JUDGMENT OF THE COURT
2 December 1986 *

In Case 239/85

Commission of the European Communities, represented by its Legal Adviser, Jean Amphoux, acting as Agent, with an address for service in Luxembourg at the office of Georges Kremlis, Jean Monnet Building, Kirchberg,

v

Kingdom of Belgium, represented by Robert Hoebaer, Director at the Ministry of Foreign Affairs, Foreign Trade and Cooperation with Developing Countries, acting as Agent, with an address for service in Luxembourg at the Belgian Embassy, Résidence Champagne, 4 rue des Girondins,

APPLICATION for a declaration that by failing to adopt all the laws, regulations and administrative measures needed to implement Council Directive No 78/319/EEC of 20 March 1978 on toxic and dangerous waste (Official Journal 1970, L 84, p. 43), the Kingdom of Belgium has failed to fulfil its obligations under the EEC Treaty,

THE COURT

composed of: Y. Galmot, President of Chamber, acting as President, T. F. O'Higgins and F. Schockweiler (Presidents of Chambers), U. Everling, K. Bahlmann, R. Joliet and J. C. Moitinho de Almeida, Judges,

Advocate General: J. L. da Cruz Vilaça
Registrar: H. A. Rühl, Principal Administrator

having regard to the Report for the Hearing and further to the hearing on 10 July 1986,

* Language of the Case: French.

after hearing the Opinion of the Advocate General delivered at the sitting on 2 October 1986,

gives the following

JUDGMENT

1 By an application lodged at the Court Registry on 1 August 1985, the Commission of the European Communities brought an action under Article 169 of the EEC Treaty for a declaration that, by failing to adopt all the laws, regulations and administrative measures needed to implement in full Article 14 of Council Directive No 78/319/EEC of 20 March 1978 on toxic and dangerous waste, the Kingdom of Belgium has failed to fulfil its obligations under Articles 5 and 189 of the EEC Treaty.

2 Reference is made to the Report for the Hearing for the provisions of Directive No 78/319 and those of the national legislation at issue and for the submissions and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

3 The Commission's first complaint, as set out in its reply to the question put to it by the Court, is that in deciding to give effect to the obligation to make the declaration provided for by the second indent of Article 14 (1) of Directive No 78/319, the Belgian Government did not require establishments which produce, hold or dispose of toxic and dangerous waste to make available to the competent national authorities all the information specified in the first indent of Article 14 (1) of that directive.

4 It is clear, in the first place, from a comparison of those provisions of Directive No 78/319 with Article 18 of the Royal Decree of 9 February 1976 laying down general rules concerning toxic waste that the national rules do not require traders to provide any of the information specified by the directive relating either to the physical and chemical characteristics of the waste or to the dates of receipt and disposal of such waste.

5 Secondly, it should be noted that the aforesaid Belgian rules impose an obligation to provide information on waste disposal methods only where such disposal is carried out by the producer, although Directive No 78/319 contains no such restriction. Finally, it must be emphasized that although the national rules require the traders concerned to specify the destination of toxic waste, they are couched in vague terms as regards the duty laid down by Directive No 78/319 to indicate the location of the disposal site.

6 It must therefore be held that the Royal Decree of 9 February 1976 does not ensure the correct and complete transposition into national law of the provisions of Directive No 78/319 as regards any of the abovementioned matters.

7 The Belgian Government has expressed the intention before the Court of issuing a circular pending the amendment of the national rules complained of. It should be remembered, in that regard, that according to the consistent case-law of the Court, each Member State must implement directives in a manner which fully meets the requirement of legal certainty and must consequently transpose their terms into national law as binding provisions. The Kingdom of Belgium cannot therefore fulfil its obligations under Directive No 78/319 by means of a mere circular which may be amended by the administration at will.

8 The Commission's second complaint is that the Belgian rules do not require production of a form identifying the waste transported, as provided for by Article 14 (2) of Directive No 78/319.

9 In reply to that complaint, the Belgian Government has argued that the obligations imposed by that provision were fulfilled by incorporating into Belgian national law by laws of 10 August 1960 (*Moniteur belge* of 7. 10. 1960, p. 7678) and 24 January 1973 (*Moniteur belge* of 9. 5. 1973, p. 5828) the provisions of the European Agreement concerning the international carriage of dangerous goods by road and of the International Convention concerning the carriage of goods by rail.

10 It is clear from the titles of those international conventions that the Belgian legislation which transposed them into national law applies solely to carriage by road and rail. Accordingly, the provisions of Article 14 (2) of Directive No 78/319 remain wholly without effect as regards inland waterway, maritime and air transport.

11 It is also clear from the statement which was made by the Commission in its reasoned opinion of 16 October 1984 and which has not been contradicted by the Belgian Government that the indication of the 'location of the site of final disposal' of the waste, where known, which is required by Article 14 (2) of Directive No 78/319, is not required by the two aforementioned international conventions.

12 It must therefore be stated that the aforementioned Belgian laws lay down measures which are less stringent than those envisaged by Article 14 (2) of Directive No 78/319. Hence they cannot, by virtue of Article 2 of that directive, be regarded as constituting a satisfactory implementation of its provisions.

13 Although the Belgian Government has argued that the requirement that the site of final disposal of the waste must be indicated is satisfied in the Flemish region since the adoption of a decree on 21 April 1982, it does not deny that that is not the case in the Walloon and Brussels regions.

14 It must therefore be held that by failing to adopt all the laws or regulations needed to implement Council Directive No 78/319 the Kingdom of Belgium has failed to fulfil its obligations under the directive and under Articles 5 and 189 of the EEC Treaty.

Costs

15 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the defendant has failed in its submissions, it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

(1) Declares that, by failing to adopt all the laws or regulations needed to implement Council Directive No 78/319/EEC of 20 March 1978 on toxic and dangerous waste, the Kingdom of Belgium has failed to fulfil its obligations under the directive and under Articles 5 and 189 of the EEC Treaty;

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

Galmot O'Higgins Schockweiler

Everling Bahlmann Joliet Moitinho de Almeida

Delivered in open court in Luxembourg on 2 December 1986.

P. Heim
Registrar

Y. Galmot
President of Chamber
acting as President