

In Case 72/83

REFERENCE to the Court under Article 177 of the EEC Treaty by the High Court of Ireland for a preliminary ruling in the proceedings pending before that court between

CAMPUS OIL LIMITED,

ESTUARY FUEL LIMITED,

McMULLAN BROS LIMITED,

OLA TEORANTA,

PMPA OIL COMPANY LIMITED

TEDCASTLE McCORMICK & COMPANY LIMITED

and

THE MINISTER FOR INDUSTRY AND ENERGY,

IRELAND,

THE ATTORNEY GENERAL,

IRISH NATIONAL PETROLEUM CORPORATION LIMITED,

on the interpretation of Articles 30 and 36 of the EEC Treaty in relation to national legislation on the supply of petroleum products,

THE COURT,

composed of: Lord Mackenzie Stuart, President, T. Koopmans, K. Bahlmann and Y. Galmot (Presidents of Chambers), P. Pescatore, A. O'Keefe, G. Bosco, O. Due and U. Everling, Judges,

Advocate General: Sir Gordon Slynn  
Registrar: H. A. Rühl, Principal Administrator

gives the following

## JUDGMENT

### Facts and Issues

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

of fuel to which the order relates for the maintenance and provision of supplies of that type or those types of fuel and provide for the control, regulation, restriction or prohibition of the import or the export of the type or types of fuel in question.

#### I — Facts and procedure

1. Under Section 2 of the Irish Fuels (Control of Supplies) Act 1971 (hereinafter referred to as "the 1971 Act"), as amended in 1982, the Irish Government may by order declare that the exigencies of the common good necessitate the control by the appropriate Minister on behalf of the State of the purchase, supply and distribution of fuels. The order remains in force for a given period which, under the Fuels (Control of Supplies) Act 1982 (hereinafter referred to as "the 1982 Act"), cannot exceed 12 months from the date on which it was made, without prejudice to the Government's power to make a further order extending the validity of the original order. On 11 April 1979 the Irish Government made an order declaring that the exigencies of the common good necessitated the control of the supply and distribution of fuels; that order was subsequently extended from time to time.

2. Ireland has no domestic supply of crude oil. Until 1979 the supply of the major proportion of refined petroleum products to the Irish market was in the hands of a small number of international oil companies which had no necessary or permanent commitment to the Irish market.

In July 1979, in order to improve the security of oil supplies within the State, the Irish Government set up a state-owned oil company known as the Irish National Petroleum Corporation Limited (hereinafter referred to as "the INPC") whose objectives include providing for the supply of a significant part of the oil requirements of the Irish market, operating within the Irish oil industry and oil market with a view to promoting orderly development and developing and maintaining economic activity which contributes to the efficiency of the oil industry in Ireland.

Section 3 of the 1971 Act, as inserted by the 1982 Act, provides that where such an order is in force, the Minister may by order provide for the regulation or control of the acquisition, supply, distribution or marketing of the type or types

The INPC has concluded term contracts with foreign suppliers for the supply of crude oil. In 1981 the INPC provided approximately 10% of Ireland's oil supplies. Crude oil purchased by the INPC was refined for it either in

Ireland's only oil refinery at Whitegate in County Cork or at refineries in the United Kingdom.

The Whitegate refinery was owned by the Irish Refining Company Limited, itself owned jointly by four major oil companies, namely Irish Shell Limited, Esso Petroleum Company Limited, Texaco International Trader Incorporated and BP (Ireland) Limited.

In August 1981 the four companies which owned the refinery informed the Ministry for Industry and Energy that it was their intention that refining should cease permanently at the refinery. Following unsuccessful negotiations with those companies with a view to the continuance by them of the operation of the refinery, the Irish Government was faced with the option of either acquiring the refinery on behalf of the State or allowing it to close. In the event of the refinery's closure, all suppliers of refined petroleum products on the Irish market would have been obliged to obtain their supplies from abroad, principally from the United Kingdom which accounts for approximately 80 % of supplies.

Having determined that the retention of the refinery was necessary in the interests of security of supplies and following consultation of the Commission of the European Communities, the Irish Government acquired through the INPC the entire issued share capital of the Irish Refining Company Limited, which owned the Whitegate refinery.

3. Since the Minister for Industry and Energy and the oil-marketing companies could not agree on the basis on which the products of the Whitegate refinery

would be sold, on 25 August 1982 the Minister, in the exercise of the powers conferred upon him by Section 3 of the 1971 Act, as amended by the 1982 Act, made the Fuels (Control of Supplies) Order 1982 (SI, No 280 of 1982) (hereinafter referred to as "the 1982 Order") in order to maintain the Whitegate refinery in operation.

The 1982 Order applies to all persons who import into Ireland any of the wide range of petroleum oils to which it refers. It requires those importers to purchase from the INPC that proportion of their requirements of each type of petroleum product during certain specified periods which the Whitegate refinery's output represents of the total requirements of that type of petroleum product of all importers for the same period.

Importers are obliged to provide the Minister with all the necessary information. Their purchasing obligation is limited to 35% of their total petroleum oil requirements or to tax of 40% of their requirements of any particular type of petroleum oil.

The price at which those products are to be purchased is determined by the Minister for Industry and Energy, having regard to the costs incurred by the INPC or by the Irish Refining Company Limited in relation to capital costs, financing costs and overhead costs of acquiring crude oil, shipment, storage, processing and any other costs incurred in, or arising from, the operation of the refinery. The persons affected by the 1982 Order are entitled to recover any additional costs thus incurred by raising their selling prices.

4. Campus Oil Limited, Estuary Fuel Limited, McMullan Bros Limited, Ola Teoranta, PMPA Oil Company Limited and Tedcastle McCormick & Company Limited are traders in petroleum products established in Ireland. They are all members of the Irish Independent Petroleum Association, a trade association formed to protect the interests of Irish-owned traders in petroleum products who trade either exclusively or predominantly on the Irish market. They are engaged in the importation and sale of fuel oils, particularly gas oils, gasolene and other fuel oils of various grades. They supply approximately 14% of the gasolene market in Ireland and a somewhat higher percentage of other petroleum products. The remainder of the market is supplied by multinational companies.

The abovementioned companies have objected to being obliged to purchase supplies from the INPC and have submitted a complaint to the Commission on the matter.

By letter of 1 February 1983 the Commission initiated the procedure under Article 169 of the EEC Treaty against Ireland for the infringement of Articles 30, 36, 85, 86 and 90 of the EEC Treaty. The Irish Government submitted its observations on the alleged infringement by letter of 26 April 1983.

5. In order to challenge the purchasing requirement under the 1982 Order, the abovementioned companies also initiated proceedings before the High Court of Ireland for a declaration that the 1982 Order is inconsistent with the provisions of the EEC Treaty and, in particular, with Articles 30, 31, 36, 85, 86, 90, 92 and 93 thereof.

In the proceedings before the High Court, the plaintiffs in the main action contend that the requirement in the 1982 Order that they should purchase up to 35% of their requirements of petroleum products from the INPC constitutes a measure having an effect equivalent to a quantitative restriction on imports. The defendants in the main action maintain that the purchasing requirement does not constitute such a restriction and that, if it does, the restriction is justified on grounds of public policy and public security and is accordingly covered by Article 36 of the EEC Treaty.

The High Court of Ireland took the view that, before hearing the submissions and arguments of the parties relating to the precise effects of the contested system on trade and to the reasons for the purchase of the Whitegate refinery by the State and for the introduction of that system on grounds of public policy and public security, it was necessary to refer to the Court of Justice certain questions on the interpretation of Community law. Accordingly, by Order of 9 December 1982, the High Court referred to the Court of Justice under Article 177 of the EEC Treaty the following questions for a preliminary ruling:

1. Are Articles 30 and 31 of the EEC Treaty to be interpreted as applying to a system such as that established by the Fuels (Control of Supplies) Order 1982 in so far as that system requires importers of oil products into a Member State of the European Economic Community (in this case Ireland) to purchase from a state-owned oil refinery up to 35% of their requirements of petroleum oils?

2. If the answer to the foregoing question is in the affirmative, are the concepts of "public policy" or "public security" in Article 36 of the Treaty aforesaid to be interpreted in relation to a system such as that established by the 1982 Order so that:

- (a) such system as above recited is exempt by Article 36 of the Treaty from the provisions of Articles 30 to 34 thereof, or
- (b) such scheme is capable of being so exempt in any circumstances and, if so, in what circumstances?

6. The order making the reference was lodged at the Court Registry on 28 April 1983.

Pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations were submitted by the following: Campus Oil Limited, Estuary Fuel Limited, McMullan Bros Limited, Ola Teoranta, PMPA Oil Company Limited and Tedcastle McCormick & Company Limited, plaintiffs in the main action, represented by Eoghan P. Fitzsimons, Senior Counsel, Richard Nesbitt, Barrister-at-law, and Messrs A. & L. Goodbody, Solicitors; Ireland, the Minister for Industry and Energy and the Attorney General, defendants in the main action, represented by Louis J. Dockery, Chief State Solicitor, acting as Agent; the Irish National Petroleum Corporation Limited, defendant in the main action, represented by Arthur Cox & Co., Solicitors; and the Commission of the European Communities, represented by Richard Wainwright and Julian Curall, members of its Legal Department, acting as Agents.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry. However, it asked the Commission to reply to a question

concerning the provisions in force governing the supply of petroleum products and their distribution at national level in other Member States, at Community level and at international level and to produce certain documents. The Commission replied to that question before the sitting.

## II — Written observations

### 1. *Observations submitted by the plaintiffs in the main action*

The plaintiffs in the main action observe first, by way of introduction, that before the entry into force of the contested 1982 Order, approximately 75% of the petroleum products sold by them were purchased from suppliers and refineries established in other Member States. Those purchases were made at prices prevailing at the time of purchase and their customers obtained the benefit of such competitive purchasing. The plaintiffs are small independent oil companies which depend on their individual capacities to operate on a totally flexible basis on the open market. The contested 1982 Order completely cuts across that freedom of action and places them at a competitive disadvantage in relation to the major multinational companies operating on the Irish market.

The plaintiffs in the main action do not contest the INPC's purchase or operation of the Whitegate refinery, nor would they have any objection to the Irish State operating the refinery in a competitive manner without the support of the contested 1982 Order and the regulatory system. However, they do contest the right of the Irish State to compel them to purchase from the Whitegate refinery a substantial proportion of their petroleum oil supplies at prices in excess of those prevailing on the

open market and fixed pursuant to the contested 1982 Order. The mandatory purchasing system created by the 1982 Order has as its purpose to ensure that the Whitegate refinery does not operate at a loss, and obliges the customer to subsidize the operation of the refinery.

As regards the *first question* the plaintiffs in the main action are of the opinion that the purchasing requirement constitutes a classic example of a measure having an effect equivalent to a quantitative restriction within the meaning of Articles 30 and 31 of the EEC Treaty. The 1982 Order expressly envisages a restriction on trade in petroleum products and prevents Irish oil importers from importing 35% of their own oil requirements. Since the 1982 Order makes no provision for any derogation from that requirement, there is an express restriction on the free movement of petroleum products between Ireland and the other Member States.

Furthermore, in the light of the judgment of the Court of Justice of 20 May 1976 in Case 104/75 (*de Peijper* [1976] ECR 613) the effect of the contested 1982 Order is to ensure that imported petroleum products (albeit initially in crude oil form) are channelled through the INPC. A system restricting the importing capacity of certain traders whilst granting a monopoly-type importing franchise to another trader must of necessity affect the free movement of the goods in question.

As regards the *second question*, the plaintiffs in the main action emphasize that Article 36 of the EEC Treaty has been given a strict interpretation in the case-law of the Court. In particular, Article 36 covers only matters of a non-economic nature (judgment of 19 De-

cember 1961 in Case 7/61 *Commission v Italy* [1961] ECR 317; judgment of 9 June 1982 in Case 95/81 *Commission v Italy* [1982] ECR 2187). In that regard, it is important to see the question as concerning the existence of a mandatory requirement to purchase goods at a specified price and not as to whether Ireland should or should not have an oil refinery.

The defendants in the main action were not seriously relying upon the concept of "public policy". In any event, that concept presupposes the existence of a genuine and sufficiently serious threat affecting one of the fundamental interests of society and in the context of the Community it must be interpreted strictly (judgment of 4. 12. 1974 in Case 41/74 *Van Duyn v Home Office* [1974] ECR 1337; judgment of 27. 10. 1977 in Case 30/77 *Regina v Boucherau* [1977] ECR 1999). The system established by the 1982 Order is, however, essentially economically based since its purpose is to enable the defendants to operate the Whitegate refinery with guaranteed customers for its products and without financial loss. The system is a financial instrument and thus economic in nature and it cannot therefore come within the concept of "public policy" referred to in Article 36. It may be possible to envisage circumstances in which the operation by a Member State of an oil refinery can be justified on the basis of that article. However, there is no basis whatever for justifying the existence of a mandatory purchasing requirement and the allied pricing system.

As regards "public security", it is difficult to conceive of any relationship between that concept and the essentially economic nature of the system in question. Public security denotes the internal security of the State rather than

national security in the context of inter-State relations. Even if the concept of public security were deemed to incorporate an element of external security, it would still not encompass the system established by the contested 1982 Order.

yet had an opportunity of putting forward or proving the factual basis which justified the purchase of the Whitgate refinery and the introduction of the contested mandatory system. In that regard, the defendants wish to make the following observations:

As it has done in relation to the concept of "public policy", the Court can give guidance for interpreting the breadth and scope of the concept of "public security" within the meaning of Article 36. "Public security" involves the maintenance of law and order within the State. In certain extreme circumstances, the assistance of the national army may be necessary to enforce security. Hence, there is no connection whatsoever between that concept and a system such as that established by the contested 1982 Order. Only the ownership and operation of the Whitgate refinery by the State can be justified on grounds of public security but not the mandatory purchasing requirement.

*2. Observations submitted by Ireland, by the Minister for Industry and Energy and by the Attorney General*

The Irish Government describes first the relevant Irish legislation and the course of the proceedings before the High Court. It emphasizes, in particular, that the reference for a preliminary ruling was made at a time when the facts had not yet been established in the main proceedings and the defendants had not

The Irish Government was confronted by the urgent necessity of taking a decision regarding the purchase of the refinery in a very short period of time since, in the interests of security of oil supplies, Ireland must have an operating oil refinery. Following the purchase of the refinery, the Government made extensive efforts to establish, through negotiations, a voluntary system for the operation of the refinery. However, it came to the conclusion that only a mandatory system would provide for the operation of the refinery with any certainty of continuous offtake of its products and equitable treatment of all the oil companies on a basis acceptable to them. Account must be taken of Ireland's exceptional dependence on a single source, namely the United Kingdom, for imports of refined petroleum products, particularly in view of the history and severity of disruptions in oil supply throughout the 1970s. Ireland is dependent on oil as an energy source for the support of all aspects of national life, not merely economic aspects but also in the social, medical, military, police and other spheres. The Irish Government is, however, still willing to seek an alternative solution to the temporary measures in question. Moreover, other countries, including other Member States, pursue similar national policies to secure oil supplies. One example is the system of control of oil distribution which the French Government operates with the Commission's approval.

As regards the *first question*, the Irish Government submits that Articles 30 and 31 of the EEC Treaty prohibit essentially any form of discrimination which seeks to give or actually gives some form of protection or preference to domestic products. It is not the intention or the object of the mandatory system to have any effect on intra-Community trade. Since Ireland has no domestic source of crude oil, the system has the effect only of diverting a proportion of oil imports from the refined to the crude product. A system of that kind does not therefore come within the scope of Article 30 *et seq.* of the EEC Treaty.

As regards the *second question*, the Irish Government submits that Article 36 of the EEC Treaty leaves the Member States a primary competence in the areas concerned. It is for the national authority in the first instance to decide on the measures to be taken. The concept of "public security" is of a special kind inasmuch as the Community has no competence itself in that field and since the Member States have retained their own powers intact. The Court should therefore give more weight to the views of a Member State on the concept of its public security than it does in the case of the other concepts referred to in Article 36, particularly where the measure in question forms the subject-matter of a solemn declaration by the Government of the country concerned.

It must be borne in mind that decisions in the field of public security are often made in circumstances of pressing urgency. In this case, moreover, Ireland consulted the Commission on several occasions and the departments concerned were quite sympathetic to the Irish proposals. It was only in July 1982,

after the refinery had been purchased, that objections were raised by the Commission.

The justification for the contested system is based not on economic grounds but on the view that the maintenance of secure supplies of oil for all purposes is a matter of public policy and public security. In that regard, particular attention must be paid to Ireland's geographical position, the absence of any domestic source of oil and the fact that in the operation of the international oil market and especially in view of the dominance of a few multinational oil companies, Ireland would be dependent on the United Kingdom for 80% to 90% of its supplies of refined petroleum products. In those circumstances, the Irish Government has taken the view that on grounds of public security and public policy it must maintain a substantial degree of independence with regard to the purchase of crude oil and refining capacity.

Before the mandatory system was introduced as a temporary measure, all the other alternatives were explored. The Minister concerned is still exploring all the possibilities with a view to suspending that system. Until a suitable alternative is found, the mandatory system must be retained.

The Irish Government states that in the course of negotiations with the oil companies it became apparent that the major oil companies were at best prepared to agree to purchase petroleum products from the Whitegate refinery only at the lowest international spot



prices prevailing at the time of purchase and only on the basis that, even at those prices, the Whitegate refinery would be a marginal supplier of such products, with the result that the off-take of its products would be a matter of extreme uncertainty. Some companies even stated that they would not purchase such products from the refinery at any price. Others expressed a preference for a mandatory system, which they felt would be more equitable. Since the resumption of refining at Whitegate in August 1982, the prices of petroleum products processed there have fallen to a level much closer to the average import prices of those products. The time at which it will be possible to dismantle the mandatory system depends, however, not only on closure of the gap in price levels but also on the attitudes of the oil companies to the purchase of petroleum products from the refinery even at competitive prices. Another important factor is the question whether, in contrast with their present attitude, the oil companies would be prepared to maintain on Irish soil adequate reserve stocks of petroleum products.

In conclusion, the Irish Government considers that public policy and public security within the meaning of Article 36 of the EEC Treaty include measures taken by a Member State that are necessary in order to maintain security of oil supplies for that State. Whether the measures at issue in this case are justified on those grounds is a matter for the national court.

### 3. *Observations of the INPC*

By way of addition to the submissions of the Irish Government, the INPC submits

observations in regard to the second question referred to the Court. The INPC points out first that when the Court considers that question, it should have before it the fullest information concerning Ireland's very special position in regard to petroleum products, including, in particular, the following factors:

Ireland is more dependent on petroleum products than most EEC Member States. It relies on oil for 66 % of its energy needs, as against the Community average of 51%. The Whitegate refinery's capacity corresponds to only two-thirds of Ireland's consumption. Other Member States, on the other hand, have a refining capacity which far exceeds their total demand and have several domestic refineries. Ireland is dependent essentially on oil supplies from the United Kingdom which provides 83% of its oil imports although Ireland accounts for only 5% of the United Kingdom's oil exports. Multinational oil companies are more dominant in Ireland than in any other Member State and Ireland has no effective control over the distribution of petroleum products. Ireland therefore needs to have a refining capacity, particularly in times of crisis, in order to protect essential supplies. In any crisis of a military nature, Ireland, being a non-aligned country and not a member of NATO, would have to fend for itself. For similar reasons, countries such as Austria, Barbados, Cyprus, Jamaica, New Zealand and Thailand, which are in a geo-political and economic situation similar to that of Ireland, all consider a domestic refining capacity to be an essential element of national security. A domestic refinery provides security, however, only if it is maintained in

operation and if it purchases crude oil and feedstocks on a continuing basis.

nation or a disguised restriction on trade between Member States.

In October 1981 the Council adopted a communication from the Commission on "Problems affecting the oil refining industry in the Community" and recognized that "the contraction and restructuring of the industry is necessary and should be carried out by the industry itself, provided that the security of supply of the regions concerned is not put at risk". The closure of Ireland's sole refinery would constitute a very serious risk to the country's security of supply of petroleum products.

In the opinion of the INPC, it is premature at this stage to answer the second question without an exhaustive examination of the abovementioned circumstances and of the considerations that were taken into account by the Government when it introduced the system in question.

In any event, the INPC takes the view that the concepts of public policy and public security should be interpreted in such a way as to exempt the mandatory system from Articles 30 to 34 of the EEC Treaty. A secure petroleum supply is as essential to the life of a country as a proper water supply, a proper road system and a proper sewerage system. The provision of those services is the responsibility of the State. Thus, ensuring a secure supply of petroleum products is not a commercial or an economic matter but a task for which the Government is directly responsible since it concerns the life of the people, public policy and public security. The contested mandatory system is within the area of discretion left to the State for those purposes. Finally, that system does not constitute a means of arbitrary discrimi-

The INPC quotes the following factors as examples of the circumstances referred to in the second part of the second question which may justify the exemption of a system of the kind at issue from Articles 30 to 34 of the EEC Treaty: security of supply of petroleum products is essential for the ordinary day-to-day life of Irish citizens and for the proper functioning of the services for which the State is directly or indirectly responsible; it is the duty of the Government to ensure security of supply; it is for the Government to determine that a system such as the mandatory system is the appropriate means for maintaining security of supply; even if there are alternative methods which may provide some protection, it is within the discretion left to the State by the Treaty to determine which means it wishes to adopt; the Government is entitled to take steps to ensure that Ireland is not deprived of refining capacity.

#### 4. *Observations of the Commission*

The Commission observes first that in the early stages of discussion it expressed some sympathy with the Irish Government's difficulties whilst voicing reservations about the compatibility with Articles 30 to 36 of the EEC Treaty of the purchasing requirement proposed by the Irish Government. The Commission formed its opinion on the 1982 Order once it had received the complaint submitted by the plaintiffs in the main action.

The answer to the *first question* should be "yes" since by requiring purchasers of petroleum products to obtain 35 or 40%

of their supplies from the INPC, the Irish Government is making it impossible for them to buy corresponding imported refined products, should they so wish. That measure is capable of causing direct and actual hindrance to intra-Community trade and is discriminatory inasmuch as it hinders the purchase by private individuals of imported products and requires the purchase of domestic products.

The answer to both parts of the *second question* should be “no”.

The Commission emphasizes in the first place that the interest which the Irish Government seeks to protect is of an economic nature and is therefore incapable of justification by reference to Article 36 of the EEC Treaty.

The purpose of safeguarding national fuel supplies in the event of an oil crisis is to ensure that economic activity may continue as before. Even if certain economic measures may have effects outside the purely economic sphere, a measure of a wholly or predominantly economic nature does not change its nature merely because it may have some non-economic effects. The exception on grounds of “public policy” under Article 36 concerns the protection of the fundamental interests of the State, and the exception on grounds of “public security” should be restricted to such matters as national defence and the maintenance of civil peace in so far as those matters are not covered by the

more specific provisions of Articles 223, 224 and 225 of the EEC Treaty.

Even if it was held that the imposition of restrictions on the importation of petroleum products intended as fuel supplies might be justified on grounds of public security or public policy, the Irish Government has failed to demonstrate that the supply of imported petroleum products, not produced by the INPC at Whitegate, constitutes a threat to its interests. The disruption of oil supplies which occurred in the past, even if it was serious enough to amount to a threat to public security or to public policy, is wholly unconnected with the purchasing requirement under the contested 1982 Order. Thus in 1973/1974, it was neither the importation of petroleum products nor the shortage of refined products which caused supplies to be disrupted, but rather the shortage of crude oil. The existence of the Whitegate refinery did not prevent the disruptions which occurred at that time and can do nothing to prevent similar situations from arising in the future.

In any event, the 1982 Order is ineffective and inappropriate for the purpose of securing supplies. The real difficulty faced by Member States which are dependent upon imported oil is the possibility that crude oil may suddenly be in short supply. In those circumstances, a refining capacity would be irrelevant to the security of supplies. There is at present, and there is likely to be for some time, a considerable surplus of refining capacity in the Community. Directives 68/414/EEC and 72/425/EEC allow the Member States to hold their fuel stocks in the form of either crude oil or refined petroleum products. However, there is nothing in those directives which justifies the suggestion that a refining capacity is necessary.

Moreover, stocks may also be held in another Member State under an agreement between the governments concerned. It is in any case possible to ensure security of supplies without hindering trade in refined petroleum products. Thus, other Member States, including those which do not have adequate refining capacity of their own, are content to ensure their security of supply, in accordance with the above-mentioned directives, by stocking fuel in the forms most appropriate to their circumstances, in several cases by storing part of their stocks in another Member State. Even if it were supposed that Ireland had a particular reason for keeping its stocks on national territory, that does not explain the need to retain the refinery or the import restrictions resulting from the 1982 Order.

As regards the question whether there are other circumstances which are capable of justifying exemption from Article 30 of the EEC Treaty, the Commission considers that none of the grounds referred to in Article 36 of the EEC Treaty can be relied upon for those purposes. Similarly, exemption cannot be claimed on the ground of other "mandatory requirements" in the public interest of the kind referred to by the Court in Case 120/78 (*Rewe* [1979] ECR 649), Case 788/79 (*Gilli* [1980] ECR 2071) and Case 130/78 (*Keldermann* [1981] ECR 527), particularly since the measure in question is discriminatory. There is nothing in Council Directives 68/414/EEC and 72/425/EEC to justify the view that those provisions cannot be complied with unless there is an oil refinery in existence. The Irish Government has not relied upon Article 224 of the EEC Treaty which contains specific provisions applicable in the event of public disorder. Furthermore, it is difficult to see how a threat to oil supplies can be removed by means of restrictions on imports of

petroleum products. Thus, a system such as the one at issue cannot be justified under any other provision or rule of Community law.

### III — Oral procedure

At the sitting on 14 February 1984 oral argument was presented by the following: Eoghan P. Fitzsimons, Senior Counsel, and Richard Nesbitt, Barrister-at-law, for the plaintiffs in the main action; Nial Fennelly, Senior Counsel, and Daniel Burn, Barrister-at-law, for the Minister for Industry and Energy, Ireland and the Attorney General; John Blayney, Senior Counsel, and Daniel O'Keeffe, Barrister-at-law, for the Irish National Petroleum Corporation; Francis Jacobs, Barrister-at-law, for the United Kingdom; F. Spathopoulous, acting as Agent, for the Greek Government; and Richard Wainwright and Julian Currall, acting as Agents, for the Commission of the European Communities.

The parties to the main action and the Commission reiterated in substance the positions which they adopted in the written procedure.

The *United Kingdom* confined its observations to the second question which it suggested should be answered as follows:

The term "public security" in Article 36 should be interpreted in such a way that measures can be considered under the head of "public security" if they are designed to secure a fundamental interest of the State which can properly be protected on that ground, including, for example, the maintenance of essential public services, or if they are designed to

enable the life of the State to function safely and effectively.

A Member State cannot invoke the grounds of public policy or public security if the measures in question are designed predominantly to attain economic objectives.

The measures in question, in order to be justified, must not go beyond what is necessary to attain the legitimate objectives protected by Article 36, as well, of course, as complying with its second sentence.

The *Greek Government* observed that Article 90 (2) of the EEC Treaty may be applicable. A petroleum refinery constitutes an undertaking of general economic interest inasmuch as its existence makes it possible to guarantee security of supplies of refined petroleum

products to the domestic market. As regards whether a purchasing obligation is essential for such an undertaking to fulfil its purpose, it must be borne in mind that a State-owned establishment, like independent refineries, is unable to compete on the same footing with vertically-integrated multinational undertakings and is at a disadvantage as regards the ability to make largescale purchases.

In response to a request made by the Court at the sitting on 29 February 1984, the Commission submitted a series of documents concerning the rules applicable within the framework of the International Energy Agency set up by the Organization for Economic Co-operation and Development.

The Advocate General delivered his opinion at the sitting on 10 April 1984.

## Decision

- 1 By order of 9 December 1982, which was received at the Court on 28 April 1983, the High Court of Ireland referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty two questions on the interpretation of Articles 30, 31 and 36 of the Treaty in order to enable it to decide whether Irish rules requiring importers of petroleum products to purchase a certain proportion of their requirements at prices fixed by the competent minister from a State-owned company which operates a refinery in Ireland are compatible with the Treaty.
- 2 Those questions arose in proceedings instituted by six Irish undertakings trading in petroleum products either exclusively or predominantly in Ireland, which supply approximately 14 % of the motor spirit market in Ireland and a

somewhat higher percentage of other petroleum products, against Ireland and the Irish National Petroleum Corporation (hereinafter referred to as "the INPC"). In the main action, the six plaintiff undertakings are seeking a declaration in the High Court that the Fuels (Control of Supplies) Order 1982 (hereinafter referred to as "the 1982 Order") is incompatible with the EEC Treaty.

- 3 The 1982 Order was made by the Irish Minister for Industry and Energy under powers conferred on him by the Fuels (Control of Supplies) Act 1971, as amended in 1982, for the maintenance and provision of supplies of fuels. The 1982 Order requires any person who imports any of the various petroleum products to which it applies to purchase a certain proportion of their requirements of petroleum products from the INPC at a price to be determined by the Minister taking into account the costs incurred by the INPC.
- 4 The INPC, whose share capital is owned by the Irish State and whose function is to improve the security of supply of oil within Ireland, purchased, in 1982, the share capital of the Irish Refining Company Limited, owner of the only refinery in Ireland, which is situated at Whitegate, County Cork. The share capital of the Irish Refining Company Limited, which is capable of supplying from the Whitegate Refinery some 35% of the requirements of the Irish market in refined petroleum products, had until then been owned by four major oil companies which supply the greater part of the Irish market in refined petroleum products. The decision to acquire the Whitegate Refinery by means of the purchase of the capital of the Irish Refining Company Limited was taken after the four major international oil companies announced their intention to close the refinery.
- 5 The reason given by the Irish Government for acquiring the Irish Refining Company Limited was the need to guarantee, by keeping refining capacity in operation in Ireland, the provision of supplies of petroleum products in Ireland, in view of the fact that if the refinery had closed, all suppliers of refined petroleum products on the Irish market would have been obliged to obtain their supplies from abroad. Approximately 80% of those supplies come from a single source, namely the United Kingdom.

- 6 The obligation to purchase from the INPC, provided for by the 1982 Order, is intended to ensure that the Whitegate Refinery can dispose of its products. For each person to whom the 1982 Order applies the proportion of requirements covered by the purchasing obligation is equal, for each type of petroleum product, to the proportion which the Whitegate Refinery's output for a certain period represents of the total requirements for that type of petroleum product during the same period of all the persons to whom the 1982 Order applies. However, each importer is only required to purchase up to a maximum of 35% of its total requirements of petroleum products and 40% of its requirements of each type of petroleum product.
- 7 The plaintiff undertakings contend, in support of their application in the main action, that the 1982 Order is contrary to Community law and in particular to the prohibition, as between Member States, of quantitative restrictions on imports and all measures having equivalent effect, laid down in Article 30 of the Treaty. The Irish Government and the INPC dispute that the 1982 Order is a measure which comes within the scope of that prohibition and contend that in any event it is justified, under Article 36 of the EEC Treaty, on grounds of public policy and public security inasmuch as it is intended to guarantee the operation of Ireland's only refinery, which is necessary to maintain the country's supplies of petroleum products.
- 8 In the main action, the detailed circumstances and reasons which led the Irish Minister for Industry and Energy to make the 1982 Order are disputed between the parties. The High Court took the view that before proceeding to inquire into the disputed facts, it was necessary to ask the Court of Justice to rule on the scope of the rules in the EEC Treaty on the free movement of goods as applied to a scheme such as the one at issue in the case. It therefore referred the following questions to the Court:

“1. Are Articles 30 and 31 of the EEC Treaty to be interpreted as applying to a system such as that established by the Fuels (Control of Supplies) Order 1982 in so far as that system requires importers of oil products into a Member State of the European Economic Community (in this case Ireland) to purchase from a State-owned oil refinery up to 35% of their requirements of petroleum oils?

2. If the answer to the foregoing question is in the affirmative, are the concepts of “public policy” or “public security” in Article 36 of the Treaty aforesaid to be interpreted in relation to a system such as that established by the 1982 Order so that:
- (a) such system as above recited is exempt by Article 36 of the Treaty from the provisions of Articles 30 to 34 thereof, or
  - (b) such scheme is capable of being so exempt in any circumstances and, if so, in what circumstances?”
- 9 The Irish Government and the INPC consider that the referral to the Court is premature since the facts of the main action have not yet been established before the national court. They submit that to rule on the questions raised, and in particular on the first part of the second question, would have the effect of definitively depriving the defendants in the main action of the opportunity of defending their case before the national court and of producing all the relevant evidence, concerning in particular the reasons justifying the 1982 Order.
- 10 As the Court has held in a number of cases (see in particular the judgment of 10. 3. 1981, Joined Cases 36 and 71/80 *Irish Creamery Milk Suppliers Association* [1981] ECR 735), it is for the national court, in the framework of close cooperation established by Article 177 of the Treaty between the national courts and the Court of Justice based on the assignment to each of different functions, to decide at what stage in the proceedings it is appropriate to refer a question to the Court of Justice for a preliminary ruling. It is also for the national court to appraise the facts of the case and the arguments of the parties, of which it alone has a direct knowledge, with a view to defining the legal context in which the interpretation requested should be placed. The decision as to when to make a reference under Article 177 in this case was thus dictated by considerations of procedural organization and efficiency which are not to be weighed by the Court of Justice, but solely by the national court.
- 11 Since it is for the national court to give judgment in the main action on the basis of the interpretation of Community law provided by the Court of Justice, the parties have the opportunity in the main proceedings to bring forward any evidence they wish, particularly with regard to the reasons for the 1982 Order.



The first question on the interpretation of Article 30 of the Treaty

- 12 The High Court's first question is whether Article 30 of the Treaty is to be interpreted as meaning that rules of the type laid down by the 1982 Order constitute a measure equivalent to a quantitative restriction on imports.
- 13 In the view of the plaintiffs in the main action and also of the Commission, it is undeniable that such measures, under which importers are obliged to purchase part of their supplies within the Member State, have a restrictive effect on imports within the meaning of Article 30.
- 14 The Irish Government, however, contends that such is not the case. First, the measure in question in no way restricts imports inasmuch as, in any event, all oil, whether crude or refined, used in Ireland, has to be imported. Secondly, it is possible to interpret Article 30 as containing an unwritten derogation for products such as oil which are of vital national importance.
- 15 In this connection, it must first be borne in mind that, according to the settled case-law of the Court, Article 30 of the Treaty, in prohibiting all measures having equivalent effect to quantitative restrictions on imports, covers any measure which is capable of hindering, directly or indirectly, actually or potentially, intra-Community trade.
- 16 The obligation placed on all importers to purchase a certain proportion of their supplies of a given product from a national supplier limits to that extent the possibility of importing the same product. It thus has a protective effect by favouring national production and, by the same token, works to the

detriment of producers in other Member States, regardless of whether or not the raw materials used in the national production in question must themselves be imported.

- 17 As regards the Irish Government's argument regarding the importance of oil for the life of the country, it is sufficient to note that the Treaty applies the principle of free movement to all goods, subject only to the exceptions expressly provided for in the Treaty itself. Goods cannot therefore be considered exempt from the application of that fundamental principle merely because they are of particular importance for the life or the economy of a Member State.
- 18 The Greek Government refers in this context to Article 90 (2) of the Treaty, contending that a refinery is an undertaking of general economic interest and that a State refinery could not, without special measures in its favour, compete with the major oil companies.
- 19 It should be noted in that regard that Article 90 (1) provides that in the case of public undertakings and undertakings to which Member States grant special or exclusive rights, Member States are neither to enact nor to maintain in force any measure contrary to the rules contained in the Treaty. Article 90 (2) is intended to define more precisely the limits within which, in particular, undertakings entrusted with the operation of services of general economic interest are to be subject to the rules contained in the Treaty. Article 90 (2) does not, however, exempt a Member State which has entrusted such an operation to an undertaking from the prohibition on adopting, in favour of that undertaking and with a view to protecting its activity, measures that restrict imports from other Member States contrary to Article 30 of the Treaty.
- 20 The answer to the High Court's first question is therefore that Article 30 of the EEC Treaty must be interpreted as meaning that national rules which require all importers to purchase a certain proportion of their requirements of petroleum products from a refinery situated in the national territory constitute a measure having equivalent effect to a quantitative restriction on imports.

The second question on the interpretation of Article 36 of the Treaty

- 21 The second question asks whether Article 36 of the Treaty and, in particular, the concepts of “public policy” and of “public security” contained therein are to be interpreted as meaning that a system such as the one at issue in this case, established by a Member State which is totally dependent on imports for its supplies of petroleum products, can be exempt from the prohibition laid down in Article 30 of the Treaty.
- 22 The Irish Government and the INPC point out that it is for the Member States to determine, for the purposes of Article 36, and in particular with regard to the concept of public security, their interests that are to be protected and the measures to be taken to that end. They contend that Ireland’s heavy dependence for its oil supplies on imports from other countries and the importance of oil for the life of the country make it indispensable to maintain refining capacity on the national territory, thereby enabling the national authorities to enter into long-term delivery contracts with the countries producing crude oil. Since the system at issue is the only means of ensuring that the Whitegate Refinery’s products can be marketed, they consider it to be justified by considerations of public security as a temporary measure until another solution can be found to safeguard the continued operation of the Whitegate Refinery.
- 23 In the United Kingdom’s view, the term “public security” in Article 36 of the Treaty covers the fundamental interests of the State such as the maintenance of essential public services or the safe and effective functioning of the life of the State. The exceptions provided for in that article cannot be relied upon if the measures in question are designed predominantly to attain economic objectives. Those measures must not go beyond what is necessary to attain the objective protected by Article 36.
- 24 The plaintiffs in the main action point out that the problem is not whether or not refining capacity needs to be maintained in Ireland, but rather whether the system chosen to enable that refinery to function can be justified on the basis of Article 36. The real purpose of the rules at issue is to ensure that the

refinery does not operate at a loss. It is thus, in the plaintiffs' view, an essentially economic measure which cannot be covered by the concepts of public security or public policy.

25 The Commission considers that national rules of the type laid down by the 1982 Order are not justified under Article 36 because the Community, in accordance with its responsibility in this area, has adopted the necessary rules to ensure supplies of petroleum products in the event of a crisis. Furthermore, the Irish Government, by means of the system at issue, has pursued an economic interest which cannot be taken into consideration within the framework of Article 36. In any event, according to the Commission, the 1982 Order is inadequate and ineffective for the purpose of securing supplies to the Irish market, and it is disproportionate inasmuch as it requires all importers to buy at prices determined by the competent minister.

26 Having regard to those arguments, it is appropriate to examine:

First, whether rules of the type laid down by the 1982 Order are justified in the light of the Community rules on the matter;

Secondly, whether, having regard to the scope of the exemptions on the grounds of public policy and public security, Article 36 can cover rules of the type laid down by the 1982 Order;

Thirdly, whether the system at issue is such as to enable the objective of ensuring supplies of petroleum products to be attained and whether it complies with the principle of proportionality.

The justification of the measures at issue in the light of Community rules on the matter

27 Recourse to Article 36 is no longer justified if Community rules provide for the necessary measures to ensure protection of the interests set out in that article. National measures such as those provided for in the 1982 Order cannot therefore be justified unless supplies of petroleum products to the Member State concerned are not sufficiently guaranteed by the measures taken for that purpose by the Community institutions.

- 28 Certain precautionary measures have indeed been taken at Community level to deal with difficulties in supplies of crude oil and petroleum products. Council Directives 68/414/EEC of 20 December 1968 (Official Journal, English Special Edition 1968 (II), p. 586) and 73/238/EEC of 24 July 1973 (Official Journal 1973, L 228, p. 1) require Member States to maintain minimum stocks and to coordinate to a certain extent the national measures adopted for the purpose of drawing on those stocks, of imposing specific restrictions on consumption and of regulating prices. Council Decision 77/706/EEC of 7 November 1977 (Official Journal 1977, L 292, p. 9) provides for the setting of a Community target for a reduction in consumption in the event of difficulties in supply and for the sharing out between the Member States of the quantities saved. Finally, Council Decision 77/186/EEC of 14 February 1977 (Official Journal 1977, L 61, p. 23) establishes a system of export licences, granted automatically, to allow the monitoring of intra-Community trade.
- 29 Measures have also been taken within the context of the International Energy Agency, set up within the framework of the Organization for Economic Cooperation and Development (OECD), of which most Community States are members and in whose work the Community, represented by the Commission, takes part as an observer. Those measures are designed to establish solidarity between the participating countries in the event of an oil shortage transcending the Communities.
- 30 Even though those precautions against a shortage of petroleum products reduce the risk of Member States being left without essential supplies, there would none the less still be real danger in the event of a crisis. According to Article 3 of Council Decision 77/186/EEC, the Commission may, as a precautionary measure, authorize a Member State, subject to certain conditions, to suspend the issue of export licences. That authorization is to be granted subject only to the condition that traditional trade patterns are maintained "as far as possible". The Council, by a qualified majority, may revoke that authorization and that power is not subject to any express reference to traditional trade patterns. According to Article 4, in the event of a sudden crisis, a Member State may, subject to certain conditions, suspend the issue of export licences for a period of 10 days. In that case, the Council, by a qualified majority, may adopt the appropriate measures.

- 31 Consequently, the existing Community rules give a Member State whose supplies of petroleum products depend totally or almost totally on deliveries from other countries certain guarantees that deliveries from other Member States will be maintained in the event of a serious shortfall in proportions which match those of supplies to the market of the supplying State. However, this does not mean that the Member State concerned has an unconditional assurance that supplies will in any event be maintained at least at a level sufficient to meet its minimum needs. In those circumstances, the possibility for a Member State to rely on Article 36 to justify appropriate complementary measures at national level cannot be excluded, even where there exist Community rules on the matter.

### The scope of the public policy and public security exceptions

- 32 As the Court has stated on several occasions (see judgment of 12 July 1979, Case 153/78 *Commission v Germany* [1979] ECR 2555, and the other judgments referred to therein), the purpose of Article 36 of the Treaty is not to reserve certain matters to the exclusive jurisdiction of the Member States; it merely allows national legislation to derogate from the principle of the free movement of goods to the extent to which this is and remains justified in order to achieve the objectives set out in the article.
- 33 It is in the light of those statements that it must be decided whether the concept of public security, on which the Irish Government places particular reliance and which is the only one relevant in this case, since the concept of public policy is not pertinent, covers reasons such as those referred to in the question raised by the national court.
- 34 It should be stated in this connection that petroleum products, because of their exceptional importance as an energy source in the modern economy, are of fundamental importance for a country's existence since not only its economy but above all its institutions, its essential public services and even the survival of its inhabitants depend upon them. An interruption of supplies of petroleum products, with the resultant dangers for the country's existence, could therefore seriously affect the public security that Article 36 allows States to protect.

35 It is true that, as the Court has held on a number of occasions, most recently in its judgment of 9 June 1982 (Case 95/81 *Commission v Italy* [1982] ECR 2187), Article 36 refers to matters of a non-economic nature. A Member State cannot be allowed to avoid the effects of measures provided for in the Treaty by pleading the economic difficulties caused by the elimination of barriers to intra-Community trade. However, in the light of the seriousness of the consequences that an interruption in supplies of petroleum products may have for a country's existence, the aim of ensuring a minimum supply of petroleum products at all times is to be regarded as transcending purely economic considerations and thus as capable of constituting an objective covered by the concept of public security.

36 It should be added that to come within the ambit of Article 36, the rules in question must be justified by objective circumstances corresponding to the needs of public security. Once that justification has been established, the fact that the rules are of such a nature as to make it possible to achieve, in addition to the objectives covered by the concept of public security, other objectives of an economic nature which the Member State may also seek to achieve, does not exclude the application of Article 36.

The question whether the measures are capable of ensuring supplies and the principle of proportionality

37 As the Court has previously stated (see judgments of 12. 10. 1978, Case 12/78 *Eggers* [1978] ECR 1935, and of 22. 3. 1983, Case 42/82 *Commission v France* [1983] ECR 1013), Article 36, as an exception to a fundamental principle of the Treaty, must be interpreted in such a way that its scope is not extended any further than is necessary for the protection of the interests which it is intended to secure and the measures taken pursuant to that article must not create obstacles to imports which are disproportionate to those objectives. Measures adopted on the basis of Article 36 can therefore be justified only if they are such as to serve the interest which that article protects and if they do not restrict intra-Community trade more than is absolutely necessary.

- 38 In that connection, the plaintiffs in the main action and the Commission cast doubt, in the first place, on whether the installation of a refinery can ensure supplies of petroleum products in the event of a crisis, since a crisis gives rise above all to a shortage of crude oil, so that the refinery would be unable to operate in such circumstances.
- 39 It is true that as the world oil market now stands, the immediate effect of a crisis would probably be an interruption or a severe reduction in deliveries of crude oil. It should, however, be pointed out that the fact of having refining capacity on its territory enables the State concerned to enter into long-term contracts with the oil-producing countries for the supply of crude oil to its refinery which offer a better guarantee of supplies in the event of a crisis. It is thus less at risk than a State which has no refining capacity of its own and which has no means of covering its needs other than by purchases on the free market.
- 40 Furthermore, the existence of a national refinery constitutes a guarantee against the additional risk of an interruption in deliveries of refined products to which a State with no refining capacity of its own is exposed. Such a State would be dependent on the major oil companies which control refineries in other countries and on those companies' commercial policy.
- 41 It may, therefore, be concluded that the presence of a refinery on the national territory, by reducing both of those types of risks, can effectively contribute to improving the security of supply of petroleum products to a State which does not have crude oil resources of its own.
- 42 The plaintiffs in the main action and the Commission consider, however, that even if the operation of a refinery is justified in the interest of public security, it is not necessary in order to achieve that objective, and, in any event, it is disproportionate in relation to that objective, to oblige importers to satisfy a certain proportion of their requirements by purchase from the national refinery at a price fixed by the competent minister.



- 43 The Irish Government contends, on the other hand, that the purchasing obligation is the only possible way of keeping the Whitegate Refinery in operation. That requires a certain degree of use of the plant's capacity since the major international oil companies, on which the Irish market depended for 80 % of its supplies in 1981, have clearly stated that they are not prepared to buy any petroleum products at all from the Whitegate Refinery, because they prefer to market the products from their own refineries in the United Kingdom. The fixing of the selling price by the minister on the basis of the refinery's costs is necessary in order to avoid financial losses.
- 44 It must be pointed out in this connection that a Member State may have recourse to Article 36 to justify a measure having equivalent effect to a quantitative restriction on imports only if no other measure, less restrictive from the point of view of the free movement of goods, is capable of achieving the same objective.
- 45 In the present case, therefore, it is necessary to consider whether the obligation placed on importers of petroleum products to purchase at prices determined on the basis of the costs incurred by the refinery in question is necessary, albeit only temporarily, for the purpose of ensuring that enough of the refinery's production can be marketed so as to guarantee, in the interest of public security, a minimum supply of petroleum products to the State concerned in the event of a supply crisis.
- 46 That obligation could be necessary if the distributors that hold the major share of the market concerned refuse, as the Irish Government contends, to purchase supplies from the refinery in question. It is on the assumption that the refinery charges prices which are competitive on the market concerned that it must be determined whether the refinery's products could be freely marketed. If it is not possible by means of industrial and commercial measures to avoid any financial losses resulting from such prices, those losses must be borne by the Member State concerned, subject to the application of Articles 92 and 93 of the Treaty.

- 47 As regards, in the next place, the quantities of petroleum products which may, as the case may be, be covered by such a system of purchasing obligations, it should be stressed that they must in no case exceed the minimum supply requirements of the State concerned without which its public security, as defined above, and in particular the operation of its essential public services and the survival of its inhabitants, would be affected.
- 48 Furthermore, the quantities of petroleum products whose marketing can be ensured under such a system must not exceed the quantities which are necessary, so far as production is concerned, on the one hand, for technical reasons in order that the refinery may operate currently at a sufficient level of its production capacity to ensure that its plant will be available in the event of a crisis and, on the other hand, in order that it may continue to refine at all times the crude oil covered by the long-term contracts which the State concerned has entered into so that it may be assured of regular supplies.
- 49 The proportion of the total needs of importers of petroleum products that may be made subject to a purchasing obligation must not, therefore, exceed the proportion which the quantities set out above represent of the current total consumption of petroleum products in the Member State concerned.
- 50 It is for the national court to decide whether the system established by the 1982 Order complies with those limits.
- 51 The answer to the second question should therefore be that a Member State which is totally or almost totally dependent on imports for its supplies of petroleum products may rely on grounds of public security within the meaning of Article 36 of the Treaty for the purpose of requiring importers to cover a certain proportion of their needs by purchases from a refinery situated in its territory at prices fixed by the competent minister on the basis of the costs incurred in the operation of that refinery, if the production of the refinery cannot be freely disposed of at competitive prices on the market concerned. The quantities of petroleum products covered by such a system

must not exceed the minimum supply requirement without which the public security of the State concerned would be affected or the level of production necessary to keep the refinery's production capacity available in the event of a crisis and to enable it to continue to refine at all times the crude oil for the supply of which the State concerned has entered into long-term contracts.

### Costs

- 52 The costs incurred by the Greek Government, the United Kingdom and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the action pending before the national court, the decision as to costs is a matter for that court.

On those grounds,

### THE COURT,

in answer to the questions referred to it by the High Court of Ireland, by order of 9 December 1982, hereby rules:

1. Article 30 of the EEC Treaty must be interpreted as meaning that national rules that require all importers to purchase a certain proportion of their requirements of petroleum products from a refinery situated in the national territory constitute a measure having equivalent effect to a quantitative restriction on imports.
2. A Member State which is totally or almost totally dependent on imports for its supplies of petroleum products may rely on grounds of public security within the meaning of Article 36 of the Treaty for the purpose of requiring importers to cover a certain proportion of their needs by purchases from a refinery situated in its territory at prices fixed by the competent minister on the basis of the costs incurred in the operation of that refinery, if the production of the refinery cannot be freely disposed of at competitive prices on the market in question.

The quantities of petroleum products covered by such a system must not exceed the minimum supply requirements without which the public security of the State concerned would be affected or the level of production necessary to keep the refinery's production capacity available in the event of a crisis and to enable it to continue to refine at all times the crude oil for the supply of which the State has entered into long-term contracts.

Mackenzie Stuart

Koopmans

Bahlmann

Galmot

Pescatore

O'Keeffe

Bosco

Due

Everling

Delivered in open court in Luxembourg on 10 July 1984.

D. Louterman

A. J. Mackenzie Stuart

Administrator

President

OPINION OF ADVOCATE GENERAL SIR GORDON SLYNN  
DELIVERED ON 10 APRIL 1984

*My Lords,*

On 1 September 1982 Campus Oil Limited and five other companies trading in refined oil products in Ireland, brought proceedings in the High Court in Ireland against the Minister for Industry and Energy, Ireland, the Attorney General and the Irish National Petroleum Corporation Limited for a declaration that the Fuels (Control of

Supplies) Order 1982 (SI No 280 of 1982) was incompatible with Articles 30 and 31 of the EEC Treaty and therefore invalid. They also sought an interlocutory injunction to restrain the defendants from implementing the Order until the proceedings were determined.

The court on 9 December 1982, despite opposition from the defendants on the basis that a reference under Article 177