1. Under the system of judicial cooperation established by Article 177 of the Treaty, the interpretation of national rules is a matter for the national courts and not for the Court of Justice, even though it has been consistently held that where national rules have been adopted in order to implement a Community directive, those courts are required to interpret their national law in the light of the wording and the purpose of the directive.

2. Directive 75/439 on the disposal of waste oils precludes national legislation establishing a system of collection and disposal of waste oils for the benefit of undertakings to which the administrative authorities grant approval for exclusive zones, and which in fact allows such approval to be granted only to national undertakings.

REPORT FOR THE HEARING
Case C-37/92 *

I — Directive 75/439

1. The third recital in the preamble to Council Directive 75/439/EEC, in the version in force at the material time, states that '(...) all provisions relating to the disposal of waste oils should have as one of their essential objectives the protection of the environment (...)', and the seventh recital that the system of treatment for waste oils must not create barriers to intra-Community trade or affect competition.

* Language of the case: French.

2. Articles 2 to 4 of the Directive provide that the Member States must take the necessary measures to ensure the safe collection and disposal of waste oils, preferably by recycling. Article 5 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'. In addition, the first paragraph of Article 6 provides that 'any undertaking which disposes of waste oils must obtain a permit'.

II — Facts of the main action and the question referred to the Court

3. J. Vanacker and A. Lesage, both Belgian nationals, were summoned before the Tribunal Correctionnel (Criminal Court), Laon, France, and charged with disposing in 1985 of waste oil, within the meaning of the first paragraph of Article 2 of French Law No 75-633 of 15 July 1975, that is to say, with collecting and transporting waste oil in French territory without possessing the approval provided for by Articles 9 and 10 of that law. That offence is laid down by Article 24-5 of the Law in question and by Decree No 79/981 of 21 November 1979 laying down rules for the recovery of waste oil (JORF, 23 November 1979, p. 2900), which also set out the penalties.

4. By judgment of 7 May 1987, the Tribunal Correctionnel acquitted the accused of the charges. Following an appeal by the Public Prosecutor and the civil party, Baudoux Combustibles SA, the Cour d'Appel (Court of Appeal), Amiens, upheld the judgment of the Tribunal Correctionnel by judgment of 30 January 1989.

5. On appeal on a point of law from Baudoux Combustibles SA, the Cour de Cassation (Court of Cassation) set aside the judgment of the Cour d'Appel, Amiens, by judgment of 8 November 1990, and remitted the case to the Cour d'Appel, Douai. The latter found 'sufficient grounds in the facts submitted for its assessment' for staying the proceedings and referring the following question to the Court:

'May the French legislation establishing within France a system of collection and

disposal of waste oil operated by undertakings to which the administrative authorities grant approval for exclusive zones be interpreted, in the light of Articles 30 to 36 of the EEC Treaty and the directive of the Council of the Communities, as in fact allowing approval to be issued only to national undertakings, and must it accordingly be regarded as consistent or inconsistent with the abovementioned European provisions?'

6. The order for reference was received at the Court Registry on 13 February 1992.

III — Written procedure

7. Pursuant to Article 20 of the Protocol on the Statute on the Court of Justice of the EEC, written observations were submitted on 18 May 1992 by the French Government, represented by P. Pouzoulet and H. Duchène, acting as Agents, and on 12 May 1992 by the Commission of the European Communities, represented by M. Condou, of its Legal Service, and V. Melgar, a national official seconded to the Commission, acting as Agents.

8. 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 inquiries. However, it requested the French Government and the Commission to give written replies to two questions.

IV — Written observations submitted to the Court

Observations of the French Government

9. The French Government observes, first, that the French legislation on waste oil must be assessed in the light of Articles 34 and 59 of the EEC Treaty, which prohibit restrictions on exports between the Member States and restrictions on freedom to provide

services, respectively. It told the Court that this legislation is at present the subject of a complaint from the Commission (complaint P/89/552 addressed to the French Government on 3 January 1992).

10. Pursuant to Council Directive 75/439, the French Government adopted Decree No 79-981, cited above, and two implementing orders (JORF, 23 November 1979, pp. 2901 and 2903) on 21 November 1979. Those measures, which constitute the French legislation on the subject, divided France into zones and set up an approval system for undertakings collecting waste oil and for undertakings responsible for disposing of it.

11. The legislation in question is the subject of the following judgments of the Court: Case 172/82 *Syndicat National des Fabricants Raffineurs d'Huile de Graissage* v *Inter-Huiles* [1983] ECR 555, Case 295/82 *Rhône-Alpes Huiles* v *Syndicat National des Fabricants Raffineurs d'Huile de Graissage* [1984] ECR 575 and Case 173/83 *Commission* v *France* [1985] ECR 491. In those judgments the Court held that the French legislation implicitly entailed a prohibition on the export of waste oil to other Member States of the Community by not providing for a derogation permitting resale to collection or disposal undertakings which had obtained in those States the permit provided for by Article 6 of Directive 75/439.

12. As a result of these judgments, Decree No 79-981 was amended by Article 1 of Decree No 89-192 of 24 March 1989, which gave several options to holders of waste oil.

13. Thus the holder may

— keep his waste oil and dispose of it himself, if he obtains approval;

— make his waste oil available to a disposal undertaking which is approved in France or authorized in another Member State pursuant to Directive 75/439;

— hand over his waste oil to a collector, who must be approved pursuant to Article 4 of Decree No 79-981.

14. The French Government recognizes that it is precisely this last point which raises a question of the interpretation of Articles 34 and 59 of the Treaty and appears to give rise to the objections on the part of the Commission, on the ground that the conditions for the grant of approval are too onerous and constitute an obstacle to exports and freedom to provide services in relation to collection undertakings already approved in another Member State.

15. The French Government observes that the conditions for granting the approval in question are laid down by the order of 21 November 1989 (JORF, 5 December 1989) and a circular of 5 December 1989. The grant of approval depends on the production of a file and the acceptance of certain undertakings.

16. Thus the main requirement underlying approval is protection of the environment. The items forming the file for an application by a collection undertaking for the grant of approval include, in particular, an undertaking to remove within 15 days any quantity of waste oil in excess of 200 litres which is offered to the undertaking in the zone concerned. The collector must also take two samples whenever it removes waste oil in order to detect whether any polychlorinated biphenyls are present. In addition to the undertakings given by the applicant, the file must also contain information on the experience of the undertaking, particularly the means used to collect and store waste oil. The conditions for tendering and the examination of pending applications did not give rise to any discrimination on grounds of nationality of the undertaking and reasons had to be stated in decisions rejecting applications.

17. According to the French Government, only one condition may be regarded as creating a potential obstacle to the activity of collectors established in other Member States and to exports, namely the requirement that a collector must have a specific storage capacity in each of the zones for which he is approved. A collector established in another Member State would not necessarily have such storage capacity in the zone for which he seeks approval. According to assurances from the French Government, a forthcoming legislative measure will provide that such capacity may be situated in another Member State.

18. Regarding the question whether the conditions for granting approval are compatible with the provisions of the Treaty concerning freedom to provide services, the French Government contends that, in the light of the Court's case law, those conditions are justified on the ground of the protection of a general interest, namely protection of the environment, and conform with the principle of proportionality (Case C-154/89 *Commission* v *France* [1991] ECR I-659).

19. With regard to the requirement for evidence of the undertaking's experience, particularly of the means used to collect and store waste oil, the French authorities consider that applicants who have already obtained approval in another Member State meet this requirement.

Observations of the Commission

20. The Commission states that Directive 75/439, as amended by Council Directive 87/101 of 22 December 1986 (OJ 1986 L 42, p. 43), was adopted on the basis of Articles 100 and 235 of the Treaty and has two objectives, namely the approximation of national legislation, so as not to create unequal conditions of competition and obstacles to trade between the Member States, and protection of the environment.

21. The relevant provisions in the present case are Articles 5 and 6 of the directive. A fourth paragraph, which was added to Article 5 by Directive 87/101, provides that 'any undertaking which collects waste oil shall be subject to registration and adequate supervision by the competent national authorities including, if necessary, a system of authorization'. Consequently those provisions require the Member States, first, to submit undertakings which collect waste oil to registration and to adequate supervision by the competent national authorities and, secondly, to submit disposal undertakings to an authorization procedure.

22. With regard to a system for the collection and disposal of waste oil, such as that in the present case, which is operated by undertakings to which the authorities grant approval relating to restricted zones, the Commission refers to the Court's case-law cited above, following which the French authorities amended certain provisions of Decree No 79-981. Under those provisions, a natural or legal person already approved in a Member State other than France must apply to the French authorities for approval for a specified geographical zone in order to collect waste oil in France and take it to his or its own Member State.

23. In the Commission's opinion, the provisions in question have the effect, if not the object, of restricting the export of waste oil to other Member States.

24. The requirement for additional approval where the traders concerned have already been approved by another Member State is incompatible with Directive 75/439, which harmonizes the conditions for the collection and disposal of waste oil, the grant of

permits and the procedures for supervising undertakings responsible for the collection and disposal of waste oil, in such a way as to ensure protection of the environment and to safeguard the free movement of goods and services.

25. Therefore the fact that an undertaking of another Member State must undergo two authorization procedures constitutes a measure having an effect equivalent to a quantitative restriction on exports. Such a procedure has the effect of discouraging undertakings from other Member States and constitutes, in any event, a discriminatory measure as it confers a special advantage on domestic undertakings and the domestic market.

26. In the Commission's opinion, the restrictions entailed by the French legislation are not justified under Article 36 of the Treaty because Directive 75/439 has established a harmonized system and laid down the framework within which the appropriate checks must be carried out and the necessary protection measures taken. Furthermore, those restrictions cannot be justified on the basis of mandatory requirements relating to the protection of the environment, since the measures laid down by the French legislation are discriminatory.

27. What is more, those measures are disproportionate to the aim pursued by the directive in so far as protection of the environment and the proper collection of waste oil could be ensured equally well by a collector approved by the French authorities or by one approved by the authorities in another Member State.

28. The Commission therefore proposes that the Court's reply to the question from the national court should be that Article 34 of the Treaty must be interpreted as precluding national legislation which lays down that a collection undertaking which has been granted approval in another Member State and wishes to collect waste oil with a view to exporting it, must obtain an additional approval from the national authorities of the country in which the oil is collected.

V — Replies to questions from the Court

29. The Court requested the French Government and the Commission to give written replies to the two following questions:

'What interpretation must be given to Directive 75/439, in the version in force in 1985, in order to reply to the question whether that directive precludes national legislation such as the French legislation in force in 1985?

What is the relevance, for the purposes of replying to the question from the national court, of the amendment made to Directive 75/439 after 1985 and of the changes made after that date to the relevant French legislation?'

30. The *French Government's* reply to the first question is that the provisions of Directive 75/439 relevant to any consideration of the French legislation are Articles 5 and 6. The changes made by Council Directive 87/101 do not substantially amend those two articles, but merely made them more precise by expressly giving the Member States the option of using a system of authorization for collection undertakings, whereas the 1975 version merely required the Member States to take 'the necessary measures' to ensure collection.

31. From the outset, the French legislation (Decree No 79/981 of 21 November 1979 laying down rules for the recovery of waste oil) required an authorization for the collection and for the disposal of waste oil.

32. Following the Court's judgment in *Rhône-Alpes Huiles,* some provisions of the decree in question were amended by Decree No 85/387 of 29 March 1985. As a result, Article 2 of that decree reads as follows:

'Article 3 of the Decree of 21 November 1979 referred to above is amended as follows:

Article 3 — Holders must:

— either hand over their waste oil to approved collection undertakings, pursuant to Article 4 of this Decree:

— or ensure the transport of their waste oil themselves with a view to making it

directly available to a disposal undertaking which has obtained the approval provided for in Article 8 of this Decree or an authorization in another Member State of the European Economic Community pursuant to Article 6 of Council Directive 75/439 (...)'.

33. Therefore the legislation in force in France at the time of the facts which are the subject of the main proceedings was in pursuance of the objective of Directive 75/439, in that it took the measures necessary to ensure the safe collection and disposal of waste oil.

34. Regarding the second question, the French Government observes that Council Directive 87/101 still gave the Member States the power to take special measures for organizing the collection of waste oil and added that collection undertakings must be subject to registration and to adequate supervision by the competent national authorities, including, if necessary, a system of authorization. Consequently, for the purposes of replying to the question from the national court, that directive made Directive 75/439 more specific yet did not alter the system which it laid down.

35. The French rules concerning waste oil have been amended since 1985 by Decree No 89/192 of 24 March 1989 and Decree No 89/648 of 31 August 1989. The latter provides for the division of metropolitan France into geographical zones, whilst Article 1 of Decree No 89/192 laying down rules for the recovery of waste oil is worded as follows:

'Article 3 of the abovementioned Decree of 21 November 1979 is amended as follows:

Article 3 — Holders must

— either hand over their waste oil to collection undertakings approved under Article 4 of this Decree;

— or ensure the transport of their waste oil themselves with a view to handing it over to undertakings which collect legally in another Member State, in conformity with Community provisions (...) or to making it directly available to a disposal undertaking which has obtained the approval provided for in Article 8 of this Decree or an authorization in another Member State (...)'.

36. The *Commission* realizes that the amendment of Directive 75/439 after the date of the facts of the main proceedings does not affect the interpretation of the provisions in force at that date, but stresses that its submissions are the same in relation both to the unamended and the amended directive.

37. With regard to the proper interpretation of the directive in the version in force in 1985, the Commission contends that it is clear from the first, third and seventh recitals in the preamble that the directive has two objectives: first, to ensure protection of the environment and, secondly, to ensure the establishment at the Community level of a system which does not impede trade in the Community and does not affect the conditions of competition.

38. Regarding the exclusive right to collect waste oil of undertakings to which the French authorities grant approval for exclusive zones, the Commission refers to Article 5 of the directive and the Court's judgments in *Inter Huiles* and *Rhône-Alpes Huiles* (cited above) and Case 240/83 *Procureur de la République* v *ADBHU* [1985] ECR 531. Those judgments show that a system of exclusive rights granted to certain undertakings which leads to a restriction on trade in the Community is contrary to the objectives of the directive and to Article 34 of the Treaty.

39. So far as concerns the authorization procedure to which undertakings collecting waste oil are subject, the Commission contends that Directive 75/439, in the version in force at the date of the national facts, does not impose upon the Member States an obligation to subject collection undertakings to a prior authorization procedure. The only obligation relating to those establishments is that laid down by Article 10 of the directive.

40. Since Article 2 of the directive requires Member States to take the necessary measures to ensure the safe collection and disposal of waste oil, they must set up an efficient, coherent system for the treatment of waste oil in such a way as to protect the environment, while ensuring freedom of trade in the Community. However, a system of prior authorization of collection undertakings for a particular zone could be accepted only on condition that it did not create barriers to trade between Member States.

41. The Commission asserts that, in view of the requirements of the directive, the French system in force in 1985 had the object or effect of restricting exports and of conferring a special advantage on domestic production because disposal undertakings approved in another Member State were unable to set up a system for the collection of waste oil from holders established in France. To do so, they had to obtain another collection authorization for each geographical zone, which was ruled out by the French system based on an exclusive right of collection for each zone.

42. In this connection, the Commission refers to Article 3 of Decree No 79/981, as amended by Decree No 85/387, and argues that this system also prevents collection undertakings from other Member States which operate lawfully at home from collecting waste oil as intermediaries in order to deliver it to an approved disposal undertaking in another Member State.

43. In the Commission's opinion, having regard to the objectives of the directive as interpreted by the Court (see paragraph 10 of the judgment in *Rhône-Alpes Huiles*), it is sufficient for the collection undertaking to be operating lawfully or to be approved in a Member State for it to be able to act as an intermediary for the collection of waste oil from holders in France in order to deliver it to an approved disposal undertaking in another Member State.

44. The requirement under the French legislation for collection undertakings to be approved in France pursuant to Article 4 of the abovementioned decree goes beyond what is laid down by the harmonization directive as being necessary for the protection of the environment. The Commission stresses that the French authorities may still, by means of non-discriminatory domestic checks, supervise collection operations, including those carried out by collection undertakings authorized under the directive, so as to make sure that those operations are properly conducted.

C. N. Kakouris

Judge-Rapporteur