OPINION OF MR ADVOCATE GENERAL MANCINI
delivered on 5 February 1987 *

Mr President,
Members of the Court,

1. The questions to be considered by the Court, which were submitted under Article 177 of the EEC Treaty in three judgments of 30 October 1985 of the Seventh Chamber of the Rechtbank van Eerste Aanleg (Court of First Instance), Bruges, call for an interpretation of certain rules of Council Directive No 75/442 of 15 July 1975 on waste (Official Journal 1975, L 194, p. 47). The questions were raised in the course of three criminal actions against Oscar Traen, Camiel Quicke, Edouard Quicke and Remi Vanhove, the private limited company Quicke PVBA being joined to the proceedings as the party liable to pay any costs and fines.

Quicke PVBA is a waste-disposal undertaking; Camiel Quicke, the proprietor, Oscar Traen, his driver, Edouard Quicke and Remi Vanhove, who operate two other companies, collected, transported, and on some occasions processed and then discharged on property in the country, with the permission of the occupants or owners, waste deriving mainly from septic tanks, cesspits, settlement tanks, soakaways, rainwater tanks, sawmills and granite-washing plants. They are charged with infringement of the Flemish Regional Law of 2 July 1981, which gave effect to Directive No 75/442, and numerous implementing decrees, by discharging waste individually or together, failing to apply for a permit and, as a result, operating a waste-disposal plant without authorization.

The questions submitted by the Bruges court are as follows:

1. According to what criteria should it be determined whether a waste-disposal undertaking is subject to the provisions of Articles 8 to 12 of Directive No 75/442? Is a casual or isolated operation sufficient or must other criteria be satisfied, concerning for example the objects of the company, the operations actually carried out (main or subsidiary activity or repeated operations), the likely effect on the environment and so forth?

2. Is a carrier who discharges waste on the instructions, at the request or with the permission of the owner or occupier of land who has acquired ownership of the waste, required to obtain a permit and does a similar obligation fall upon an owner or occupier who, without himself discharging waste, gives his consent thereto?

3. Does a discharge permit issued by the director of a water-purifying company set up by the authorities of a Member

* Translated from the Italian.

State comply with the requirements of Articles 5 and 8 of the directive?

4. To what extent are the Member States free to organize the supervision referred to in Article 10 of the directive?

5. Do the obligations imposed by Articles 8 and 12 of the directive apply directly to undertakings or does their application depend upon the prior creation or designation by the Member State of the competent authority to which undertakings may apply, *inter alia* in order to obtain the necessary permit, and upon the adoption of the necessary implementing rules, regarding such matters as the forms to be used for the deposit of waste, in view of the fact that the directive entered into force by virtue of its notification to the Member States and not by publication in the *Official Journal of the European Communities* (Article 191 of the EEC Treaty and Article 13 of the directive)?

By order of 4 December 1985 the Court joined the three cases for the purposes of the oral procedure and judgment. The Procureur des Konings attached to the referring court, the accused, Mr Vanhove, and the Commission of the European Communities have submitted observations which concur to a considerable extent.

2. For a better understanding of the questions, it is appropriate to describe the purposes and the main provisions of the directive which the Court is called upon to interpret.

It is based on Articles 100 and 235 of the Treaty and is designed both to avoid any disparity between conditions of competition between undertakings and — in particular — to protect human health and the environment from the harmful effects of waste disposal (first and third recitals in the preamble). The terms 'waste' and 'disposal' are defined in Article 1. Waste means 'any substance or object which the holder disposes of or is required to dispose of pursuant to the provisions of national law in force' (paragraph (a)); disposal includes 'the collection, sorting, transport and treatment of waste as well as its storage and tipping above or under ground' and also 'the transformation operations necessary for its re-use, recovery or recycling' (paragraph (b)).

Next, a number of obligations are imposed upon the Member States. Article 3 requires them to take appropriate steps to encourage the prevention, recycling and processing of waste, the extraction of raw materials and possibly of energy from it; they must inform the Commission of any draft rules and comply with the rules contained in Article 4 which embody the principal objective of the directive. Accordingly, waste must be disposed of without risk to human health and without damage to the environment. Other measures are prescribed in Article 7: Member States are required to ensure that any holder of waste has it handled by a private or public waste collector or disposes of it himself in accordance with the principles laid down in Article 4.

Article 5 is of fundamental importance. It requires the Member States to designate one or more authorities to plan, authorize and

supervise waste disposal, specifying in particular the 'natural or legal persons' empowered to carry out the disposal of waste (Articles 5 and 6). Among such persons, a distinction is drawn between operators acting on behalf of third parties and those who treat their own waste. Undertakings of both kinds are subject to supervision by the competent authorities (Article 10), but only the former are required to obtain a permit (Article 8), and must undertake to satisfy certain conditions, periodical inspections being carried out (Article 9) to ensure that they are being fulfilled.

By virtue of Article 11 and of the 'polluter pays' principle, the cost of disposal, less any proceeds derived from treating it, are to be borne by (a) the holder who has waste handled by a waste collector or duly authorized undertaking; (b) the previous holders or the producer of the product from which the waste came.

Finally, Article 12 provides that every three years the Member States are to forward to the Commission a situation report on waste disposal and, for that purpose, the undertakings referred to in Articles 8 and 10 are to supply the competent authorities with particulars of the operations carried out by them.

3. I shall now consider the questions submitted to the Court. As will be recalled, the first concerns the criteria for establishing to whom and, in particular, to what undertakings the directive applies. The central issue is the degree of intensity with which the disposal operations are carried out. Is it sufficient if that activity is occasional or must waste disposal necessarily be one of the objects of the undertaking and therefore constitute its main or a subsidiary activity and, in the latter case, must it be carried out on a continuing basis?

The answer is not difficult. As I have said, the directive is intended principally to secure the adoption of national rules to ensure that waste disposal does not threaten human health or damage the environment. Such a wide-ranging objective necessarily implies that the directive applies to all kinds of operators, regardless of their legal classification and the greater or lesser frequency of their disposal activities. Moreover, the wording of several parts of the directive favours that interpretation. Thus, as regards the tipping of waste, the directive draws no distinction between regular, sporadic or single instances of tipping and attaches no importance to the manner (spreading, discharging, and so forth) in which tipping is carried out. Of even more importance is the fact that it is apparent from Articles 7 and 11 that the disposal operations may be carried out not only by an undertaking in the technical sense but also by the actual holder of the waste or a public or private collector.

Of course, what I have said is subject, in the case of Article 8, to the condition that the undertaking must dispose of waste on behalf of third parties.

4. The second question is intended to establish (a) whether, where waste is deposited on behalf of third parties on land on the instructions, at the request or with the consent of the owner or occupier of the land, the carrier is obliged to obtain a permit; and (b) whether, by reason of his consenting to waste being deposited, the owner or occupier who has acquired ownership of the waste is also required to obtain a permit from the authorities indicated in Article 5.

As regards the first limb of the question, all that need be said is that according to the undoubtedly binding rule contained in Article 8 an undertaking may dispose of waste on behalf of third parties only if it is authorized to do so by a public authority; as a result, there is no question of its being possible for the latter to be replaced by a private individual such as the owner of the property where the discharging takes place. The solution to the second problem is to be found in the fact that Article 8 itself requires permits to be obtained only by undertakings operating on behalf of third parties. However, in connection with the measures referred to in Articles 3, 4 and 7, the Member States may extend that obligation to others and in particular to the holders of waste who themselves carry out disposal. It is the responsibility of the Member States to decide whether a measure of that kind is necessary for the attainment of the objectives pursued by the directive.

5. Thirdly, the Bruges court asks whether the authorities empowered to grant permits may include the director of a public water-purification company.

Here too the answer is easy. As we know, the directive merely requires the Member States to designate *one or more* authorities responsible for authorizing the disposal operations in a given zone (Articles 5 and 8). There is, therefore, nothing to prevent the authority to issue permits for certain types of waste (for example, effluents) from being vested in the person mentioned in the question.

6. The fourth question concerns the extent of the discretion enjoyed by Members States regarding organization of the supervision of undertakings which dispose of their own waste and of those which dispose of waste on behalf of third parties.

I should point out that Article 10 speaks in general terms of 'supervision by the competent authority'. From this, it seems to me, it must be inferred that the Member States enjoy a considerable degree of freedom in determining the measures to be taken — provided, of course, that such measures do not conflict with the objectives of the directive as laid down in Article 4.

7. In the fifth question, the national court raises the age-old problem of whether directives which have not been implemented in due time or in the proper manner by a Member State are to be recognized as effective; in other words, it asks whether Articles 8 and 12 apply directly to undertakings which dispose of waste.

In the present case — it is true — the provisions at issue do not confer rights, but impose obligations; and in a recent judgment (of 26 February 1986 in Case 152/84 *Marshall* v *Southampton and South-West Hampshire Health Authority (Teaching)* [1986] ECR 723) the Court held that provisions of that kind did not have direct effect. However, I shall not refer the national court to that judgment, the scope of which is a matter for further reflection; I shall answer its question in a more practical way by pointing out that, for the obligations laid down in the two articles in question to be given effect, it is necessary to enact national legislation. The function of the obligation laid down in Article 8 is to ensure compliance with the 'measures taken pursuant to Article 4'; and the purpose of the obligation laid down in Article 12 is to enable Member States to discharge their duty to forward a report on waste disposal to the Commission every three years. Determination of the scope and of the arrangements to be adopted for implementing such provisions is therefore the duty, and the right, of the Member States.

8. In view of all the foregoing considerations, I propose that the Court should give the following answers to the questions submitted by the Seventh Chamber of the Rechtbank van Eerste Aanleg, Bruges, by judgments of 30 October 1985 in proceedings against Oscar Traen, Camiel Quicke, Edouard Quicke, Remi Vanhove and Quicke PVBA:

'1. Articles 8 to 12 of Directive No 75/442 of 15 July 1975 are to be interpreted as being applicable to all persons engaged in waste-disposal operations, subject, as regards Article 8, to the condition that such persons are acting on the instructions of third parties. The legal classification of such persons and the frequency with which they dispose of waste are irrelevant.

2. Article 8 of Directive No 75/442 is to be interpreted as meaning that the permit provided for therein must be granted by the public authority designated for that purpose by the Member States in accordance with Article 5 thereof and may not be replaced by an order, request or authority from the owner or occupier of the land on which the waste is discharged.

   Even though that article imposes the obligation to obtain a permit only on installations or undertakings which dispose of waste on behalf of third parties, the Member States may, by adopting the measures provided for in Article 4, extend that obligation to the holders of waste who dispose of it themselves.

3. Pursuant to Article 5 of Directive No 75/442, it is incumbent upon the Member States to designate one or more competent authorities to issue permits for the disposal of waste. Therefore, there is nothing to prevent a public water-purification undertaking from being designated for that purpose.

4. Article 10 of Directive No 75/442 is to be interpreted as meaning that the Member States enjoy a considerable degree of discretion in organizing the supervision to be exercised by the competent authorities over all waste-disposal undertakings. However, the measures adopted must be in conformity with the objectives of the directive as laid down in Article 4.

5. Articles 8 and 12 of Directive No 75/442 are to be interpreted as meaning that no obligations are directly imposed by them upon the undertakings involved. The latter fulfil their obligations by complying with the implementing measures adopted by the Member States.'