In Case 295/82

REFERENCE to the Court under Article 177 of the EEC Treaty by the Cour d'Appel [Court of Appeal], Lyon, for a preliminary ruling in the action pending before that court between

GROUPEMENT D'INTÉRÊT ÉCONOMIQUE "RHÔNE ALPES HUILES" AND OTHERS

and

SYNDICAT NATIONAL DES FABRICANTS RAFFINEURS D'HUILE DE GRAISSAGE AND OTHERS

on the interpretation of Articles 30 and 34 of the EEC Treaty and of Council Directive 75/439/EEC of 16 June 1975 on the disposal of waste oils (Official Journal, L 194, p. 23),

THE COURT (Third Chamber)

composed of: Y. Galmot, President of Chamber, Lord Mackenzie Stuart and U. Everling, Judges,

Advocate General: S. Rozès
Registrar: J. A. Pompe, Deputy Registrar

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the written observations submitted pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and written procedure

The disposal of waste oils is the subject of Council Directive 75/439/EEC of 16 June 1975 (Official Journal 1975, L 194, p. 23).

The directive provides that Member States must take the necessary measures to ensure the safe collection and disposal of waste oils, preferably by recycling (Articles 2 to 4). Article 5 of the directive 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."

The French Republic implemented the directive in Decree No 79-981 of 21 November 1979 "laying down rules for the recovery of waste oils" (Journal Officiel de la République Française of 23 November 1979, p. 2900), and further by the Order of 21 November 1979 on the "conditions for the collection of waste oils in pursuance of Decree No 79-981 of 21 November 1979 laying down rules for the recovery of waste oils" (Journal Officiel de la République Française of 23 November 1979, p. 2901) and by the Order of 21 November 1979 on the "conditions for the disposal of waste oils in pursuance of Decree No 79-981 of 21 November 1979 laying down rules for the recovery of waste oils" (Journal Officiel de la République Française of 23 November 1979, p. 2903).

The French legislation provides in substance that:

Holders who accumulate waste oils as a result of their business activities must either deliver their waste oils to approved collectors, or, if they transport their waste oils themselves, deliver them to approved disposal undertakings, or dispose themselves of the waste oils which they produce, provided that they have been issued with an approval from the Ministry of the Environment (Article 3 of Decree No 79-981 of 21 November 1979 laying down rules for the recovery of waste oils);

In order to ensure that all waste oils are collected, the whole country is partitioned into geographical zones (generally the *départements*), in each of which an approved collector has been appointed by the Minister for the Environment on the basis of an invitation to tender and the opinion of an inter-departmental committee of approval;

The approved collector is responsible for the collection of all waste oils produced in the zone for which an approval has been granted to it;

The approved collector must deliver waste oils to an approved disposal undertaking, except for clear oils which may also be reused without further treatment (Article 10 of the Annex to the Order of 21 November 1979 on the conditions for the collection of waste oils);

The disposal of waste oils is likewise subject to an approval issued by the Minister for the Environment;

Approved disposal undertakings must treat the waste oils in their own plants, or their approval may be withdrawn.

The Syndicat National des Fabricants Raffineurs d'Huile de Graissage, together with four other plaintiffs, brought an action before the Tribunal de Grande Instance [Regional Court], Saint-Étienne, seeking essentially to have the Groupement d'Intérêt Économique "Rhône Alpes Huiles" (hereinafter referred to as "Rhône Alpes Huiles") and the other defendants restrained from collecting waste oils in certain geographical zones. In support of their application, the plaintiffs claim that the defendants, who had not been approved by the authorities for the collection of waste oils, set up their groups and

companies in a clear attempt to evade the law and in order to enable them to continue their former activities of collecting waste oils without approval. Before the Tribunal de Grande Instance, Saint-Étienne, the plaintiffs also claimed that the defendants set aside a substantial quantity of the oils which they collected for export to Belgium and the Federal Republic of Germany.

Rhône Alpes Huiles and the other defendants at first instance claimed before the national court that application of the French domestic legislation constituted a measure having an effect equivalent to a quantitative restriction on exports and imports contrary to Article 30 of the EEC Treaty and, moreover, was not justified by virtue of the derogations permitted by Article 36 of the Treaty. The Tribunal de Grande Instance, Saint Étienne, decided, by judgment of 28 October 1981, "that the French legislation is justified under Article 36 of the EEC Treaty".

On appeal by the defendants, the Cour d'Appel, Lyon, decided by judgment of 18 November 1982 to stay the proceedings and refer the following question to the Court of Justice for a preliminary ruling:

"Are the provisions contained in Article 3 of Decree No 79-981 of 21 November 1979, requiring holders of waste oils who transport such wastes themselves to place them at the disposal of a disposal undertaking holding a permit under Article 8 of the decree, and the provisions of Article 10 of the annex to the order of 21 November 1979 on the conditions for the collection of waste oils, requiring approved collectors to deliver the waste oils to approved disposal undertakings, compatible with Article 30 et seq. of the Treaty of Rome prohibiting quantitative restrictions on imports between Member States and all measures having equivalent effect, and are they compatible with the directives issued on the subject by the Council of the Communities?"

The judgment making the reference was received at the Court Registry on 22 November 1982.

Pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC written observations were submitted by the Syndicat National des Fabricants Raffineurs d'Huile de Graissage and Others, represented by J. F. Renaud and A. Desmazières de Séchelles of the Paris Bar; by Rhône Alpes Huiles and Others, represented by J. Thréard of the Paris Bar; by the Commission of the European Communities, represented by its Legal Adviser, R. Wägenbaur; by the French Government, represented by J. P. Costes of the General Secretariat of the Comité Interministériel pour les Questions de Coopération Économique Européenne [Interdepartmental Committee for Questions on European Economic Cooperation]; and by the Italian Government, represented by P. G. Ferri, Avvocato dello Stato.

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 inquiry and to assign the case to the Third Chamber.

II — Summary of the observations submitted to the Court

Rhône Alpes Huiles and the other appellants in the main proceedings consider that the French legislation

constitutes a measure having an effect equivalent to a quantitative restriction on exports which cannot be justified under Article 36 of the EEC Treaty. They refer, as regards the other aspects of the case, to the observations submitted in Case 172/82, *Inter-Huiles.* However, they observe that in Case 172/82 the Tribunal de Grande Instance, Versailles, limited its reference to the position of collectors of oils, whereas the Cour d'Appel, Lyon, has extended it to include holders of waste oils.

The *Syndicat National des Fabricants Raffineurs d'Huile de Graissage* and the other respondents in the main proceedings also refer broadly to the arguments which they put forward in Case 172/82. Thus they again contend that the legality of the French legislation should be examined not in relation to Article 30 et seq. of the Treaty, but in the context of Directive 75/439/EEC. In fact the Court is asked to give a preliminary ruling not on the validity of the directive but rather on a question of interpretation. Moreover, they state that Article 90 of the EEC Treaty, a provision based on public policy, in their view justifies the French legislation. As a result of the procedural rules contained in Article 90, as long as the Commission has not contested the restrictions in question, those restrictions are permissible. They are binding on the national court.

According to the respondents in the main proceedings, the directive is not intended to ensure the free movement of black waste oils between Member States of the EEC. On the contrary, that free movement may be sacrificed in order to achieve one or more other overriding objectives (which explains why Article 235 of the EEC Treaty is relied upon as the legal basis for the directive).

The system of exclusive rights has beneficial effects which are justified by Article 5 of Directive 75/439 and by Articles 90 (2) und 85 (3) of the EEC Treaty. In fact, the appellants are by their unlawful activities jeopardizing the achievement of the objectives of protection of the environment and conservation of raw materials by rendering the task undertaken by the approved collectors unprofitable.

The raw material can be effectively recycled only by regeneration, and not by burning. France has chosen to give absolute priority to regeneration and prohibits burning. The French system of exclusive rights is indispensable, in order to reduce distortions arising out of the failure to implement the directive in certain Member States and the fact that is has been implemented in different ways in the other Member States. Regeneration in France is thus discouraged, as is demonstrated by the fact that the company Sopaluna has for some months been treating tonnages below its profit threshold. The respondents in the main proceedings therefore conclude that the Court should give the following reply to the question referred to it:

"The provisions referred to by the national court must be examined not in relation to Articles 30, 34 and 36 of the EEC Treaty, but in the context of Council Directive 75/439/EEC.

By virtue of Article 5 of Council Directive 75/439/EEC read in conjunction with Article 90 of the EEC

Treaty, the restrictions in question are binding on the national court, unless and until they are called in question by the Commission according to the procedure laid down in Article 90 (3) of the EEC Treaty and in application of the legislation to which that provision clearly refers."

The *French Government* refers in its observations to the observations which it submitted in Case 172/82. In addition, it provides statistics to show that the records of intra-Community trade in waste oils reveal artificial patterns of exports from France to the Federal Republic of Germany and Belgium.

The *Italian Government* for its part considers that Directive 75/439/EEC lays down compulsory rules for the Member States which involve restrictions on the trade in waste oils. That follows from a reading of Articles 5, 6 and 7 of the directive in conjunction with each other, which provide that the use and movement of that product must be supervised. If it is necessary to ensure that the waste oil is treated in a specified manner in order to prevent pollution and at the same time to promote the recycling of energy, it is impossible to avoid "compulsory" routing of the product so that it is taken directly and in a manner which can be effectively checked to the point at which it is properly disposed of.

Article 7 of the directive specifically limits the freedom to trade in waste oil. The holder, that is to say the person of undertaking on whose premises the degraded product is actually produced, is expressly obliged, by virtue of the reference made in Article 7 to Article 5, to comply with the measures adopted by the Member States in order "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."

The Italian Government therefore proposes that the Court should reply to the question referred to it as follows:

"The provisions of national law adopted in order to implement Directive 75/439/EEC which restrict exports of waste oil by reason of the prohibition of any commercial transactions in respect of such oil which are incompatible with the requirements laid down in Articles 5 and 7 of the directive do not infringe Article 34 of the Treaty. Those transactions consist in particular in:

(a) delivery of the waste oil by the original holder to persons or undertakings other than those designated, under the national rules, as collectors or disposal undertakings in accordance with Article 5 of the directive;

(b) delivery of the waste oil by persons or undertakings which are not the original holders of the waste oil or collectors or disposal undertakings as defined in subparagraph (a) above to any other person or undertaking, even an authorized disposal undertaking."

The *Commission* for its part also refers to the observation lodged in Case 172/82. It proposes that the questions referred to the Court should be answered as follows:

"Article 34 must be interpreted as prohibiting a Member State from organizing on its territory a system for the collection and disposal of waste oils which prohibits holders and collectors of waste oil from delivering such oil to traders lawfully operating in other Member States."

III — Oral procedure

The appellants in the main action, represented by J. Thréard, the respondents in the main action, represented by A. Desmazières de Séchelles, the French Government, represented by its Agent, B. Botte, the Italian Government, represented by its Agent, P. G. Ferri, and the Commission, represented by R. Wägenbaur, a member of its Legal Department, presented oral observations at the sitting on 10 November 1983.

The Advocate General delivered her opinion at the sitting on 12 January 1984.

Decision

1 By judgment of 18 November 1982, received at the Court on 22 November 1982, the Cour d'Appel [Court of Appeal], Lyon, referred to it a question for a preliminary ruling under Article 177 of the EEC Treaty on the interpretation of Council Directive 75/439/EEC of 16 June 1975 on the disposal of waste oils (Official Journal, L 194, p. 23) and Article 30 et seq. of the EEC Treaty, for the purpose of determining the compatibility with those provisions of French Decree No 79-981 of 21 November 1979 laying down rules for the recovery of waste oils (Journal Officiel de la République Française of 23 November 1979, p. 2900) and the orders implementing it.

2 The main action is between, on the one hand, the Syndicat National des Fabricants Raffineurs d'Huile de Graissage and four other plaintiffs at first instance (respondents before the Cour d'Appel), and, on the other, the Groupement d'Intérêt Économique "Rhône Alpes Huiles" and three other defendants (appellants before the Cour d'Appel). The purpose of the action is to restrain the defendants from collecting waste oils in a number of geographical zones, in so far as the appellants do not have the permit required by French legislation and export the oils collected in breach of that legislation.

3 The disposal of waste oils is the subject of the aforementioned Council Directive 75/439. Articles 2 to 4 of the directive provide that Member States must take the necessary measures to ensure the safe collection and disposal of waste oils, preferably by recycling. Article 5 of the directive 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". Article 7 requires holders of waste oils to place them "at the disposal of the undertaking or undertakings referred to in Article 5", except if they are in a position to discharge, deposit or process them in a way which is not prohibited under Article 4 for reasons connected with the protection of the environment.

4 By way of implementation of that directive, the French Government, on 21 November 1979, adopted Decree No 79-981, laying down rules for the recovery of waste oils, and two implementing orders of the same date. Those provisions introduced a system of permits both for collectors of waste oils and for undertakings responsible for the disposal of such oils. Decree No 79-981 provides expressly that collectors must deliver the waste oils collected to approved disposal undertakings. Articles 2 and 9 of the order on the conditions for the disposal of waste oils stipulate, moreover, that approved disposal undertakings must treat the waste oils in their own installations or be liable to have their permit withdrawn. Finally, Article 3 of Decree No 79-981 requires those holders of waste oils who themselves carry out the transport thereof to place them at the disposal of a disposal undertaking holding a permit under Article 8 of that decree.

5 In that connection, the Cour d'Appel, Lyon, considered that the French legislation contained by implication a prohibition, applying to both approved collectors and holders of waste oils, on exportation of those oils to other countries, including Member States of the Community.

6 The Groupement d'Intérêt Économique "Rhône Alpes Huiles" and the other appellants maintained in their action before the national court that such an export ban was incompatible with Community rules on the free movement of goods, and the Cour d'Appel, Lyon, stayed the proceedings and referred the following question to the Court for a preliminary ruling:

"Are the provisions contained in Article 3 of Decree No 79-981 of 21 November 1979, requiring holders of waste oils who transport such wastes themselves to place them at the disposal of a disposal undertaking holding a permit under Article 8 of the decree, and the provisions of Article 10 of the annex to the order of 21 November 1979 on the conditions for the collection of waste oils, requiring approved collectors to deliver the waste oils to approved disposal undertakings, compatible with the provisions of Article 30 et seq. of the Treaty of Rome prohibiting quantitative restrictions on imports between Member States and all measures having equivalent effect, and are they compatible with the directives issued on the subject by the Council of the Communities?"

7 This question is substantially similar to the question which was answered in the judgment of the Court of 10 March 1983 in Case 172/82 *Inter-Huiles* [1983] ECR 555. Like the question in that case its purpose is to establish whether Community rules on the free movement of goods, and Council Directive 75/439 of 16 June 1975 on the disposal of waste oils, permit 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. However, unlike the question raised in the earlier case, it draws a distinction between used oils which are delivered by a holder and those which are delivered by an approved collector.

8 In its above-mentioned judgment in the *Inter-Huiles* case, the Court has indicated in general terms that the Community rules on the free movement of goods, as well as Council Directive 75/439 of 16 June 1975 on the disposal of waste oils, 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.

9 Thus the Court has not drawn a distinction between exports which are carried out through approved collectors and those made by the holders of waste oils. For to the extent to which the holders of waste oils are entitled under Article 7 of Directive 75/439 to make their own deliveries of the oils they have produced to an approved disposal undertaking, it is not open to

Member States to subject them to restrictions on exports contrary to the aims of the directive and to Article 34 of the Treaty.

10 In reply to the Cour d'Appel, Lyon, it should therefore be stated that the aims of Council Directive 75/439 of 16 June 1975 on the disposal of waste oils and the rules laid down by the EEC Treaty on the free movement of goods require that waste oils may be delivered by either a holder or an approved collector to a disposal undertaking in another Member State which holds a permit in that State in accordance with Article 6 of the directive.

11 However, the French Government has indicated that France is the main exporter of waste oils within the Community and considers that a Member State in such a position cannot be accused of impeding the exportation of such products. In that connection, it should be noted that the mere fact that the great majority of exports within the Community come form a single Member State does not justify the inference that the legislation of that Member State permits exports to other Member States by collectors and holders.

12 In any event, whilst the French Government has maintained that its national legislation, taken together with a customs circular dated 20 October 1982, permits, in practice, the resale of waste oils to authorized disposal undertakings in other Member States, it should be borne in mind that the Court, in the context of a reference for a preliminary ruling, can only provide the interpretation of Community law which is requested of it. It is instead for the national court, where necessary in the light of information furnished by the Court of Justice, to determine whether the legislation at issue contains a prohibition of exports.

13 For the rest, it appears to the Court that the interpretation of Community rules which has been requested in this case has in the meantime been provided by the judgment of the Court in the aforementioned *Inter-Huiles* case, in which all the contentions put forward in the observations submitted in these proceedings received an answer, and in connection with which it does not appear to the Court that any new factors have arisen.

Costs

14 The costs incurred by the Government of the French Republic, the Government of the Italian Republic and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the proceedings pending before the national court, costs are a matter for that court.

On those grounds,

THE COURT (Third Chamber),

in answer to the question referred to it by the Cour d'Appel, Lyon, by judgment of 18 November 1982, hereby rules:

The aims of Council Directive 75/439/EEC of 16 June 1975 on the disposal of waste oils and the rules laid down by the EEC Treaty on the free movement of goods require that waste oils may be delivered by either a holder or an approved collector to a disposal undertaking in another Member State which has obtained a permit as provided for in Article 6 of the directive in that State.

Galmot Mackenzie Stuart Everling

Delivered in open court in Luxembourg on 9 February 1984.

P. Heim
Registrar

Y. Galmot
President of the Third Chamber