JUDGMENT OF THE COURT (Fourth Chamber)

27 February 2002 *

In Case C-46/01,

Commission of the European Communities, represented by H. Støvlbaek and R. Amorosi, acting as Agents, with an address for service in Luxembourg,

applicant,

v

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

defendant,

APPLICATION for a declaration that, by failing to draw up and communicate to the Commission by 16 September 1999 the appropriate plans, outlines and summaries of inventories provided for in Articles 11 and 4(1) of Council Directive 96/59/EC of 16 September 1996 on the disposal of polychlorinated biphenyls and polychlorinated terphenyls (PCB/PCT) (OJ 1996 L 243, p. 31), the Italian Republic has failed to fulfil its obligations under those provisions,

* Language of the case: Italian.

THE COURT (Fourth Chamber),

composed of: S. von Bahr, President of the Chamber, D.A.O. Edward and C.W.A. Timmermans (Rapporteur), Judges,

Advocate General: P. Léger,

Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 6 December 2001,

gives the following

Judgment

1 By application lodged at the Court Registry on 2 February 2001, the Commission of the European Communities brought an action under Article 226 EC for a declaration that, by failing to draw up and communicate to the Commission by 16 September 1999 the appropriate plans, outlines and summaries of inventories provided for in Articles 11 and 4(1) of Council Directive 96/59/EC of 16 September 1996 on the disposal of polychlorinated biphenyls and polychlorinated terphenyls (PCB/PCT) (OJ 1996 L 243, p. 31), the Italian Republic has failed to fulfil its obligations under those provisions.

2 Article 1 of Directive 96/59 states:

'The purpose of this Directive is to approximate the laws of the Member States on the controlled disposal of PCBs, the decontamination or disposal of equipment containing PCBs and/or the disposal of used PCBs in order to eliminate them completely on the basis of the provisions of this Directive.'

3 Article 4(1) of Directive 96/59 provides:

'In order to comply with Article 3, Member States shall ensure that inventories are compiled of equipment with PCB volumes of more than 5 dm^3, and shall send summaries of such inventories to the Commission at the latest three years after the adoption of this Directive. In the case of power capacitors, the threshold of 5 dm^3 shall be understood as including all the separate elements of a combined set.'

4 Article 11 of Directive 96/59 states:

'1. Member States shall, within three years of the adoption of this Directive, draw up:

— plans for the decontamination and/or disposal of inventoried equipment and the PCBs contained therein;

— outlines for the collection and subsequent disposal of equipment which is not subject to inventory in accordance with Article 4(1), as referred to in Article 6(3).

2. Member States shall communicate these plans and outlines to the Commission without delay.'

5 Since it took the view that the Italian Republic had not drawn up the plans, outlines and summaries of inventories provided for in Articles 11 and 4(1) of Directive 96/59 or communicated those documents to it, the Commission initiated the procedure under Article 226 EC. After giving the Italian Republic formal notice to submit its observations, the Commission issued a reasoned opinion on 3 August 2000, requesting it to adopt the measures necessary to comply with the opinion within a period of two months from the date of its notification. Since the Italian Government did not respond to that opinion, the Commission brought the present action.

6 In its application, the Commission submits that, by failing to draw up and communicate to it, by 16 September 1999 at the latest, the plans, outlines and summaries of inventories provided for in Articles 11 and 4(1) of Directive 96/59, the Italian Republic has failed to fulfil its obligations under those provisions.

7 The Italian Government contends, firstly, that Directive 96/59 was transposed into Italian law by Legislative Decree No 209 of 22 May 1999 (GURI No 151 of 30 June 1999, p. 23). Article 3 of that decree imposes on holders of equipment with PCB volumes of more than 5 dm^3, including electrical capacitors, an obligation to communicate information every two years. That communication forms the basis for drawing up the inventories and the summaries referred to in Article 4 of Directive 96/59. The Italian Government does recognise, however, that it has not yet met its obligation to communicate the relevant matters.

8 Secondly, it explains that the delay in sending the documention referred to in Article 4(1) and Article 11 of Directive 96/59 within the time-limits there laid down is due to the difficulty in drawing up a complete inventory of existing PCBs in the absence of standardised methods for analytical determination of the presence of PCBs. The standardised methods for carrying out the analyses, which are indispensable for uniform determination of the presence of substances falling within the Community definition of PCBs in Article 2 of Directive 96/59, were only adopted by Commission Decision 2001/68/EC of 16 January 2001 establishing two reference methods of measurement for PCBs pursuant to Article 10(a) of Council Directive 96/59 (OJ 2001 L 23, p. 31).

9 The Commission replies that, by virtue of Article 10(a) of Directive 96/59, before the Commission fixed the reference methods of measurement to determine the PCB content of contaminated materials, the measurements were to be effected by referring either to the analytical methods then in force at national level, or to those in force in the United States. Consequently, thanks to the existing methods hitherto applied by the Member States, the absence of a reference method at European level never prevented them from drawing up the documentation required by Directive 96/59. According to the Commission, the Italian Government was therefore able to do likewise.

10 It should be noted at the outset that the Italian Government itself admits that it did not comply with the obligation to draw up and communicate to the Commission, by 16 September 1999 at the latest, the summaries of inventories referred to in Article 4(1) of Directive 96/59, the plan for the decontamination and/or disposal of the inventoried equipment and the PCBs contained therein, as well as the outlines for the collection and subsequent disposal of equipment which is not subject to the inventory referred to in Article 11(1) of the said Directive. The Italian Government accepted in its defence lodged on 30 March 2001 that that obligation had still not been complied with.

11 However, it must be examined whether, as the Italian Government maintains, non-compliance with that obligation can be justified by the absence, as at

16 September 1999, of reference methods of measurement at European level for determining the PCB content of contaminated materials, those methods having been adopted only on 16 January 2001.

12 In that connection, it should be noted that in terms of Article 10(a) of Directive 96/59, measurements effected prior to the determination of those reference methods remain valid.

13 Thus Directive 96/59 expressly authorised the Member States to continue to apply their own methods of measurement to determine the PCB content, without having to wait for the adoption of a reference method of measurement at European level in order to carry out the necessary analyses. The reasons invoked by the Italian Government cannot, therefore, be accepted.

14 It follows that having failed to draw up and communicate to the Commission, by 16 September 1999 at the latest, the summaries of inventories provided for in Article 4(1) of Directive 96/59 and the plans and outlines provided for in Article 11 of the same directive, the Italian Republic has failed to fulfil its obligations under those provisions.

Costs

15 Article 69(2) of the Rules of Procedure provides that 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 Italian Republic must be ordered to pay the costs.

On those grounds,

THE COURT (Fourth Chamber),

hereby:

1. **Declares that, by failing to draw up and communicate to the Commission of the European Communities, by 16 September 1999 at the latest, the summaries of inventories provided for in Article 4(1) of Council Directive 96/59/EC of 16 September 1996 on the disposal of polychlorinated biphenyls and polychlorinated terphenyls (PCB/PCT) and the plans and outlines provided for in Article 11 of the same directive, the Italian Republic has failed to fulfil its obligations under those provisions.**

2. **Orders the Italian Republic to pay the costs.**

von Bahr Edward Timmermans

Delivered in open court in Luxembourg on 27 February 2002.

R. Grass

Registrar

S. von Bahr

President of the Fourth Chamber