OPINION OF MRS ADVOCATE GENERAL ROZÈS DELIVERED ON 12 JANUARY 1984 [1]

Mr President,
Members of the Court,

The question which has been referred to the Court by the Cour d'Appel, Lyon, for a preliminary ruling raises the issue of the compatibility with Community law of provisions laid down by regulation in France to implement Council Directive 75/439/EEC of 16 June 1975 on the disposal of waste oils (Official Journal, L 194, p. 23).

Both the proceedings before the national court and the observations which have been submitted to the Court of Justice essentially relate to points of fact and law which are known to the Court and on which judgment has already been given on 10 March 1983 in Case 172/82 *Inter-Huiles* [1983] ECR 555 on a reference from the Tribunal de Grande Instance, Versailles. In view of the identical subject-matter of both references, I shall confine my examination to the peculiarities which distinguish this case, considering successively the new points of fact and of law.

I — Questions of fact

The case concerns, on the one hand, the possible extension of the Court's ruling in *Inter-Huiles* to include a new category of undertakings and, on the other hand, the consideration of certain technical and economic factors.

1. In the earlier case, the question submitted concerned only "collectors of waste oils". The Cour d'Appel, Lyon, has opted for a wider form of words which includes "holders" of that product.

In this connection it is sufficient to point out that in its judgment in the *Inter-Huiles* case, the Court stated that

"The Community rules on the free movement of goods and Council Directive 75/439 ... do not allow a Member State to organize *a system for the collection and disposal of waste oils* within its territory in such a way as to prohibit exports to an authorized disposal or regenerating undertaking in another Member State" (at paragraph 16, my emphasis).

That answer applies generally to the national system for the collection and treatment of this product. The general nature of its terms allows me to reaffirm my view [2] that the description of the trader concerned does not affect the incompatibility of any national rules maintaining such an export ban.

2. The Syndicat National des Fabricants Raffineurs d'Huiles de Graissage has adverted, on the one hand, to the findings of a technical inquiry (the Intercomm report), and, on the other, to the nature of the trade in waste oils within the Community.

2.1. The Intercomm report was drawn up at the request of the Commission and

1 — Translated from the French.

2 — Cf. my Opinion in Case 172/82 at paragraph II (2) (b), p. 570.

delivered at the end of 1980. In substance, it recommends that waste oils should be treated by recycling, which is preferable to burning for ecological, economic and social reasons and for the conservation of energy.

The Syndicat National notes that there is therefore an identity of aims between the disputed French rules and those recommendations; it also points out the disparities in the Member States' legislation implementing the directive, depending on whether they have given the priority to burning or regeneration. Taken together, those considerations justify the restrictions on exports which have been decided on by a Member State which is anxious to provide for a treatment of the product not giving rise to pollution.

This line of argument, which has already been put forward in the *Inter-Huiles* case, consists essentially in favouring the protection of the environment at the expense of the free movement of goods. However, in that case, the Court has held that the protection of the environment, inasmuch as it is provided for in a uniform manner in all the Member States in accordance with the directive, is not enough to justify an export ban. [1] This seems to me to be a sufficient answer.

2.2. There remains the argument that the disparity in the legislation of the Member States, which is due to different approaches to the treatment of waste oils, has led to certain economic distortions. The statistics supplied by the Commission at the request of the Court in Case 172/82 show that France is the main exporter of waste oils in the European Economic Community (with more than 80% of annual exports within the Community). The French Government and the Syndicat National point out the contradiction between these figures and the restrictions which the French rules are supposed to produce.

These statistics, though they may be paradoxical in the light of the export ban resulting from the national rules, do not remove the principle, that the rules are inconsistent with Community law. Without there being any need to consider their practical effects on trade in waste oils within the Community, it appears that they are incompatible with Community law as long as the actual content of the national system of collection and disposal remains unchanged, with the logical implication that such a restriction continues. Thus none of the elements of fact which have been put forward here can alter the substance of the Court's decision in the *Inter-Huiles* case.

II — Questions of law

It would be appropriate at this point to consider how the Court's decision in *Inter-Huiles* is affected by the Commission's proposal for a directive on transfrontier shipment of hazardous wastes and by a French Government note stating its rules on the export of waste oils.

1. The Commission has submitted a Proposal for a Council Directive on the supervision and control of transfrontier shipment of hazardous wastes within the European Community (Official Journal 1983, C 53, p. 3). Article 2 of that proposed directive includes waste oils in

1 — Case 172/82 [1983] ECR 555, at p. 566, paragraph 14.

the definition of "hazardous waste" of which the shipment is accordingly subjected to stringent control procedures.

This proposal is intended to complement Directive 75/439, which indeed does not deal with the question of the conditions governing the transport of waste oils. Can such a gap in the law be relied upon as a justification for the export ban contained by implication in the disputed national rules?

The answer is negative on two grounds: in the first place, both Directive 75/439 and the proposed directive considered above expressly endorse the principle of free movement the supremacy of which has been clearly established in the Court's judgment in the *Inter-Huiles* case; in the second place, the directive, by providing that only undertakings *holding a permit* are made responsible in each Member State for the treatment of waste oils (Article 6), provides for the protection of the environment whatever may be the Member State which is to receive the relevant products.

While the provisions for the transfrontier shipment of waste oils are governed by the law of the Member States until the proposed directive is definitively adopted, they must, therefore, observe the principle that there must be no restrictions on exports of the product. This seems to be precisely the object of the internal memorandum drawn up by the French Ministry of Economic Affairs and Finance.

2. The effect of that memorandum, which was dated 26 October 1982 and addressed to the principal customs officers for the French regions, raises more sensitive issues, but I do not think that they should lead the Court to reverse its judgments in *Inter-Huiles.*

That memorandum regulates the customs control of export applications for waste oils; it requires exporters to supply a certificate showing that the final consignee is a disposal undertaking licensed by the authorities of the Member State of destination. According to the French Government, the stated purpose of the memorandum confirms the compatibility of the disputed national rules with Directive 75/439.

I do not share that view.

First of all, the internal memorandum reserves the right to make exports to "holders" and "approved collectors" alone; as far as disposal undertakings are concerned, the export ban therefore remains wholly in force (see my Opinion in the *Inter-Huiles* case, paragraph III (2) (d).

Furthermore, the legal force which may be given to that memorandum seems to me to be relative to say the least. Since it is merely an internal measure designed to interpret the existing rules for the benefit of the officials who are to apply it, the memorandum has not been published. Moreover, it expressly states that it is subject to review in the light of circumstances. Finally, when the question had been put to it by the Court in the *Inter-Huiles* case, the government confirmed that even though the memorandum had been issued for more than a month the prohibition of exports entailed by the French system for the collection and treatment of waste oils continued.

The internal memorandum under consideration therefore has all the features of what have been described as mere administrative practices, "which by their nature can be changed as and when the authorities please and which are not publicized widely enough", and which do not meet "the requirements of clarity and certainty in legal situations which directives seek (Case 102/79 *Commission*

v *Belgium* [1980] ECR 1473 at p. 1486, paragraph 11; also, more recently, Case 145/82 *Commission* v *Italy* [1983] ECR 711 at p. 718, paragraphs 9 and 10). These requirements are essential for the legal protection of individual rights, *a fortiori* when the administrative practice in question is supposed to be terminating the infringement of a directive by the national provisions ensuring its implementation in the national legal system. In view of the features which attach to its nature, the internal memorandum is therefore incapable of expunging the prohibition of exports which is a logical result of the French rules at issue.

It does not appear to me, therefore, that on this analysis any of the submissions of fact or law is of such a nature as to require the reconsideration by the Court of the answer given in its judgment of 10 March 1983 in the *Inter-Huiles* case. For this reason I should like to refer to the Opinion which I delivered in that case, and I propose that the question which has been put to the Court by the Cour d'Appel, Lyon, should be answered as follows:

Council Directive 75/439/EEC of 16 June 1975 on the disposal of waste oils may not be interpreted as sanctioning a national provision implementing it which has the effect of prohibiting exports of waste oils to other Member States.