OPINION OF MR ADVOCATE GENERAL DA CRUZ VILAÇA
delivered on 2 October 1986 *

Mr President,
Members of the Court,

1. The Court of Justice is asked to declare in proceedings instituted by the Commission against the Kingdom of Belgium that the latter has failed to fulfil its obligations inasmuch as it has brought its national legislation only partially into line with the provisions of Council Directive No 78/319/EEC of 20 March 1978 on toxic and dangerous waste. [1]

2. That Council directive, which was adopted on the basis of Articles 100 and 235 of the EEC Treaty, is designed in the first place to abolish any risk of unequal conditions of competition resulting from the disparity between the provisions on disposal of toxic and dangerous waste already applicable or in preparation in the various Member States, and secondly to lay down certain specific provisions concerning Community policy in the sphere of protection of the environment and improvement of the quality of life.

The Member States are under an obligation to take appropriate steps 'to encourage, as a matter of priority, the prevention of toxic and dangerous waste, its processing and recycling' (Article 4) and must at the same time 'ensure that toxic and dangerous waste is disposed of without endangering human health and without harming the environment' (Article 5 (1)). The Member States must therefore take the necessary measures 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)' (Article 5 (2)) and must designate or establish 'the competent authority or 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' (Article 6).

Furthermore, the Member States must impose a number of obligations on traders who produce, store, dispose of or transport such waste.

The measures needed to implement that directive should have been adopted within 24 months of the date of its notification. The Kingdom of Belgium should therefore have fulfilled its obligations by 22 March 1980.

By letter of 2 May 1980 the Belgian Government informed the Commission that, by virtue of national legislation that was already in force prior to the notification of the directive, [2] its legal system was, with the exception of a list the adaptation of which was in progress, in conformity with the obligations resulting from the directive.

* Translated from the Portuguese.

1 — Official Journal 1978, L 84, p. 43.

2 — In particular, the Law of 22 July 1974 on toxic waste (*Moniteur belge* of 1. 3. 1975) and the Royal Decree of 9 February 1976 laying down general rules concerning toxic waste (*Moniteur belge* of 14. 2. 1976).

That was disputed by the Commission which, after approaching the Belgian Government and taking the view that the explanation given by the latter was inadequate, finally delivered a reasoned opinion pursuant to Article 169 of the EEC Treaty. Since Belgium did not comply with the Commission's request within the prescribed period, the Commission finally instituted proceedings against it before the Court on the ground that it had failed to fulfil its obligations under Community law.

In its application the Commission reaffirms the subject-matter of its reasoned opinion and charges Belgium specifically with failing to transpose into national law Article 14 (1) and (2) of Council Directive No 78/319.

3. Article 14 (1) of the directive provides that:

'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.'

In both its reasoned opinion and its application, the Commission seemed to consider that one aspect of Belgium's failure to fulfil its obligations relating to the aforesaid provision was the fact that its legislation did not impose an obligation on installations, establishments or undertakings which produce, hold and/or dispose of toxic and dangerous waste to *keep a record* containing a wide range of information.

Article 14 (1), however, provides that the obligation to keep a record of certain information and the obligation to make that information available to the competent authorities on request are to be imposed either cumulatively or alternatively (as is clear from the use of the words 'and/or').

In response to a request from the Court to clarify its position on that point, the Commission rectified its claim in that regard, although it took the view that the obligation to keep a record was the most effective means of achieving the objectives of the directive.

However, as that was not supported by the wording of the directive, the Commission maintained its claim only as regards the fact that Belgium, in choosing to impose on traders the obligation to submit a declaration, as provided for in the second indent of Article 14 (1), had failed to impose on them the obligation to make available *all* the information required by the first indent of Article 14 (1) for the purposes of the record.

Articles 17 and 18 of the Royal Decree of 9 February 1976 must be regarded as implementing the obligations imposed by the directive only in part. Although, on the one hand, those provisions require declarations to be submitted every year, every month or case by case, on the other hand they do not require those declarations to set out all the information referred to in the first indent of Article 14 (1) of the directive. Clearly, the national legislation does not require traders to provide information

concerning the physical and chemical characteristics of the waste or the dates of receipt and disposal of such waste. The failure to indicate waste disposal sites is more difficult to establish in view of the reference in Article 18 of the royal decree to the 'destination' of such waste, but the wording is unclear and leaves room for doubt, in this respect too, as to whether the directive has been fully transposed into national law by the Belgian legislation.

Moreover, the Belgian legislation provides only that the declarations must include information concerning waste disposal methods when the destruction, neutralization or disposal of the waste is carried out by the trader producing it.

In its defence and rejoinder, the Belgian Government evinces the intention of amending the Royal Decree of 9 February 1976 so as to comply with the Commission's requirements, and in addition, before the decree is amended, of publishing a circular designed to fill provisionally the gaps in its legislation.

However, the legislative provisions which the Belgian Government intends to adopt are, in view of their timing, irrelevant to these proceedings. The obligations resulting from Article 14 (1) of Council Directive No 78/319 will not be fully and correctly transposed into national law until the Royal Decree of 9 February 1976 has been amended. Until then the view must be taken that the Kingdom of Belgium has failed — albeit on a relatively specific point — to fulfil certain obligations under the directive in question and, consequently, under the EEC Treaty.

With regard to the circular which Belgium intends to issue, there can be no doubt, as the Commission points out in its reply, that since the directive in question imposes obligations on nationals of the Member States, its transposition into national law involves the adoption by those States of legislative provisions which alone are capable of endowing those obligations with the necessary force of law. Consequently, the provisional adoption of a mere administrative measure, or one which is of purely internal scope, is insufficient to ensure the complete transposition of the objectives of the directive into Belgian national law.

4. Belgium is also charged with failing to fulfil its obligations under Article 14 (2) of the directive in question, which provides as follows:

'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.'

When charged by the Commission with failing to fulfil its obligations, the Belgian Government replied during the procedure prior to this action that the obligations resulting from that provision had been fulfilled inasmuch as the provisions of the European Agreement concerning the international carriage of dangerous goods by road and the International Convention concerning the carriage of goods by rail had been incorporated into Belgian national law by laws of 10 August 1960 and 24 January 1974.

Article 2 of Directive No 78/319 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 so far as carriage is concerned'. However, it goes on to add that this is so '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'. Clearly, that provision cannot be overridden by the declaration of the Council and the Commission set out in the minutes of the Council meeting of 20 March 1978, which was relied upon by Belgium in its letter of 27 February 1984 during the procedure prior to the action and which apparently makes no mention of the condition laid down in the second half of Article 2 of the directive.

That being so it follows, as the Commission has pointed out, that the legislation in force in Belgium relating to the carriage of toxic and dangerous waste is not sufficient to satisfy the requirements of Article 14 (2) of the directive. In the first place, the international conventions referred to by Belgium apply only to carriage by road and rail and make no provision for carriage by inland waterway, by sea or by air, and secondly, when those products are transported they must be accompanied by a document which by virtue of those conventions is not required to set out all the information prescribed by Article 14 (2), in particular the indication of the waste disposal site.

In its defence, the Belgian Government states that under the Decree of 21 April 1982 adopted by the Flemish region, the waste disposal site must be mentioned in the identification form accompanying the waste when it is transported, that the Walloon Regional Executive intends to issue a decree laying down the same obligation and that the Brussels region proposes to resolve the question on a provisional basis by issuing a circular pending the entry into force of a law and its implementing decrees.

None the less, the conclusion that Belgium is still not fulfilling its obligations is inescapable. In the first place, the Belgian legislation does not extend the obligations laid down by Article 14 (2) to all means of transport. Secondly, even though the Flemish region may require all the information prescribed by the directive to be stated on the identification form accompanying the waste being transported, that is not the case as regards the other regions of the country, with the result that Belgium is not fulfilling its obligations.

To be sure, some of the difficulties encountered by Belgium in fulfilling its obligations under the directive are the result of its constitutional structure, in particular the division of powers between the central

government and the regions. It is therefore appropriate to recall that the Court has consistently held in that regard that a Member State may not plead 'provisions, practices or circumstances in its internal legal system to justify failure to comply with obligations under Community directives'.[3] Similarly, the Court has consistently held that a Member State is responsible for the action or inaction of its agencies even in the case of a constitutionally independent institution.[4]

5. In conclusion, therefore, I suggest that the Court of Justice should declare that by failing to adopt within the prescribed period the provisions needed to comply fully with the obligations laid down by Council Directive No 78/319/EEC of 20 March 1978 Belgium has failed to fulfil its obligations under the EEC Treaty.

The unsuccessful party should be ordered to pay the costs, pursuant to Article 69 (2) of the Rules of Procedure.

3 — See, for instance, the judgments of 2 February 1982 in Cases 68/81, 69/81, 70/81, 71/81, 72/81 and 73/81 *Commission* v *Belgium* [1981] ECR 153, 163, 169, 175, 183 and 189.

4 — See, for instance, the judgment of 5 May 1970 in Case 77/69 *Commission* v *Belgium* [1970] ECR 237.