REPORT FOR THE HEARING
delivered in Case 239/85 *

I — Facts and procedure

A — *Legislative framework of the dispute*

Council Directive No 78/319/EEC of 20 March 1978, based on both Article 100 and Article 235 of the Treaty, was intended:

(i) to abolish the unequal conditions of competition caused by the disparity between the provisions on disposal of toxic and dangerous waste already applicable or in preparation in the Member States;

(ii) to achieve one of the aims of the Community in the sphere of protection of the environment and improvement of the quality of life by adopting more extensive rules.

The directive indicates the toxic and dangerous waste coming within or excluded from its scope in Articles 1 and 3 respectively, and imposes obligations on the Member States and on private persons.

(1) *Obligations imposed on the Member States*

According to Articles 4 and 5 of the directive, Member States are to take appropriate steps 'to encourage, as a matter of priority, the prevention of toxic and dangerous waste, its processing and recycling' and the necessary measures 'to ensure that toxic and dangerous waste is disposed of without endangering human health and without harming the environment'.

To that end, the Member States are, according to Article 5 (2), to 'prohibit the abandonment and uncontrolled discharge, tipping or carriage of toxic and dangerous waste, as well as its consignment to installations, establishments or undertakings other than those referred to in Article 9 (1)'.

According to Article 6 of that directive, they are also to 'designate . . . the competent . . . authorities to be responsible, in a given area, for the planning, organization, authorization and supervision of operations for the disposal of toxic and dangerous waste'. Under Article 12 of the directive, those authorities are to keep up-to-date plans for the disposal of toxic and dangerous waste.

Article 8 of the directive provides that Member States may at any time take more stringent measures with regard to toxic and dangerous waste than those provided for in the directive. They may only derogate from the provisions of the directive, however, after informing the Commission of such derogations in accordance with Article 13.

Article 2 of the directive also provides that:

'When Member States which are parties to one or more international conventions concerning the carriage of dangerous goods are applying those conventions, this shall be adequate for the purposes of this directive

* Language of the Case: French.

so far as carriage is concerned, provided that the measures being applied in implementation of the conventions are at least as stringent as those required for the implementation of the directive.'

(2) *Obligations imposed on traders*

Installations producing, holding or disposing of toxic and dangerous waste, as well as undertakings engaged in the carriage of such waste are subject to control by the competent authorities under Articles 15 and 9 of the directive respectively.

In that regard, the persons concerned must comply, in particular, with the requirements of Article 14. That article provides as follows:

'1. Any installation, establishment or undertaking which produces, holds and/or disposes of toxic and dangerous waste shall:

(i) keep a record of the quantity, nature, physical and chemical characteristics and origin of such waste, and of the methods and sites used for disposing of such waste, including the dates of receipt and disposal;

(ii) and/or make this information available to the competent authorities on request.

2. When toxic and dangerous waste is transported in the course of disposal it shall be accompanied by an identification form containing at least the following details:

nature;

composition;

volume or mass of the waste;

name and address of the producer or of the previous holder(s);

name and address of the next holder or of the final disposer;

location of the site of final disposal where known.

3. Documentary evidence that the disposal operations have been carried out shall be kept for as long as the Member States deem necessary.

This evidence shall, where necessary, be addressed to the relevant authorities of the Member States concerned.'

B — *Origin and development of the dispute*

Article 21 of Directive No 78/319 provides as follows: Member States shall bring into force the measures necessary to comply with this directive within 24 months of its notification. They shall forthwith inform the Commission thereof.'

Since the directive was notified to the Kingdom of Belgium on 22 March 1978, that period expired on 22 March 1980.

By letter of 2 May 1980, the Belgian Permanent Representation to the European Communities transmitted to the Commission the texts of:

(i) the law of 22 July 1974 on toxic waste (*Moniteur belge* of 1. 3. 1975);

(ii) the Royal Decree of 9 February 1976 laying down general rules concerning toxic waste (*Moniteur belge* of 14. 2. 1976).

In that letter, the Permanent Representation made clear that Directive No 78/319 should

be regarded as having been implemented by the provisions of the abovementioned law and royal decree, subject to certain amendments which would have to be made to the list of products contained in Article 2 of the royal decree in order to bring it into line with the list annexed to the directive.

However, the Commission considers that those measures do not constitute a complete transposition of Directive No 78/319 and, more particularly, of Article 14 thereof. In its view, the Belgian rules provide neither for the keeping of records by undertakings which produce, hold or dispose of toxic waste nor for the identification form for waste which is transported, as required by Article 14 in paragraphs 1 and 2 respectively.

By letter of 15 November 1983 the Commission called upon the Belgian Government to submit its observations within two months, in accordance with the provisions of the first paragraph of Article 169 of the Treaty.

By letter of 27 February 1984, the Belgian Permanent Representation informed the Commission that:

(i) Articles 16, 17 and 18 of the Royal Decree of 9 February 1976 went further than was required by Article 14 (1) of the directive inasmuch as they required that an annual or monthly declaration be made to the competent authority in respect of the holding, sale, disposal for consideration or otherwise and export of toxic waste;

(ii) Compliance with Article 14 (2) of the directive was ensured, in accordance with Article 2 thereof, by the incorporation in the abovementioned Belgian legislation of the provisions of certain international conventions on transport, such as the European Agreement concerning the international carriage of dangerous goods by road of 30 September 1957 and the International Convention concerning the carriage of goods by rail, approved by the laws of 10 August 1960 and 24 January 1973 respectively. The text of those two laws was transmitted to the Commission by letter of the Belgian Government dated 20 March 1984.

The Commission considers that the declaration system established by the Belgian rules does not ensure the same degree of certainty as that which would be obtained under the system envisaged by Article 14 (1) of the directive. The Commission also considers that the content of the declarations provided for by the Belgian rules is insufficient inasmuch as it does not include the information required by Article 14 (1), particularly in regard to the physical and chemical characteristics of the waste in question, the methods and sites used for disposing of such waste and the dates of receipt and disposal therof.

With regard to the transport of waste, the Commission considers that the provisions of the abovementioned conventions are not sufficient to transpose those of Article 14 (2) of the directive into national law since the conventions are limited to transport by road or rail and do not satisfy all the requirements of the directive; in particular, they do not require the location of the site of final disposal to be indicated even though, according to Article 14 (2) of the directive, it must be specified in the documents accompanying the waste being transported.

On 16 October 1984, the Commission delivered a reasoned opinion in accordance with the second paragraph of Article 169 of the Treaty. In that opinion it concluded that by failing to adopt all the laws, regulations and administrative measures necessary to implement Council Directive No 78/319, the Kingdom of Belgium had failed to fulfil its obligations under that directive. The

opinion was notified to the Belgian Government on the same day and called upon the latter to comply with its terms within two months.

Since that time-limit expired without any reply having been received from the Belgian Government, the Commission brought the present action, which was received at the Court Registry on 1 August 1985.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided, in accordance with Article 21 of the Protocol on the Statute of the Court of Justice of the EEC and Article 45 of the Rules of Procedure, to put a question to the Commission and requested it to reply in writing by 29 April 1986.

The Commission replied to the question within the period set by the Court.

In accordance with Article 54 of the Rules of Procedure, the President of the Court of Justice fixed the date for the opening of the oral procedure after the expiry of the period within which the Commission was to reply to the question put by the Court.

II — Conclusions of the parties

The *Commission* claims that the Court should:

1. Declare that the Kingdom of Belgium has, by failing to adopt all the measures necessary to implement Article 14 of Council Directive No 78/319/EEC of 20 March 1978 on toxic and dangerous waste, failed to fulfil one of its obligations under the Treaty;

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

The *Kingdom of Belgium* submitted a defence which did not contain any formal conclusions.

III — Summary of the parties' arguments

The *Commission* considers that the Belgian Government has failed to fulfil its obligations under Articles 5 and 189 of the Treaty, according to which Member States are required to take all appropriate measures within the prescribed periods to ensure complete implementation of directives in their internal legal order.

Those obligations cannot be regarded as fulfilled when a Member State dispenses its nationals from keeping records and from supplying all the information required by Article 14 (1) of Council Directive No 78/319.

The same is true with regard to the obligation to draw up an identification form in respect of the goods being transported, as required by Article 14 (2) of the same directive, inasmuch as, under Article 2 of the directive, the implementation of international conventions concerning the carriage of dangerous goods can dispense the Member States concerned from adopting supplementary measures for the implementation of the directive only if the measures being applied in implementation of those conventions are at least as stringent as those required for the implementation of the directive. However, the conventions relied upon by the Belgian Government do not cover transport by sea, inland waterway or air.

The Commission states that even if the decree of the Flemish Executive Council of 21 April 1982, relied upon by the Belgian Government in its defence, is capable of meeting the requirements of Article 14 (2) of the directive, there is still a failure to comply with that provision on the part of the Walloon and Brussels regions.

The Commission states that it has taken note of the intention expressed by the Belgian Government in its defence and reply to adapt its rules in order to bring them into line with Article 14 (1) of Directive No 718/319. However, the Commission considers that the infringement complained of subsists notwithstanding the Belgian Government's intention to issue circulars pending the amendment of the Royal Decree of 9 February 1976. In the Commission's view, that infringement will come to an end only with the entry into force of the royal decree making the necessary amendments to the Decree of 9 February 1976.

The *Belgian Government* states that in order to comply with the provisions of Article 14 (1), which require the undertakings concerned to keep records containing all the information specified, the Royal Decree of 9 February 1976 laying down general rules concerning toxic waste will be amended in the next few months and until that time, the implementation of the terms of the directive will be ensured by the issue of a circular.

With regard to the contents of the forms accompanying the waste being transported, and in particular the indication of the location of the site of final disposal required by Article 14 (2) of the directive, the Belgian Government states that that obligation is being fulfilled in the Flemish region by the Decree of 21 April 1982, adopted in implementation of Article 33 of the Decree of 2 July 1981.

The authorities in the Walloon region intend to adopt a similar decree. With regard to the Brussels region, a circular will be issued in the very near future pending the amendment of the law and its implementing decrees.

IV — Question put to the Commission by the Court

Question

Article 14 (1) of Council Directive No 78/319/EEC of 20 March 1978 on toxic and dangerous waste provides for the compilation of a record and/or the communication of the information entered in that record to the competent authorities on request, those being alternatives.

Why did the Commission consider that one aspect of the Kingdom of Belgium's failure to fulfil its obligations was the fact that the national legislation did not impose an obligation to keep the record in question?

This question arises independently of the fact that the documents before the Court seem to show that the annual declaration provided for by the national legislation does not contain all the information referred to in Article 14 (1) of the directive.

Answer

The Commission states that its complaint concerning the Belgian rules is not that those rules do not require the record referred to in Article 14 (1) of the directive to be kept and merely implement Article 14 (2). The Commission's complaint is that the Belgian rules do not require all the traders concerned to make available all the information specified in Article 14 (1) of the directive.

The Commission states that the relevant provisions in that regard are Articles 17 and 18 of the Royal Decree of 9 February 1976 laying down general rules concerning toxic waste.

Those provisions are as follows:

Article 17

The storage, sale, disposal for or without consideration and the exportation of toxic waste shall be declared within eight days of the date of the operation.

By derogation from the provisions of the aforesaid paragraph:

(a) the storage declaration may be made annually by producers and monthly by importers and purchasers in the trade who do not themselves destroy, neutralize or dispose of the waste;

(b) the declaration of sale and disposal for or without consideration may be made monthly by producers of toxic waste and by importers and purchasers in the trade.

The declaration of purchase and importation shall be made on a monthly basis.

Article 18

The declarations shall be submitted to the Department of Occupational Hygiene and Industrial Medicine and must contain at least the following information:

1. the nature and origin of the toxic waste;
2. the quantity and destination of the toxic waste.

By derogation from the provisions of paragraph 1, the storage declarations made by the producers of toxic waste must contain at least the following information:

1. the nature and origin of the toxic waste;
2. the approximate quantity produced each year;
3. the method of storage and disposal if the destruction, neutralization or disposal of the waste is not carried out by the producer;
4. the method of destruction, neutralization or disposal if those operations are carried out by the producer.

Y. Galmot
Judge-Rapporteur