réforme institutionnelle (Special Law on Institutional Reform) of 8 August 1980.

In that regard the *Commission* refers to the judgments in which the Court has held that a Member State may not justify its failure to fulfil its obligations by practical difficulties or situations arising in its domestic legal system.

2. The *Belgian Government* also describes the situation as regards the implementation of the directives on environmental matters since the entry into force of the aforesaid Special Law of 8 August 1980:

at national level:

(i) Royal Decree of 7 November 1983 implementing the Law of 8 February 1978 ratifying the Convention on the Prevention of Marine Pollution,

(ii) Law of 9 July 1984 on the importation, exportation and transit of waste,

(iii) a royal decree laying down sectoral standards on discharge from the titanium dioxide production industry now in preparation;

at regional level:

(i) Flemish region:

(a) Decree of 2 July 1981 on the management of waste,

(b) approximately 30 decrees of the Flemish Executive, including the Decree of 25 July 1985 on the elimination of waste oils;

(ii) Walloon region:

(a) Decree of 5 July 1985 on the management of waste published in the *Moniteur belge* of 14 December 1985,

(b) Decrees of the Walloon Executive now in preparation;

(iii) Brussels region:

(a) A committee is responsible for drawing up the text of a basic royal decree on waste,

(b) meanwhile, the Executive intends to send out a circular with a view to applying the directives.

The *Commission* takes note of those measures but stresses that as they now stand they do not implement the directives concerned in their entirety since:

(i) Directives 78/176/EEC and 76/403/EEC are not yet being applied in their entirety;

(ii) although the application of Directives 75/439/EEC and 75/442/EEC has now been satisfactorily achieved in the Flemish region and although in the Walloon region it will be achieved by the entry into force (which has since taken place) of the Decree of 5 July 1985 and the various decrees of the Walloon Executive, the measures are only at the preparatory stage in the Brussels region.

The Commission also stresses that an internal administrative circular cannot create rights and obligations under national law and therefore does not have the binding

force necessary for the proper implementation of the directives in national law.

IV — Replies to the questions asked by the Court

In reply to the Court's request for a statement, of the measures still to be taken or still needed to implement each of the directives, the *Commission* submitted extracts from a study on the 'review of the application of Community directives on the environment and protection of consumers' containing details on how far the four directives in question have been implemented, from which it is clear that they have not yet implemented in particular in the Brussels region and the Walloon region.

The *Belgian Government* stated that the national authorities, which have powers only as regards Directive 78/176/EEC, have prepared a Royal Decree on discharges into surface water which should enter into force in August 1986. At regional level the Walloon Executive considers that all the implementing decrees will have entered into force by May 1987 at the latest and in the Brussels region royal decrees supplementing a royal decree which implements the four directives and has just been signed will enter into force at the end of 1986.

In answer to a supplementary question asked by the Court, the *Belgian Government* confirmed that the implementing measures referred to by it will contain all the measures which the Commission considers are still needed to implement the directives fully.

The *Commission* took note of the statement on the entry into force of those implementing measures, expressed regret at the delay in bringing them into force and reserved the right to examine whether they would implement the four directives fully.

U. Everling
Judge-Rapporteur