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Eurobrief

Voluntary Eco-audit
On 19 January Parliament approved the regulation on voluntary eco-audits for companies but suggested that all companies be encouraged to participate in the scheme and that it be extended from the industrial sector to all areas of economic activity.

Subsidiarity
The White report (A3-380/92) on subsidiarity, the environment and consumer protection, was debated and approved on 19 January. In contrast to recent doubts about whether EC environmental legislation might be watered down in its application, the report emphasises the importance of EC legislation in achieving the highest possible standards and underlines the right of Member States to impose higher national standards. The report also calls for the list of projects liable to an environmental impact assessment statement to be extended and the Commission's role in investigating complaints from individuals to be expanded. The principle of subsidiarity is considered inappropriate for environmental protection since pollution so readily crosses frontiers and the European Environment Agency should have an increased role involving, for instance, on the spot investigations of reported breaches of Community legislation.

EC Structural Funds
The Ruiz-Gimenez Aqilar report (A3-326-92) considers how to ensure that full account is taken of environmental needs when EC structural funds are allocated to development projects, so that environmental damage is avoided. Among the changes recommended to the structural funds regulations are:
- the environmentally sustainable use of natural resources should be the guiding principle of regional policy;
- applications for aid should be accompanied by full documented profiles on the likely effects of development on the environment;
- full and proper application of EC environmental impact assessment legislation for major projects;
- the targeting of EC funding on environmentally aware projects such a waste recycling rather than landfill;
- the need for information on EC funding arrangements to be freely available to the public;
- the suspension of EC funding in cases where environmental damage arises.

The resolution was approved on 19 January.

Environment and Trade
On 21 January Parliament adopted the Spencer resolution on environment and trade which invites the signatories of GATT to include consideration of environmental costs and problems relating to trade in their final conclusions, to establish a Trade and Environment Committee and to ensure that Uruguay round decisions are implemented in a way that is compatible with the ecological balance of the planet. There is also a call for a two-year moratorium on all GATT panel judgments concerning the environment.

European Court of Justice

Commercial Fishing

The French Trade Court of La Roche-sur-Yon has requested a ruling from the European Court of Justice on Council Regulation 345/92 which, inter alia, bars fishing with gill nets (with a minor exception relating to fishing for albacore), as to whether the Regulation can restrict fishing by EC nationals on the open seas and whether it can be adopted without having a scientific justification. Europe.

*Han Somsen**

Case C-237/90, Commission v Federal Republic of Germany (Directive 80/778, drinking water) 24 November 1992 (not yet reported)†

Factual and Procedural Background
Directive 80/778 of 15 July 1980 relating to the quality of drinking water intended for human consumption (Official Journal 1980 L 229/11) was notified to the Federal Republic of Germany on 18 July of the same year. Article 18(1) of the Directive requires Member States to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive and its Annexes within two years following its notification. Paragraph 2 of the same provision adds that Member States must communicate to the Commission the texts of the main provisions of national law which they adopt in the field governed by the Directive.

After numerous requests from the Commission, the Federal government sent the Commission the *Mineral-und Tafelwasser-Verordnung* of 1 August 1984 as well as the *Allgemeine Verwaltungsvorschrift* of 26 November 1984. By letter of 29 July 1987 it further submitted the *Trinkwasserverordnung* of 22 May 1986 (BGBL 1986 1, p 760).

The Commission, in a letter dated 30 October 1987, indicated that the aforementioned provisions still did not fully transpose the Directive and invited the Federal government to submit its observations in respect of the Commission's complaints. In response, the Federal government indicated that it would take account of a number of the Commission's suggestions, but could not agree with numerous other points. Considering this response not to be satisfactory, the Commission issued a Reasoned Opinion in accordance with Article 169 EEC on 6 July 1989, inviting the Federal Government to take the necessary measures to comply with the Directive within two months. By letter of 6 September 1989 the Federal government indicated that in its opinion the *Trinkwasserverordnung* and the *Mineral-und Tafelwasser-Verordnung* completely transposed the Directive, taking into account the amendments to the aforementioned legislation which came into force on 1 January 1991 (*Verordnung zur Anderung der Trinkwasserverordnung und der Mineral-und Tafelwasser-Verordnung*, 5 December 1990, BGBL 1990 I, p 2600). Pursuant to Articles 9(2) and 10(3) of the Directive, on 4 May 1990 the Federal government communicated the derogations authorized by virtue of Article 4 of the *Trinkwasserverordnung*. The Commission brought the case before the European Court of Justice on 27 July 1990.

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†I would like to acknowledge the assistance of Genevieve Rich in the translation of parts of the judgment. The final text is my sole responsibility.

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Initially, the Commission had brought ten complaints against the Federal Republic, most of which it withdrew in the course of the written procedure, while maintaining that, contrary to the opinion of the Federal Republic, only after the coming into force of the 1991 amendments did these infringements cease to exist. The remaining complaints with which the court had to deal related to:
a) infringement of Article 10(1) of the Directive,
b) absence of notification of derogations as required under Articles 9(1) and 10(3) of the Directive.

Legal Framework
The Directive at issue contains standards for water intended for human consumption which in Article 2 is defined as "all water intended for that purpose, either in its original state or after treatment, regardless of origin". Natural mineral waters and medicinal waters fall outside the scope of the Directive and in Case 42/89, *Commission v Belgium*, the court further excluded waters which are privately owned.

Article 7(1) requires Member States to fix values applicable to water intended for human consumption for the parameters shown in Annex I. For the parameters given in Tables A, B, C, D, and E of Annex I the values to be fixed must be less than or the same as the values shown in the "Maximum admissible concentration" column, whilst Member States shall take as a basis the values appearing in the "Guide level" column (Article 7(3)).

The case revolves around Articles 9 and 10 which specify the conditions under which Member States may derogate from the Directives and which provide:

Article 9
1. Member States may make provision for derogations from this Directive in order to take account of:
(a) situations arising from the nature and structure of the ground in the area from which the supply in question emanates.

Where a Member State decides to make such a derogation, it shall inform the Commission accordingly within two months of its decision stating the reasons for such derogation;
(b) situations arising from exceptional meteorological conditions.

Where a Member State decides to make such a derogation, it shall inform the Commission accordingly within 15 days of its decision stating the reasons for this derogation and its duration.

2. Member States shall report to the Commission only those derogations referred to in paragraph 1 which relate to a daily water supply of at least 1,000 m3 or a population of at least 5,000.

3. In no case shall the derogations made by virtue of this Article relate to toxic or microbiological factors or constitute a public health hazard.

Article 10
1. In the event of emergencies, the competent national authorities may, for a limited period of time and up to a maximum value to be determined by them, allow the maximum admissible concentration shown in Annex I to be exceeded, provided that this does not constitute an unacceptable risk to public health and provided that the supply of water for human consumption cannot be maintained in any other way.

2. Without prejudice to the application of Directive 75/440/EEC, and in particular Article 4(3) thereof, when, for its supply of drinking water, a Member State is obliged to resort to surface water which does not reach the concentrations required of category A3 water within the meaning of Article 2 of the aforementioned Directive and when it cannot devise suitable treatment to obtain drinking water of the quality laid down by this Directive, it may, for a limited period of time and up to a maximum permissible value which it shall determine, authorize the maximum admissible concentration shown in Annex I to be exceeded provided that this does not constitute an unacceptable risk to public health.

3. Member States which have recourse to the derogations referred to in this Article shall immediately inform the Commission thereof, stating the reasons for and probable duration of such derogations.

Arguments of the Parties
a) *Infringement of Article 10(1)*
Article 4(1) of the 1986 version of the *Trinkwasserverordnung* (hereafter Trwv) incorporating Article 10(1) of the Directive provides:
"In individual cases and for a limited period of time, the competent authority may authorise, up to a maximum value to be determined by them, a derogation to the limit values fixed in Annex 2, provided that this does not constitute any risk to public health and provided that the supply of water for human consumption cannot be maintained in any other way at acceptable cost."

After the amendments brought about by the 1990 legislation, this provision was amended in the following way:
"In the event of emergencies and for a limited period of time, the competent authority may authorise, up to a maximum which is determined by them, a derogation to the limit values fixed in Annex 2, provided that this does not constitute any risk to public health and provided that the supply of water for human consumption cannot be maintained in any other way."
The Commission's complaint related to the original version of Article 4(1), and not to the amended version which came into force only after the issuing of the Reasoned Opinion but before the court delivered its judgment. It argued that, by not limiting the possibility to authorise derogations to the event of emergencies and by creating the possibility of allowing such derogations if the supply for human consumption cannot be maintained "at acceptable cost" the German provision did not properly transpose Article 10(1) of the directive. Referring to Case 228/87, *Pretura unificata di Torino/X* [1987] ECR 5099 where the court ruled that the derogations provided for in Article 10(1) of the Directive could only be allowed in urgent, unexpected circumstances and should be interpreted strictly, the Commission stressed the importance of the reference to "emergencies" in this provision (which in the French version is translated more precisely as *circonstances accidentelles graves*). This element, the Commission emphasised, distinguished the derogations in Article 10(1) from those contained, on the one hand in Article 9 (derogations in order to take account of situations arising from the nature and structure of the ground or exceptional meteorological conditions) and, on the

other hand, in Article 20 (allowing Member States, in exceptional cases and for geographically defined population groups, to submit a special request to the Commission for a longer period for complying with Annex I).

The Commission submitted that the admissibility of the granting of derogations under Article 10(1) was conditional upon four conditions, which needed to be satisfied cumulatively:

i) there must be an emergency,
ii) the supply of drinking water cannot be maintained in any other way,
iii) the derogation must not constitute an unacceptable risk for public health,
iv) Member States must immediately inform the Commission of any derogation granted.

The Trwv, the Commission maintained, on the one hand failed to distinguish between the first two of these conditions while on the other hand, by the inclusion of the notion "acceptable cost", it gave a wider meaning to the second condition.

Although the Commission agreed that after the amendments, Article 4(1) conformed with the wording of the Directive, it was of the opinion that the German authorities did not respect these requirements in practice. In support it referred to, *inter alia*, numerous complaints received by the Commission on which basis it had already opened 169 proceedings and a recommendation by the *Bundesgesundheitsamt* from which it appeared that certain derogations had been allowed where the criterion of "emergency" had not been fulfilled.

The Federal Republic argued that it fully respected the interpretation of Article 10(1) as provided by the court in Case 228/87 and that it only authorised derogations in the event of emergencies and if the supply of water for human consumption could not be maintained in any other way. The expression "acceptable cost", on the other hand, merely sought to ensure respect for the principle of proportionality which, in the opinion of the Federal Republic, was an unwritten constitutional principle of Community law applying to all measures burdening individuals.

Furthermore, referring to Cases 29/84, *Commission v Federal Republic of Germany* [1985] ECR 1661 and 363/85, *Commission v Italy* [1987] ECR 1733, the Federal Republic pointed out that Article 189 EEC does not require that Member States literally transpose the wording of Directives into their national laws but that it suffices that no real or potential risk exists that the law is not applied in accordance with the Directive. The Federal Republic also rejected the Commission's claims regarding the practical application of the Directive.

b) *absence of notification of derogations as required under Articles 9(1) and 10(3)*

The Commission pointed out that neither the Trwv nor any other provision of German law made the granting of derogations by the German competent authorities conditional upon the obligation to notify such derogations as specified in Articles 9(1) and 10(3) of the Directive. While acknowledging that, under the "*Grundsatz des bundesfreundlichen Verhaltens*" (principle of loyalty to the Bund), the German government had the power eventually to obtain the necessary information, the principle could not guarantee the immediate supply of information to the Commission.

To the extent that the amended German legislation did contain a requirement of notification to the Commission, an examination of Article 4(2) and (3) of the 1986 Trwv and Annex 4, point III revealed that this notification did not apply to all derogations related to geological circumstances, as for example ammonium, potassium etc. Thus, those derogations were generally authorised without them needing to be notified in each individual case and the requirement of notifications for individual substances would therefore only be partly satisfied for the future.

The Federal government submitted that it had notified to the Commission the derogations granted under Article 9(1) of the Directive with the 1986 Trwv, accompanied by explanations in respect of the parameters for potassium, magnesium and sulphates. To the extent that no other derogations had been granted (the Lander not having made use of the powers granted to them under Article 4(2)), there was no point in communicating other notifications.

Admitting that the Trwv does not contain any obligation to notify derogations under either Article 4(1) or (2), it maintained that this was not necessary. First, such an obligation followed directly from the Directive itself and, secondly, the principle of loyalty vis-a-vis the Bund ensured respect for the obligation to notify the Commission. Regarding the new legislation, the Federal Republic maintained that the Directive did leave Member States free, from a legislative perspective, to choose how to authorise the departures from the limit values. It was therefore perfectly acceptable to authorise such derogations in a general and abstract fashion so long as this system is notified to the Commission.

The Judgment

The court first dealt with the "old" version of Article 4(1) of the Trwv, rejecting the Federal Republic's arguments that in practice derogations were allowed only in emergencies and that the reference to "acceptable cost" in this provision was an expression of the Community principle of proportionality. To this end, it first of all referred to the aforementioned Case 228/87 where the court had pointed out in paragraph 10 of its judgment that the derogations contained in Articles 9 and 10 of the Directive had to be interpreted strictly and, in paragraph 14, that the notion of "emergencies" in the sense of Article 10 had to be understood as an urgent situtation relating to the supply of drinking water with which the responsible authorities must deal immediately. Thus the derogations contained in Article 4 of the Trwv, where no reference was made to emergencies, could be granted under different conditions than those foreseen in Article 10(1) of the Directive. In fact, derogations could be authorised when, in the absence of any risk to public health, the supply of water for human consumption could be maintained, but not at an acceptable cost. The court stressed that the principle of proportionality could not be advanced as a basis for allowing derogations to the limit values since, as had been pointed out by the Commission, such an interpretation would contradict the Directive's objective of establishing, throughout the Community, a uniform minimum health standard relating to water for human consumption. It followed that the Commission's complaint was well

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founded.

Turning to the Commission's complaint regarding the practical application of the amended version of Article 4(1), the court noted that, according to its jurisprudence, the scope of the proceedings is determined by the Reasoned Opinion. Thus, the Commission not having brought up this matter in the pre-contentious phase of the proceedings, the court rejected this aspect of its complaint as inadmissible.

Regarding the Commission's second complaint, relating to the absence of a duty on the part of the Länder to notify the Federal authorities of the derogations effected under the Trwv, the court dismissed the Federal Republic's arguments on three accounts. In the first place, the obligation in Article 9(1) to inform the Commission of any derogations was not satisfied by simply providing the general conditions which each derogation must satisfy and the motives for their adoption. The obligation was aimed at placing the Commission in a position to judge whether the individual derogations granted fulfilled the conditions of Article 9 of the Directive and was hence not satisfied by a simple communication of the text of the Trwv. Secondly, the principle of loyalty to the Bund could not guarantee that the Federal Government would obtain the information relating to derogations granted by the Länder within the prescribed time, as was shown by numerous examples given by the Commission. Finally, the Federal government could not rely on amendments to its legislation adopted after the deadline contained in the Reasoned Opinion. In any event, the court added, neither did the amended legislation fully respect the Directive. In fact, it followed from Annex 4, point III of the Trwv that the obligation to notify the Commission did not apply to certain parameters when they related to geological conditions. In those cases there was therefore a general derogation which, for the reasons set out, did not satisfy the requirements of the Directive.

The court concluded that by allowing, until January 1991, derogations to Directive 80/778 of 15 July 1980 relating to the quality of water intended for human consumption under conditions other than those contained in Article 10(1) and by not providing the obligation for the Länder to communicate the derogations in such a way as to ensure respect with Articles 9(1) and 10(3) of the Directive, the Federal Republic of Germany had failed to fulfil its obligations under the Treaty.

Comment

The case brings together two recurring themes of Community environmental law; the need to provide information to the Commission relating to the implementation of EC environmental Directives and the scope of provisions allowing Member States to derogate from the obligations contained in those Directives.

Regarding the duty to provide information in respect of the implementation of environmental Directives, (which apart from the Directives themselves also follows more generally from Article 5 EEC), the court's case law is quite unambiguous. Thus, failure to provide information constitutes an infringement of the Treaty and the information provided by the Member State should be sufficiently precise for the Commission to carry out its task under Article 155. In the context of Directive 80/778 this implies, as the court points out in paragraph 28 of the judgment, that the information must be specific enough to allow the Commission to judge in individual cases whether the derogations granted satisfy the conditions of Articles 9 and 10 of the Directive. The communication to the Commission of general criteria governing the authorisation of derogations is therefore not sufficient.

The court's finding that the absence of any duty on the part of the Länder to notify the Federal authorities of the derogations afforded under the Trwv (which is a necessary precondition for the fulfilment of the duty to provide information) is incompatible with the obligation in Article 9(1) therefore needs little comment. It is recalled that a Member State cannot hide behind the distribution of powers within that Member State to escape a judgment by the court. By way of example the Netherlands government's argument, in respect of Directive 75/440 relating to surface waters, that it lacked the powers to impose rules on the subordinate authorities responsible for its implementation was rejected for this reason (Case 97/81, *Commission v Netherlands* [1982] ECR 1819).

The interpretation of derogations contained in environmental Directives has already given rise to extensive case law, in particular in respect of Directive 79/409 on the conservation of wild birds. The derogations in Directive 80/778, apart from Case 228/87, have previously been subject to a court ruling in Case 42/89, *Commission v Belgium* [1990] ECR I-2821. In all these cases, the court has stressed that derogations should be interpreted restrictively and has required a rather literal transposition of the Directives' wording, (see for example Cases 247/85, *Commission v Belgium* [1987] ECR I-2821, 262/85, *Commission v Italy* [1987] ECR I-3073, 412/85, *Commission v Federal Republic of Germany* [1987] ECR I-3503 or 252/85, *Commission v France* [1988] ECR I-2243). Hence, the court's ruling that the Trwv does not fulfil the conditions of Articles 9 and 10 comes as no surprise.

After the court's – in the author's opinion erroneous – interpretation of the principles of "proximity" and "self-sufficiency" in Case C-2/90 of 9 July 1992 (reported in [1992] European Environmental Law Review October at p 107) the German government's attempt to afford similar legal weight to the "principle of proportionality" gave rise to some concern. The court's unreserved rejection of the German government's interpretation of the principle of proportionality must therefore be welcomed.

A final remark concerns the Commission's decision to maintain its complaint relating to the version of the Trwv in force before 1 January 1991. The court had asked whether, given the fact that after 1 January 1991 the Trwv complied with the Directive, the Commission wished to maintain its complaint. In a clear reference to the possible non-contractual liability of Member States for the infringement of environmental Directives the Commission responded:
"The Commission considers that (. . .) in view of a possible claim for damages, it would be useful if the Court of Justice would establish as a point of law that the *Trinkwasserverordnung* was not

compatible with the directive, at least in its version prior to 1.1.1991 (. . .)"

In his opinion in Case C-337/89, *Commission v United Kingdom of Great Britain and Northern Ireland*, (not yet reported, see [1993] European Environmental Law Review January at p 16) Advocate General Lenz, too, appeared to suggest that the court's ruling to the effect that the UK has infringed the Treaty may provide the basis for compensation for individuals (see Somsen, H and Bovis, C, "Enforcement of EC environmental law and the implications of the Francovich judgment" Water Law [1992] vol 3/6 pp. 184–188). It would appear that it can only be a matter of time before, on the basis of the court's judgment in *Francovich*, individuals will claim compensation for damages suffered as a result of the non-implementation of environmental Directives.

Han Somsen

Case C-376/90, Commission v Belgium (safety standards for the health protection of the general public and workers against the dangers of ionizing radiation) 25 November 1992 (not yet reported)

Procedural and Factual Background

By letter of 31 December 1988 the Commission invited the Belgian government to submit its observations relating to its alleged infringement of Articles 10(2), (where Belgian implementing legislation provides for more stringent standards than the Directive), 44 and 45 of Directive 80/836 concerning ionizing radiation. In response, the Belgian government maintained that a Member State can impose more stringent standards than those contained in the Directive, a position it maintained after the Commission had formulated its Reasoned Opinion. In particular, the Belgian government pointed out that the complete harmonization advocated by the Commission was difficult to reconcile with Article 161 of the Treaty and with the principles of Article 6. Not satisfied with this response, the Commission brought the case before the court on 18 December 1990.

Legal Framework

Directive 80/836 (Official Journal 1980 L 246/1) aims to protect the health of workers and the general public against the dangers of ionizing radiation. Directive 80/836 has been amended by Directive 84/467 of 4 September 1984 (Official Journal 1984 L 265/4). The Directive establishes procedures regarding medical surveillance as well as a system of surveillance inspection and, in the case of accident, intervention.

Article 6 of the Directive establishes the principles on which the limitation of individual and collective doses resulting from controllable exposures is based, ie:

(a) every activity resulting in an exposure to ionizing radiation shall be justified by the advantages which it produces;

(b) all exposures shall be kept as low as reasonably achievable;

(c) without prejudice to Article 11, the sum of the doses and committed doses received shall not exceed the dose limits laid down in this Title for exposed workers, apprentices and students and members of the public.

Articles 8 and 9 fix the limits for doses to which workers are exposed. Article 10 establishes doses for apprentices and students and the second paragraph provides:

"The dose limits for apprentices and students aged between 16 and 18 years who are training for employment involving exposure to ionizing radiation or who, in the course of their studies, are obliged to use sources, shall be equal to three tenths of the annual dose limits for exposed workers laid down in Articles 8 and 9."

Article 44 concerns the surveillance of the population and establishes the methods which Member States apply for the health surveillance of the population and the assessment of the doses of radiation received by the population. Article 45 provides for a system of inspection to supervise the protection of the health of the population and measures to be taken in the event of accidents.

According to Article 46 the Directive should have been implemented into Belgian law by 3 December 1982.

By letters of 21 May and 10 August 1987, the Belgian government notified the Commission of the national measures which in its opinion implemented the Directive. Regarding Article 10(2), it referred to 20.6.2 of the Royal Decree of 28 February 1963 on the protection of the population and its workers against the danger of ionizing radiation (*Moniteur belge* No 98 p 5206) as amended by the Royal Decree of 16 January 1987 (*Moniteur belge* No 50 p 3714) providing:

"The dose limits for apprentices and students aged between 16 and 18 years who are training for employment involving exposure to ionizing radiation or who, in the course of their studies, are obliged to use sources, shall be equal to one tenth of the dose limits laid down in Article 20.3 for exposed workers"

Regarding Articles 44 and 45 of the Directive, the Belgian government having adopted the necessary legislation in the course of the proceedings the Commission decided to withdraw the complaint.

Main Arguments of the Parties

The Commission submitted that the fixing of dose limits by Member States differing from Article 10(2) was contrary to the objective of Article 2(b) of the Euratom Treaty, ie the establishment of uniform safety standards. The freedom relating to the implementation of Directives as contained in Article 161 of the Treaty could not justify derogations to specific quantitative norms seeking to ensure the uniformity of standards within the Community.

Regarding the principles of "justification" and "optimalisation" pronounced in Article 6, these applied within the framework established by the dose limits and could not justify changing them or making them more stringent.

The Belgian government contested the Commission's interpretation of Article 10(2). It noted that Article 30 Euratom defines basic standards as maximum standards and that under Article 6(c) of Directive 80/836 the maximum dose is the sum of the doses received which "shall not exceed the dose limits laid down". Hence, the basic standard should be understood as a limit not to be exceeded whilst allowing more stringent standards.

In support, it referred to 1977 recommendations of the International Commission for Radiological Protection (the "ICRP"), which had marked the evolution towards a general system based on the three principles contained in Article 6 from which it followed that the national authorities must ensure that all the conditions are satisfied, even if they

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respect the levels prescribed. Furthermore, the Belgian government submitted, restricting the dose limits for apprentices and students to three-tenths of the annual dose limits for exposed workers in Article 10(2) contradicted the rule applicable to workers under 18 years of age under Article 7 in conjunction with Article 1(c), as it would be unjustifiable to accept a higher exposure for students and apprentices under the age of 18 than for workers of the same age.

The Commission rejected this interpretation, pointing at Article 2(b) Euratom which refers to the adoption of *uniform* safety standards (emphasis added). Consequently, a Member State was prohibited from adopting different dose limits than those laid down in Article 10(2), even if these are more stringent.

As for the principles in Article 6 of the Directive, these had to be applied autonomously. The principle of optimalisation applied essentially to the use of the radioactive source and within the limits prescribed by the legislation. The reason why workers under the age of 18 should not be exposed to doses exceeding a tenth of the limits of the annual dose limits for exposed workers was that these workers were in a particularly vulnerable phase of their physical development and very susceptible to the effects of radiation. Whilst this applied equally to apprentices and students of the same age group, a higher dose limit was necessary in order for their studies to be effective. Hence, Article 10(1) had to be regarded as a *lex specialis* or an exception to Article 7(1). Meanwhile, the Commission stressed, the dose limits adopted in the Directive allowed for a sufficient safety margin for the persons concerned.

In reply, the Belgian government argued that the uniformity of the standards followed from the three principles elaborated by the ICRP. It followed that the dose limits for apprentices and students were maximum doses and not admissible doses.

The Judgment

The court first turned to the interpretation of the concept of "dose limits" as used in Article 10(2). The wording of this provision, the court noted, did not provide any arguments in favour of either position. The same applied to the definition of "dose limits" in Article 1(b): the limits laid down in this Directive for the doses resulting from the exposure of exposed workers, apprentices and students, and members of the public, excluding the doses resulting from natural background radiation and exposure of individuals as a result of medical examination and treatment undergone by them. The dose limits apply to the sum of the doses received from external exposure during the period considered and the committed doses resulting from the intake of radionuclides during the same period.

The court noted that the Commission's reliance on Article 2(b) Euratom) as proof of the fact that the dose limits are not intended to be minimum levels of protection, had to be rejected. Thus, the uniformity of the standards did not preclude the adoption of more stringent standards.

Moreover, certain elements in the Directive justified an interpretation of the notion "dose limits" in Article 10(2) as referring to a minimum level of protection. Thus, it followed from the communication of the Commission of 31 December 1985 concerning the implementation of Directives 80/836 and 84/467 Euratom that the standards fixed in Directive 80/836 were based on the recommendations of the ICRP. In particular, it followed from ICRP publication No 60 that levels of ionizing radiation exceeding doses resulting from natural background radiation constituted a danger for human health. The fact that such levels were accepted for social and economic reasons was merely the result of a comparison between the advantages they bring with the disadvantages they cause. Within this framework, the general principles on which the system of protection recommended by the ICRP is based were:

a) justification of every activity resulting in an exposure to ionizing radiation by the advantages which it produces,
b) optimalisation of protection by keeping all exposures as low as reasonably possible, taking into account, inter alia, social and economic factors, the sum of the individual doses and the number of individuals exposed,
c) the fixing of dose limits.

It followed from the same ICRP publication that the dose limits represent values at which the consequences for public health of persons regularly exposed to ionizing radiation are just tolerable and that the choice of dose limits necessarily was dependent upon considerations that varied amongst the societies concerned.

Thus, the dose limits fixed by the ICRP did not constitute absolute norms, but were published merely as guidelines and the principle which governs the dose limits is the optimalisation of protection.

In conclusion, there was nothing allowing the court to conclude that the Community legislator had departed from the position of the ICRP concerning dose limits, and that it had not left Member States any discretion in pursuing a higher level of protection than that of the Directive.

It was therefore appropriate to hold, having regard to the objective of the Directive and the principle of optimalisation of protection, that if the Community legislator had intended to prohibit the establishment, by the Member States, of a higher level of protection than provided by the Directive, it would have expressly indicated this in its provisions.

Such an interpretation of Article 10(2), according to which the notion of "dose limits" constitutes a minimum level of protection, was supported by the fact that the Directive itself anticipated higher levels of protection. If followed from Article 7(1), read in conjunction with Article 1(c) of the Directive, that workers under the age of 18 should not be exposed to doses exceeding one tenth of the annual doses applicable to workers.

Although it was true that Article 10(2) anticipated a lower level of protection for apprentices and students between 16 and 18 years, which may be justified if there are sound reasons, this did not change the fact that in the absence of an express provision to the contrary, the Directive should not be considered as opposing a Member State deciding, having regard to economic and social factors, not to make use of that possibility and to afford to its apprentices and students a higher level of protection than guaranteed by the Directive for workers of the same age.