JUDGMENT OF THE COURT (Second Chamber)

21 February 2002 *

In Case C-65/00,

Commission of the European Communities, represented by L. Ström and G. Bisogni, acting as Agents, with an address for service in Luxembourg,

applicant,

v

Italian Republic, represented by U. Leanza, acting as Agent, assisted by G. Aiello, avvocato dello Stato, with an address for service in Luxembourg,

defendant,

APPLICATION for a declaration that, by exempting undertakings and establishments which carry out hazardous waste recovery operations covered by Council Directive 91/689/EEC of 12 December 1991 on hazardous waste (OJ 1991 L 377, p. 20) from the permit requirement laid down by Article 10 of Council Directive 75/442/EEC of 15 July 1975 on waste (OJ 1975 L 194, p. 39), as

* Language of the case: Italian.

amended by Council Directive 91/156/EEC of 18 March 1991 (OJ 1991 L 78, p. 32), without making such exemption conditional upon satisfaction of the requirements laid down by Article 3(2) of Directive 91/689, the Italian Republic has failed to fulfil its obligations under Article 11 of Directive 75/442, as amended by Directive 91/156, and under Article 3 of Directive 91/689,

THE COURT (Second Chamber),

composed of: N. Colneric, President of the Chamber, R. Schintgen and V. Skouris (Rapporteur), Judges,

Advocate General: J. Mischo,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 20 September 2001,

gives the following

Judgment

1 By application lodged at the Registry of the Court of Justice on 25 February 2000, the Commission of the European Communities brought an action under Article 226 EC for a declaration that, by exempting undertakings and establishments which carry out hazardous waste recovery operations covered by Council Directive 91/689/EEC of 12 December 1991 on hazardous waste (OJ 1991 L 377, p. 20) from the permit requirement laid down by Article 10 of Council Directive 75/442/EEC of 15 July 1975 on waste (OJ 1975 L 194, p. 39), as amended by Council Directive 91/156/EEC of 18 March 1991 (OJ 1991 L 78, p. 32), ('Directive 75/442'), without making such exemption conditional upon satisfaction of the requirements laid down by Article 3(2) of Directive 91/689, the Italian Republic has failed to fulfil its obligations under Article 11 of Directive 75/442 and under Article 3 of Directive 91/689.

Legal background

Community legislation

Directive 75/442

2 The object of Directive 75/442 is to ensure the removal and recovery of waste and to encourage the adoption of measures to restrict the production of waste, particularly by promoting clean technologies and products which can be recycled and re-used.

3 The first paragraph of Article 4 of Directive 75/442 provides:

'Member States shall take the necessary measures to ensure that waste is recovered or disposed of without endangering human health and without using processes or methods which could harm the environment, and in particular:

— without risk to water, air, soil and plants and animals,

— without causing a nuisance through noise or odours,

— without adversely affecting the countryside or places of special interest.'

4 Article 10 of Directive 75/442 provides that, '[f]or the purposes of implementing Article 4, any establishment or undertaking which carries out the operations referred to in Annex II B must obtain a permit.' Annex II B to Directive 75/442 lists, at paragraphs R1 to R13, the recovery operations as practised.

5 Article 11 of Directive 75/442 provides:

'1. Without prejudice to Council Directive 78/319/EEC of 20 March 1978 on toxic and dangerous waste ..., as last amended by the Act of Accession of Spain

and Portugal, the following may be exempted from the permit requirement imposed in Article 9 or Article 10:

(a) establishments or undertakings carrying out their own waste disposal at the place of production;

and

(b) establishments or undertakings that carry out waste recovery.

This exemption may apply only:

— if the competent authorities have adopted general rules for each type of activity laying down the types and quantities of waste and the conditions under which the activity in question may be exempted from the permit requirements,

and

— if the types or quantities of waste and methods of disposal or recovery are such that the conditions imposed in Article 4 are complied with.

2. The establishments or undertakings referred to in paragraph 1 shall be registered with the competent authorities.

3. Member States shall inform the Commission of the general rules adopted pursuant to paragraph 1.'

Directive 91/689

6 According to Article 1(1) of Directive 91/689, the object of that directive, enacted pursuant to Article 2(2) of Directive 75/442, is to approximate the laws of the Member States on the controlled management of hazardous waste. Article 1(2) provides:

'Subject to this Directive, Directive 75/442/EEC shall apply to hazardous waste.'

7 Article 3 of Directive 91/689 provides:

'1. The derogation referred to in Article 11(1)(a) of Directive 75/442/EEC from the permit requirement for establishments or undertakings which carry out their own waste disposal shall not apply to hazardous waste covered by this Directive.

2. In accordance with Article 11(1)(b) of Directive 75/442/EEC, a Member State may waive Article 10 of that Directive for establishments or undertakings which recover waste covered by this Directive:

— if the Member State adopts general rules listing the type and quantity of waste and laying down specific conditions (limit values for the content of hazardous substances in the waste, emission limit values, type of activity) and other necessary requirements for carrying out different forms of recovery, and

— if the types or quantities of waste and methods of recovery are such that the conditions laid down in Article 4 of Directive 75/442/EEC are complied with.

3. The establishments or undertakings referred to in paragraph 2 shall be registered with the competent authorities.

4. If a Member State intends to make use of the provisions of paragraph 2, the rules referred to in that paragraph shall be sent to the Commission not later than three months prior to their coming into force. The Commission shall consult the Member States. In the light of these consultations the Commission shall propose that the rules be finally agreed upon in accordance with the procedure laid down in Article 18 of Directive 75/442/EEC.'

National legislation

8 The provisions concerning the exemption from the permit requirement set out in Article 11 of Directive 75/442 were transposed into Italian law by Decree-Law No 22 of 5 February 1997 implementing Directives 91/156, 91/689 and 94/62/EC on packaging and packaging waste (GURI No 38 of 15 February 1997, suppl. ord. No 33), as amended by Decree-Law No 389 of 8 November 1997 (GURI No 261 of 8 November 1997), ('Decree-Law No 22/97').

9 As regards, more particularly, the establishments or undertakings carrying out waste recovery operations covered by Directive 91/689, Article 33 of Decree-Law No 22/97 provides that, in certain circumstances, they may take advantage of simplified procedures exempting them from the permit requirement laid down by Article 10 of Directive 75/442.

10 Under those simplified procedures, establishments or undertakings planning operations for the recovery of hazardous waste without applying for a permit are required to notify the relevant province of their activities, attaching a report confirming that all of the preconditions for admission to the simplified procedure have been complied with. A declaration that those preconditions have been complied with results in exemption from the permit requirement laid down by Article 10 of Directive 75/442. On the basis of that declaration the relevant province checks that those conditions have been complied with.

11 Given the complexity and the technical nature of the rules in question, Decree-Law No 22/97 does not set out and describe those conditions in detail. It proceeds by reference, stating that technical rules fixing the type, quantity and requirements for recovery under the simplified procedure system will be adopted by ministerial decrees.

12 Article 33(6) of Decree-Law No 22/97 states that, pending the adoption of those technical rules, the simplified procedures are to apply to any person carrying out the waste recovery operations listed respectively in Annex 3 to the Decree of the Minister for the Environment of 5 September 1994 (GURI No 212 of 10 September 1994, suppl. ord. No 126) applying Articles 2 and 5 of Decree-Law No 438 of 8 July 1994 laying down provisions for the recovery of industrial or household waste by production or combustion processes and for the disposal of waste, and in Annex 1 to the Decree of the Minister for the Environment of 16 January 1995 (GURI No 24 of 30 January 1995, suppl. ord.) laying down technical rules for energy production by combustion of industrial and household waste, and in accordance with the rules laid down therein.

Facts and pre-litigation procedure

13 In accordance with the procedure laid down by the first paragraph of Article 226 EC, after giving the Italian Republic the opportunity to submit its observations, the Commission, by letter of 14 July 1999, delivered a reasoned opinion to that Member State, requiring it to take the measures necessary to comply with its obligations under Article 11 of Directive 75/442 and Article 3 of Directive 91/689 within a period of two months from the receipt of that opinion.

14 As the Italian authorities did no more, following that opinion, than forward to the Commission a draft interministerial decree on activities for the recovery of hazardous waste within the meaning of Articles 31 and 33 of Decree-Law No 22/97, the Commission decided to institute the present proceedings.

The action

15 The Commission claims that the failure to adopt the technical rules necessary to implement the system for exemption from the permit requirement was considered, in Decree-Law No 22/97, as justification for maintaining in force the two ministerial decrees of 5 September 1994 and 16 January 1995.

16 According to the Commission, the simplified procedures applicable to establishments and undertakings which carry out hazardous waste recovery operations covered by Directive 91/689/EEC are currently still subject only to the conditions laid down by those ministerial decrees, which do not satisfy the requirements laid down by Article 3(2) of Directive 91/689.

17 As for the draft interministerial decree forwarded to it by the Italian authorities, the Commission emphasises that it is not a legislative instrument providing effects, but merely a draft decree which does not appear even to have been submitted to the Italian Council of State for the mandatory prior examination of its legality.

18 On the basis of the information available to it, therefore, the Commission concludes that the Italian Republic has not brought the infringement complained of to an end.

19 The Italian Government does not dispute the infringement and states that it will ensure that it remedies the inadequate implementation of Article 11 of Directive 75/442 and Article 3 of Directive 91/689 as soon as possible. It adds that the

Ministers for the Environment and for Industry will, in good time, forward the final version of the interministerial decree on activities for the recovery of hazardous waste within the meaning of Articles 31 to 33 of Decree-Law No 22/97.

20 It follows from the foregoing that, upon expiry of the period specified in the reasoned opinion, the conditions for exemption from the permit requirement laid down by Article 10 of Directive 75/442 were defined solely by the ministerial decrees of 5 September 1994 and 16 January 1995 whilst, for the establishments or undertakings referred to by subparagraph 1(b) of Article 11(1) of Directive 75/442, those decrees did not reproduce the requirements laid down by Article 3(2) of Directive 91/689. It follows that, in Italy, undertakings and establishments carrying out hazardous waste recovery operations covered by Directive 91/689 were simultaneously exempt from the permit requirement laid down by Article 10 of Directive 75/442, and under no obligation to show that they satisfied the requirements for that exemption.

21 As the combined provisions of subparagraph 1(b) of Article 11(1) of Directive 75/442 and Article 3(2) of Directive 91/689 provide that a Member State may derogate from Article 10 of Directive 75/442, requiring every establishment or undertaking to obtain a permit, only if that Member State adopts measures to ensure that the requirements laid down by Article 3 of Directive 91/689 are complied with by establishments or undertakings carrying out waste recovery operations, it must be held that the Italian Republic has failed to fulfil its obligations under Article 11 of Directive 75/442 and Article 3 of Directive 91/689.

22 In those circumstances it must be held that, by exempting undertakings and establishments which carry out hazardous waste recovery operations covered by Directive 91/689 from the permit requirement laid down by Article 10 of Directive 75/442 without making such exemption conditional upon satisfaction

of the requirements laid down by Article 3(2) of Directive 91/689, the Italian Republic has failed to fulfil its obligations under the combined provisions of Article 11 of Directive 75/442 and Article 3 of Directive 91/689.

Costs

23 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for costs and the Italian Republic has been unsuccessful, the latter must be ordered to pay the costs.

On those grounds,

THE COURT (Second Chamber),

hereby:

1. **Declares that, by exempting undertakings and establishments which carry out hazardous waste recovery operations covered by Council Directive**

91/689/EEC of 12 December 1991 on hazardous waste from the permit requirement laid down by Article 10 of Council Directive 75/442/EEC of 15 July 1975 on waste, as amended by Council Directive 91/156/EEC of 18 March 1991, without making such exemption conditional upon satisfaction of the requirements laid down by Article 3(2) of Directive 91/689, the Italian Republic has failed to fulfil its obligations under the combined provisions of Article 11 of Directive 75/442, as amended by Directive 91/156, and Article 3 of Directive 91/689;

2. Orders the Italian Republic to pay the costs.

Colneric Schintgen Skouris

Delivered in open court in Luxembourg on 21 February 2002.

R. Grass N. Colneric

Registrar President of the Second Chamber