JUDGMENT OF THE COURT (Sixth Chamber)

25 June 1998 *

In Case C-203/96,

REFERENCE to the Court under Article 177 of the EC Treaty by the Netherlands Raad van State for a preliminary ruling in the proceedings pending before that court between

Chemische Afvalstoffen Dusseldorp BV and Others

and

Minister van Volkshuisvesting, Ruimtelijke Ordening en Milieubeheer

on the interpretation of Articles 34, 86, 90 and 130t of the EC Treaty, of Council Directive 75/442/EEC of 15 July 1975 on waste (OJ 1975 L 194, p. 39), as amended by Council Directive 91/156/EEC of 18 March 1991 (OJ 1991 L 78, p. 32), and of Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community (OJ 1993 L 30, p. 1),

* Language of the case: Dutch.

THE COURT (Sixth Chamber),

composed of: H. Ragnemalm (Rapporteur), President of the Chamber, G. F. Mancini, P. J. G. Kapteyn, J. L. Murray and G. Hirsch, Judges,

Advocate General: F. G. Jacobs,
Registrar: H. A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

— Chemische Afvalstoffen Dusseldorp BV and others, by B. J. M. Veldhoven of the Hague Bar, O. W. Brouwer of the Amsterdam Bar and F. P. Louis of the Brussels Bar,

— the Netherlands Government, by J. G. Lammers, Deputy Legal Adviser in the Ministry of Foreign Affairs, acting as Agent,

— the French Government, by C. de Salins, Assistant Director in the Legal Affairs Directorate of the Ministry of Foreign Affairs, and R. Nadal, Assistant Foreign Affairs Secretary in the same directorate, acting as Agents,

— the Commission of the European Communities, by H. van Vliet and M. Condou, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Chemische Afvalstoffen Dusseldorp BV and Others, represented by O. W. Brouwer and F. P. Louis, of the Netherlands Government, represented by J. S. van den Oosterkamp, Assistant Legal Adviser in the Ministry of Foreign Affairs, acting as Agent, of the Danish Government, represented by P. Biering, Head of Department in the Ministry of Foreign Affairs, acting as Agent, and of the Commission, represented by H. van Vliet, at the hearing on 3 July 1997,

after hearing the Opinion of the Advocate General at the sitting on 23 October 1997,

gives the following

Judgment

1 By order of 23 April 1996, received at the Court on 14 June 1996, the Netherlands Raad van State (Council of State) referred to the Court for a preliminary ruling under Article 177 of the EC Treaty four questions on the interpretation of Articles 34, 86, 90 and 130t of the EC Treaty, of Council Directive 75/442/EEC of 15 July 1975 on waste (OJ 1975 L 194, p. 39), as amended by Council Directive 91/156/EEC of 18 March 1991 (OJ 1991 L 78, p. 32, hereinafter 'the Directive'), and of Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community (OJ 1993 L 30, p. 1, hereinafter 'the Regulation').

2 Those questions were raised in proceedings between Chemische Afvalstoffen Dusseldorp BV ('Dusseldorp'), Factron Technik GmbH ('Factron') and Dusseldorp Lichtenvoorde BV ('Dusseldorp Lichtenvoorde') and the Minister van Volkshuisvesting, Ruimtelijke Ordening en Milieubeheer (the Netherlands Minister for

Housing, Regional Development and the Environment; 'the Minister') concerning exports to Germany of waste for recovery there.

The Community legislation

The Directive

3 Article 1 of the Directive defines waste disposal operations and waste recovery operations as those described in Annex II A and Annex II B respectively, which each contain a precise list of the operations concerned.

4 Articles 3, 4 and 5 of the Directive lay down the following objectives: first, the prevention, reduction, recovery and use of waste; next, the protection of human health and the environment in the processing of waste, whether for disposal or recovery and, finally, the creation at Community level and, if possible, at national level of an integrated network for the disposal of waste.

5 In that context, Article 5 of the Directive provides:

'1. Member States shall take appropriate measures, in cooperation with other Member States where this is necessary or advisable, to establish an integrated and

adequate network of disposal installations, taking account of the best available technology not involving excessive costs. The network must enable the Community as a whole to become self-sufficient in waste disposal and the Member States to move towards that aim individually, taking into account geographical circumstances or the need for specialised installations for certain types of waste.

2. The network must also enable waste to be disposed of in one of the nearest appropriate installations, by means of the most appropriate methods and technologies in order to ensure a high level of protection for the environment and public health.'

6 Article 7 of the Directive requires the Member States to draw up waste management plans in order to implement the objectives referred to in Articles 3, 4 and 5 and permits them to take measures to prevent movements of waste which are not in accordance with those plans.

The Regulation

7 The Regulation deals with the shipment of waste, in particular between Member States.

8 Title II of the Regulation, entitled 'Shipments of waste between Member States', contains two separate chapters dealing with the procedure applicable to shipments of waste for disposal (Chapter A) and the procedure applicable to shipments of waste for recovery (Chapter B). The procedure laid down in respect of the latter category of waste is less onerous than that applicable to the former.

9 Article 4(3)(a)(i), which is in Chapter A, concerning shipments of waste for disposal, provides:

'In order to implement the principles of proximity, priority for recovery and self-sufficiency at Community and national levels in accordance with Directive 75/442/EEC, Member States may take measures in accordance with the Treaty to prohibit generally or partially or to object systematically to shipments of waste. Such measures shall immediately be notified to the Commission, which will inform the other Member States.'

10 By contrast, Chapter B, which concerns shipments of waste for recovery, does not mention the principles of self-sufficiency and proximity.

11 Article 7(2) and (4)(a), in Chapter B, provides:

'2. The competent authorities of destination, dispatch and transit shall have 30 days following dispatch of the acknowledgement to object to the shipment. Such objection shall be based on paragraph 4. Any objection must be provided in writing to the notifier and to other competent authorities concerned within the 30-day period.

...

4. (a) The competent authorities of destination and dispatch may raise reasoned objections to the planned shipment:

— in accordance with Directive 75/442/EEC, in particular Article 7 thereof, or

— if it is not in accordance with national laws and regulations relating to environmental protection, public order, public safety or health protection,

...'

The national legislation

12 Paragraph 6.5 of the Netherlands' Long-term Plan for the Disposal of Dangerous Waste of June 1993 ('the Long-term Plan'), provides:

'Export is permitted if a superior processing technique exists abroad or if there is insufficient capacity for processing a given type of waste in the Netherlands, unless that export makes it impossible to carry out disposal of an at least equivalent level in the Netherlands. In that case, the waste shall be stockpiled pending disposal.'

13 Sectoral Plan 19 of Part II of the Long-term Plan states, with regard to oil filters, that export is not permitted if the processing of those filters abroad is not superior to that performed in the Netherlands.

14 Sectoral Plan 10 of Part II of the Long-term Plan, concerning waste for incineration, provides that, on account of the principle of self-sufficiency, the export of dangerous waste for incineration must, in so far as is possible, be restricted *inter alia* because the emission requirements for incineration are less strict abroad than in the Netherlands.

15 In that Sectoral Plan, the pursuit of the best possible method of disposal is also implemented by attributing to AVR Chemie CV ('AVR Chemie') responsibility for 'waste management'. AVR Chemie is thus designated as the sole end-processor for the incineration of dangerous waste in a high-performance rotary furnace. Waste which has to be incinerated in such a furnace may be exported only by AVR Chemie, whose permit is subject to conditions intended to prevent undesirable price increases.

16 AVR Chemie is a limited partnership between the Netherlands State, the district of Rotterdam and eight industrial undertakings, including Akzo Nobel Nederland. The Netherlands State and the district of Rotterdam together hold a 55% share in AVR Chemie.

17 The director of the waste management division of the Ministry of the Environment is also the representative of the Netherlands State on the Surveillance Board

of AVR. The division is responsible for laying down the Netherlands' policy in relation to the export of waste and decides, in practice, whether a particular export may be permitted or refused.

The facts

18 In 1994 Dusseldorp applied for authorisation to export to Germany two loads of oil filters and related waste, weighing 2 000 and 60 tonnes respectively, for processing there by Factron.

19 By two decisions of 22 August 1994 the Minister raised objections to the export pursuant to the Long-term Plan and Article 7(2) and (4)(a) of the Regulation.

20 On 13 September 1994 Dusseldorp, Factron and Dusseldorp Lichtenvoorde lodged a complaint against those two decisions.

21 By a new decision of 8 December 1994, following a visit to Factron's premises by two officials of the Netherlands Ministry of the Environment, the Minister declared the complaints unfounded on the ground that the processing performed

by Factron was not of a higher quality than that performed by the Netherlands waste processing and management undertaking, AVR Chemie.

22 By application of 18 January 1995 Dusseldorp, Factron and Dusseldorp Lichtenvoorde brought an action before the Raad van State seeking the annulment of the Minister's decision of 8 December 1994 which, they maintain, is incompatible with the Community legislation.

The questions submitted for a preliminary ruling

23 The national court was uncertain as to whether the principles of self-sufficiency and proximity, as implemented in the Long-term Plan, could be applied to shipments of waste for recovery, and referred the following four questions to the Court of Justice for a preliminary ruling:

'1. (a) Having regard to the scheme of Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community and Council Directive 75/442/EEC of 15 July 1975 on waste (as amended by Directive 91/156/EEC), read in conjunction with each other, do the principles of self-sufficiency and proximity apply solely to the shipment between Member States of waste for disposal or also to waste for recovery?

(b) If the Court of Justice takes the view that Regulation (EEC) No 259/93 and Directive 75/442/EEC do not provide a basis for the application of the principles of self-sufficiency and proximity to the shipment between

Member States of waste for recovery, can Article 130t of the EC Treaty then provide a basis for rules such as those contained in the relevant part of the Long-term Plan for Disposal of Dangerous Waste of June 1993 drawn up by the Netherlands Government?

2. In the abovementioned Long-term Plan, the principles of self-sufficiency and proximity find specific expression in the pursuit of the best possible quality method of disposal (including recovery) and continuity of disposal. Does this constitute a correct implementation of those principles?

3. (a) In so far as the criteria laid down in the Long-term Plan for objecting to the export of waste for recovery are in themselves acceptable, is this then a case of a measure having equivalent effect within the meaning of Article 34 of the EC Treaty and is there any justification for it?

(b) In that context, if the principles of self-sufficiency and proximity may be applied in regard to waste intended for recovery, does it make any difference whether those principles are applied primarily within the Community as a whole or exclusively at national level?

4. Are the exclusive rights to incinerate dangerous waste conferred by the Netherlands authority on AVR Chemie CV in Sectoral Plan 10 of Part II of the Long-term Plan compatible with Article 90(1) and (2) in conjunction with

Article 86 of the EC Treaty having regard to the reasons given for such conferral in the Long-term Plan?'

The first question

24 By its first question, the national court is essentially asking whether the Directive and the Regulation are to be interpreted as meaning that the principles of self-sufficiency and proximity are applicable to shipments of waste for recovery. If not, it asks whether Article 130t permits Member States to extend the application of those principles to such waste.

The interpretation of the Directive and the Regulation

25 The Netherlands Government and the Danish Government consider that the absence of any express reference in the Directive and the Regulation to the principles of self-sufficiency and proximity in regard to waste for recovery does not preclude the application of those principles to that type of waste. Article 7 of the Directive sets out a non-exhaustive list of the details which the waste management plans must include.

26 Dusseldorp, the French Government and the Commission consider, by contrast, that the absence of any express reference to the principles of self-sufficiency and proximity in regard to waste for recovery in the Directive and the Regulation, and the general scheme of the latter, indicate that those principles cannot be taken into account in regard to waste for recovery.

27 In that respect, it should be noted, first, that Article 7 of the Directive provides that Member States are to draw up waste management plans in particular in order to attain the objectives set out in Articles 3, 4 and 5. Of those provisions, only Article 5 refers to the principles of self-sufficiency and proximity, and then solely in respect of waste for disposal. Similarly, the seventh recital in the preamble, which refers to those principles, concerns that category of waste exclusively.

28 Secondly, the Regulation mentions those principles expressly only in the tenth recital in the preamble, which associates them solely with waste for disposal, and in Article 4(3)(a)(i) and (b), which sets out the type of measures which may be taken by the Member States and the competent authorities of dispatch and destination in order to implement them. Since it is part of Chapter A of Title II of the Regulation, that provision concerns only the shipment of waste for disposal.

29 Article 7 of the Regulation, which is in Chapter B, concerning waste for recovery, and is the corresponding provision to Article 4, does not provide for the possibility of adopting measures to implement the principles of self-sufficiency and proximity.

30 It thus follows from the provisions of the Directive and the Regulation, and from the general scheme of the latter, that neither text provides for the application of the principles of self-sufficiency and proximity to waste for recovery.

31 That conclusion is borne out by the Council resolution of 7 May 1990 on waste policy (OJ 1990 C 122, p. 2), which is referred to in the second recital in the preamble to the Directive. In that resolution, the Council specifies that the objective of self-sufficiency in waste disposal does not apply to recycling.

32 Furthermore, the explanatory memorandum in the initial proposal for the Regulation (COM(90) 415 final — SYN 305 of 26 October 1990) states that the criterion of proximity might justify intervention from the authorities in regard to waste for disposal. That criterion is not mentioned in regard to waste for recovery; in regard to the latter, only the criterion of environmentally sound management might be applied.

33 Finally, it should be noted that the difference in treatment between waste for disposal and waste for recovery reflects the different roles played by each type of waste in the development of the Community's environmental policy. By definition, only waste for recovery can contribute towards implementation of the principle of priority for recovery laid down in Article 4(3) of the Regulation. It was in order to encourage such recovery in the Community as a whole, in particular by eliciting the best techologies, that the Community legislature stipulated that waste of that type should be able to move freely between Member States for processing, provided that transport poses no threat to the environment. It therefore introduced for intra-Community shipment of that waste a more flexible procedure, which does not reflect the principles of self-sufficiency and proximity.

34 In view of those considerations, it must be concluded therefore that the Regulation and the Directive are to be interpreted as meaning that the principles of self-sufficiency and proximity do not apply to waste for recovery.

The interpretation of Article 130t of the Treaty

35 According to Dusseldorp and the Commission, the Regulation brought about full harmonisation of the rules on shipments of waste between Member States, so that in principle the latter can object to such shipments only on the basis of that Regulation. Furthermore, Article 130t of the Treaty permits Member States to adopt

rules only if they are compatible with, *inter alia*, Article 30 et seq. of the Treaty. They maintain that the Long-term Plan contains measures having equivalent effect to quantitative restrictions on export prohibited by Article 34 of the Treaty, which are not justified either by imperative requirements relating to the protection of the environment or under Article 36 of the EC Treaty.

36 According to the Netherlands Government, it can be concluded from the wording and the general scheme of the Regulation and from Article 130t of the Treaty that the measures adopted pursuant to Article 130s constitute minimum harmonisation. In those circumstances, there is nothing to prevent Member States from seeking to achieve a higher level of protection on the basis of Article 130t. Furthermore, the Plan is not contrary to the Treaty and, in particular, does not contain any prohibition on export. In the alternative, the Netherlands Government submits that, if the Long-term Plan does contain a prohibition on export for the purposes of Article 34, that prohibition is justified under Article 36 of the Treaty by the pursuit of the best method of disposal of waste and by the need for continuity of disposal, which are intended to protect the health and life of humans.

37 It should be noted that the Directive and the Regulation were adopted on the basis of Article 130s of the Treaty, which is referred to by Article 130t of the Treaty.

38 Article 130t of the Treaty provides:

'The protective measures adopted pursuant to Article 130s shall not prevent any Member State from maintaining or introducing more stringent protective measures. Such measures must be compatible with this Treaty. They shall be notified to the Commission.'

39 It is therefore necessary to consider whether, in accordance with that provision, measures such as those adopted in the Long-term Plan for the application of the principles of self-sufficiency and proximity to waste for recovery are compatible with Article 34 of the Treaty.

40 Article 34 prohibits quantitative restrictions on exports, as well as all measures having an equivalent effect. According to the settled case-law of the Court, it concerns national measures which have as their specific object or effect the restriction of patterns of exports and thereby the establishment of a difference in treatment between the domestic trade of a Member State and its export trade, in such a way as to provide a particular advantage for national production or for the domestic market of the State in question (Case 155/80 *Oebel* [1981] ECR 1993, paragraph 15).

41 Sectoral Plan 19 of Part II of the Long-term Plan provides that export is not permitted unless the processing of oil filters abroad is superior to that performed in the Netherlands.

42 It is plain that the object and effect of such a provision is to restrict exports and to provide a particular advantage for national production.

43 However, the Netherlands Government submits, first, that the aforementioned provision of the Long-term Plan could be justified by an imperative requirement relating to protection of the environment. In its submission, the measures in question are necessary to enable AVR Chemie to operate in a profitable manner with sufficient material of which to dispose and to ensure it a sufficient supply of oil

filters for use as fuel. In the absence of a sufficient supply, AVR Chemie would be obliged to use a less environmentally friendly fuel or to obtain other fuels which are equally friendly to the environment but involve additional costs.

44 Even if the national measure in question could be justified by reasons relating to the protection of the environment, it is sufficient to point out that the arguments put forward by the Netherlands Government, concerning the profitability of the national undertaking AVR Chemie and the costs incurred by it, are of an economic nature. The Court has held that aims of a purely economic nature cannot justify barriers to the fundamental principle of the free movement of goods (Case C-120/95 *Decker* [1998] ECR I-1831, paragraph 39).

45 The Netherlands Government considers, secondly, that the contested provision of the Long-term Plan is justified under the derogation provided for by Article 36 of the Treaty concerning the protection of the health and life of humans.

46 Such a justification would be relevant if the processing of oil filters in other Member States and their shipment over a greater distance as a result of their being exported posed a threat to the health and life of humans.

47 The documents before the Court do not, however, show that to be the case. On the one hand, the Netherlands Government itself conceded that the processing of filters in Germany was comparable to that performed by AVR Chemie. On the other, it has not been established that the shipment of the oil filters posed a threat to the environment or to the life and health of humans.

48 It follows that restrictions on the export of waste for recovery such as those introduced by the rules in the Netherlands were not necessary for the protection of the health and life of humans in accordance with Article 36 of the Treaty.

49 It must therefore be concluded that the object and effect of application of the principles of self-sufficiency and proximity to waste for recovery, such as oil filters, is to restrict exports of that waste and is not justified, in circumstances such as those in the present case, by an imperative requirement relating to protection of the environment or the desire to protect the health and life of humans in accordance with Article 36 of the Treaty. A Member State cannot therefore rely on Article 130t of the Treaty in order to apply the principles of self-sufficiency and proximity to such waste.

50 In those circumstances the answer to the first question must be that the Directive and the Regulation cannot be interpreted as meaning that the principles of self-sufficiency and proximity are applicable to shipments of waste for recovery. Article 130t of the Treaty does not permit Member States to extend the application of those principles to such waste when it is clear that they create a barrier to exports which is not justified either by an imperative measure relating to protection of the environment or by one of derogations provided for by Article 36 of the Treaty.

The second and third questions

51 The second and third questions were raised by the national court only in the event of a finding by the Court that the principles of self-sufficiency and proximity are applicable to waste for recovery pursuant either to the Directive and the Regulation or to Article 130t of the Treaty.

52 In the light of the answer to the first question, it is not necessary to answer these questions.

The fourth question

53 By its fourth question, the national court asks whether the exclusive rights conferred on AVR Chemie within the framework of the policy implemented in accordance with the Long-term Plan are compatible with the competition rules contained in Articles 90 and 86 of the Treaty. As the Advocate General points out at paragraph 97 of his Opinion, the exclusive rights referred to by the national court should be taken to include both the general exclusivity granted for incineration and any exclusivity resulting from the contested rule. The latter concerns the prohibition on exporting oil filters unless processing abroad is superior to that performed in the Netherlands.

54 Essentially, therefore, the national court is asking whether Article 90 of the Treaty, in conjunction with Article 86, precludes rules such as the Long-term Plan whereby a Member State requires undertakings to deliver their waste for recovery, such as oil filters, to a national undertaking on which it has conferred the exclusive right to incinerate dangerous waste, unless the processing of their waste in another Member State is superior to that performed by that undertaking.

55 The Netherlands Government considers that AVR Chemie has no exclusive rights, so that Article 90 cannot apply in the present case.

56 Dusseldorp considers that the exclusive rights conferred on AVR Chemie by the Netherlands authorities are incompatible with Article 90(1) in conjunction with Article 86 of the Treaty. Furthermore, those rights cannot be justified under Article 90(2) of the Treaty, since the Netherlands' disposal arrangements could be maintained by measures having less effect on competition and on the free movement of goods.

57 The Commission points out that the fact that a Member State grants authorisation to process certain waste to only one undertaking established on its territory is not, in itself, incompatible with Article 90 in conjunction with Article 86 of the Treaty.

58 It is apparent from the documents before the Court that AVR Chemie was designated as the sole end-processor for the incineration of dangerous waste. That undertaking can therefore be regarded as having an exclusive right within the meaning of Article 90(1) of the Treaty.

59 That provision stipulates that Member States are neither to enact nor to maintain in force any measure contrary to the rules of the Treaty, in particular the competition rules.

60 The grant of exclusive rights for the incineration of dangerous waste on the territory of a Member State as a whole must be regarded as conferring on the undertaking concerned a dominant position in a substantial part of the common market (see, to that effect, Case C-260/89 *ERT* [1991] ECR I-2925, paragraph 31).

61 Although merely creating a dominant position is not, in itself, incompatible with Article 86 of the Treaty, a Member State breaches the prohibitions laid down by Article 90 in conjunction with Article 86 if it adopts any law, regulation or administrative provision which enables an undertaking on which it has conferred exclusive rights to abuse its dominant position (see, to that effect, Case C-18/88 *GB-Inno-BM* [1991] ECR I-5941, paragraph 20).

62 It is apparent from the documents before the Court that, on the basis of the Long-term Plan, the Netherlands Government prohibited the applicant in the main proceedings from exporting and, by doing so, in practice imposed an obligation on it to deliver its oil filters — waste for recovery — to the national undertaking which held the exclusive right to incinerate dangerous waste, even though the quality of processing available in another Member State was comparable to that performed by the national undertaking.

63 Such an obligation has the effect of favouring the national undertaking by enabling it to process waste intended for processing by a third undertaking. It therefore results in the restriction of outlets in a manner contrary to Article 90(1) in conjunction with Article 86 of the Treaty.

64 However, it is necessary to consider whether that obligation could be justified by a task of general economic interest within the meaning of Article 90(2) of the Treaty.

65 It follows from the case-law of the Court that that provision may be relied upon to justify a measure contrary to Article 86 of the Treaty adopted in favour of an undertaking to which the State has granted exclusive rights if that measure is necessary to enable the undertaking to perform the particular task assigned to it and if

it does not affect the development of trade in a manner contrary to the interest of the Community (see, to that effect, Case C-320/91 *Corbeau* [1993] ECR I-2533, paragraph 14, and Case C-159/94 *Commission* v *France* [1997] ECR I-5815, paragraph 49).

66 The Netherlands Government submits that the rules in question are intended to reduce the costs of the undertaking responsible for the incineration of dangerous waste and thus to enable it to be economically viable.

67 Even if the task conferred on that undertaking could constitute a task of general economic interest, however, it is for the Netherlands Government, as the Advocate General points out at paragraph 108 of his Opinion, to show to the satisfaction of the national court that that objective cannot be achieved equally well by other means. Article 90(2) of the Treaty can thus apply only if it is shown that, without the contested measure, the undertaking in question would be unable to carry out the task assigned to it.

68 In those circumstances, the answer to the fourth question must be that Article 90 of the Treaty, in conjunction with Article 86, precludes rules such as the Long-term Plan whereby a Member State requires undertakings to deliver their waste for recovery, such as oil filters, to a national undertaking on which it has conferred the exclusive right to incinerate dangerous waste unless the processing of their waste in another Member State is of a higher quality than that performed by that undertaking if, without any objective justification and without being necessary for the performance of a task in the general interest, those rules have the effect of favouring the national undertaking and increasing its dominant position.

Costs

69 The costs incurred by the Governments of the Netherlands, Denmark and France, and by the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Sixth Chamber),

in answer to the questions referred to it by the Raad van State by order of 23 April 1996, hereby rules:

1. Council Directive 75/442/EEC of 15 July 1975 on waste, as amended by Council Directive 91/156/EEC of 18 March 1991 and Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community cannot be interpreted as meaning that the principles of self-sufficiency and proximity are applicable to shipments of waste for recovery. Article 130t of the EC Treaty does not permit Member States to extend the application of those principles to such waste when it is clear that they create a barrier to exports which is not justified either by an imperative measure relating to protection of the environment or by one of derogations provided for by Article 36 of that Treaty.

2. **Article 90 of the EC Treaty, in conjunction with Article 86, precludes rules such as the Long-term Plan whereby a Member State requires undertakings to deliver their waste for recovery, such as oil filters, to a national undertaking on which it has conferred the exclusive right to incinerate dangerous waste unless the processing of their waste in another Member State is of a higher quality than that performed by that undertaking if, without any objective justification and without being necessary for the performance of a task in the general interest, those rules have the effect of favouring the national undertaking and increasing its dominant position.**

Ragnemalm Mancini Kapteyn

Murray Hirsch

Delivered in open court in Luxembourg on 25 June 1998.

R. Grass H. Ragnemalm

Registrar President of the Sixth Chamber