JUDGMENT OF THE COURT (Fourth Chamber)
16 October 2003 *

In Case C-455/01,

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

applicant,

v

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

defendant,

* Language of the case: Italian.

APPLICATION for a declaration that, by keeping in force legislation under which products in respect of which there has not yet been full harmonisation, intended for use on merchant vessels flying the Italian flag, may be marketed only if a certificate of conformity has been issued by a national body — so that in some cases the right to market those products is enjoyed only by the grantee of the certificate — and by not recognising the validity of tests carried out in accordance with international standards by bodies recognised in the other Member States or in States signatory to the Agreement of 2 May 1992 on the European Economic Area (OJ 1994 L 1, p. 3), even where the relevant information is made available to the competent authority and it is clear from the certificates that the equipment guarantees a degree of safety equivalent to that required for Italian products, the Italian Republic has failed to fulfil its obligations under Articles 28 EC and 30 EC,

THE COURT (Fourth Chamber),

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

Advocate General: S. Alber,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 By application lodged at the Court Registry on 27 November 2001, the Commission of the European Communities brought an action under Article 226 EC for a declaration that, by keeping in force legislation under which products in respect of which there has not yet been full harmonisation, intended for use on merchant vessels flying the Italian flag, may be marketed only if a certificate of conformity has been issued by a national body — so that in some cases the right to market those products is enjoyed only by the grantee of the certificate — and by not recognising the validity of tests carried out in accordance with international standards by bodies recognised in the other Member States or in States signatory to the Agreement of 2 May 1992 on the European Economic Area (OJ 1994 L 1, p. 3; 'the EEA Agreement'), even where the relevant information is made available to the competent authority and it is clear from the certificates that the equipment guarantees a degree of safety equivalent to that required for Italian products, the Italian Republic has failed to fulfil its obligations under Articles 28 EC and 30 EC.

Relevant provisions

Community legislation

2 Article 28 EC provides:

'Quantitative restrictions on imports and all measures having equivalent effect shall be prohibited between Member States.'

3 Article 30 EC provides:

'The provisions of Articles 28 and 29 shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of... the protection of health and life of humans... Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States.'

4 Article 4(1) and (2) of Council Directive 94/57/EC of 22 November 1994 on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations (OJ 1994 L 319, p. 20) read as follows:

'1. Member States may only recognise such organisations which fulfil the criteria set out in the Annex. The organisations shall submit to the Member States from

which recognition has been requested complete information concerning, and evidence of, compliance with these criteria. The Member States will notify the organisations in an appropriate manner of their recognition.

2. Each Member State shall notify to the Commission and the other Member States those organisations it has recognised.'

5 Article 1 of Council Directive 96/98/EC of 20 December 1996 on marine equipment (OJ 1997 L 46, p. 25), as amended by Commission Directive 98/85/EC of 11 November 1998 (OJ 1998 L 315, p. 14; hereinafter 'Directive 96/98'), provides:

'The purpose of this Directive shall be to enhance safety at sea and the prevention of marine pollution through the uniform application of the relevant international instruments relating to equipment listed in Annex A to be placed on board ships for which safety certificates are issued by or on behalf of Member States pursuant to international conventions and to ensure the free movement of such equipment within the Community.'

6 Directive 96/98/EC lays down for that purpose provisions harmonising national laws on the documentation and conditions necessary to obtain certification for the equipment to be placed on board ships which is listed in Annex A.1, namely equipment for which detailed testing standards already exist in the international instruments referred to in that Annex.

7 Equipment for which no detailed testing standards exist in international instruments is listed in Annex A.2 to Directive 96/98.

National legislation

8 As provided in Article 2(1) of Presidential Decree No 347 of 18 April 1994 (GURI No 132 of 8 June 1994, Ordinary Supplement; 'Decree No 347/94'):

'On ships for which the provisions of international conventions regarding the protection of human life at sea... require the adoption of devices, systems and materials... referred to in Table A annexed to Book I of these regulations, these shall be of a type approved by the Ministry, with the exception of exemptions laid down in the regulations.'

9 Article 3 of Decree No 347/94 provides:

'1. The application for the declaration of type-approval shall be lodged or sent by post to the Ministry.

2. The application must be accompanied by the technical report of the Italian Ships Registry, which the applicant must obtain.'

10 Following legislative developments subsequent to the adoption of the regulations in Decree No 347/94, the abovementioned provisions of it now apply only to the equipment listed in Annex A.2 to Directive 96/98.

11 It follows from these provisions that, in order to place on the market and install on ships equipment listed in Annex A.2 to Directive 96/98, it is necessary to produce a certificate of conformity issued by the Italian Ships Registry ('RINA') and a declaration of type-approval issued by the competent Ministry. The certificate of conformity may only be issued if tests and analyses have been carried out by RINA.

Pre-litigation procedure

12 Following a complaint lodged in 1997 by a Danish producer of marine equipment, the Commission sent the Italian Republic a letter of formal notice on 11 June 1998, supplemented by a letter on 30 July 1999. In these letters, the Commission stated in particular that the absence of recognition, on the one hand, of certificates of conformity of marine equipment issued in the other Member States or States signatory to the EEA Agreement, and, on the other hand, of tests of conformity of this equipment carried out in these States was incompatible with Articles 28 EC and 30 EC and with Article 11 of the EEA Agreement.

13 The Italian authorities replied to these letters on 28 October 1999, stating that they had remedied the shortcomings complained of by the Commission by adopting legislation to transpose Directive 96/98 into Italian law.

14 Taking the view that the adoption of this legislation did not bring an end to the infringement in relation to the equipment referred to in Annex A.2 to Directive 96/98, the Commission issued a reasoned opinion by letter of 17 February 2000, repeating the complaints set out in the letter of formal notice but restricting them to the abovementioned equipment.

15 At a meeting on 6 June 2000, the Italian authorities acknowledged that the national legislation was incompatible with Directive 96/98 and informed the Commission of their intention to comply with the reasoned opinion by amending that legislation. They also stated that, whilst awaiting the entry into force of the amendments, circulars would be issued to give the instructions necessary to comply with the obligations arising from Directive 96/98.

16 By letter of 8 June 2000, the Italian authorities informed the Commission of the adoption of the circular of 22 February 2000, which recognised, for the marine equipment referred to in Annex A.2 to the directive, the certificates of type-approval issued by the authorities of the other Member States. As to the recognition of tests, they stated that legislative amendments were under consideration.

17 By letter of 16 November 2000 addressed to the Commission, the Italian authorities stated that the procedure for the amendment of Decree No 347/94 had been initiated. In the same letter, they sent the Commission the text of Service Order No 57/2000 of 4 August 2000 issued by the authority governing harbourmasters, which states that the competent bodies are to take account of tests and checks already carried out in the other Member States.

18 By letter of 29 March 2001, the Commission drew the attention of the Italian authorities to the fact that the only way to bring national legislation into line with Community law was to adopt a provision of a status at least equal to that of Decree No 347/94 and that therefore a service order was not capable of remedying the incompatibility.

19 By letter of 2 May 2001, the Italian authorities informed the Commission that the legislative procedure was under way and enclosed with the letter the proposed amendments to Decree No 347/94.

20 On noting that more than a year had elapsed since the meeting of 6 June 2000 at which the Italian authorities stated their intention to amend the legislation in question, the Commission brought the present action.

The action

21 It follows from Article 2(1) and (3) of Decree No 347/94 that all marine equipment intended for use on merchant vessels flying the Italian flag, from a Member State other than the Italian Republic and listed in Annex A.2 to Directive 96/98, must, in order to be marketed in Italy, be covered by both a declaration of type-approval issued by a body subject to the Italian authorities, namely RINA, and by tests and analyses which may only be carried out by RINA.

22 The abovementioned national provisions are thus capable of hindering intra-Community trade and therefore constitute a measure having an effect equivalent to a quantitative restriction prohibited by Article 28 EC (see Case 8/74 *Dassonville* [1974] ECR 837, paragraph 5, and Case C-383/97 *Van der Laan* [1999] ECR I-731, paragraph 18).

23 Although in the absence of harmonisation a restriction on the free movement of goods may be justified under Article 30 EC, in relation in particular to the protection of health and life of humans or on overriding grounds in the general interest, the Italian Republic has not pleaded such a justification in this case. In its defence, Italy merely states that the amendment of Decree No 347/94 is under way and sets out the reasons for the delay.

24 In any event, since Decree No 347/94 does not enable analyses and tests already carried out in an approval procedure in another Member State to be taken into account, the restriction on intra-Community trade which results from the need to obtain a declaration of approval issued by RINA does not fulfil the condition of proportionality and therefore cannot be justified in Community law (see, to that effect, Case C-400/96 *Harpegnies* [1998] ECR I-5121, paragraphs 34 and 35).

25 Service Order No 57/2000 cannot remedy the incompatibility between Article 2(1) and (3) of Decree No 347/94 and Article 28 EC. The Court has consistently held that the incompatibility of national legislation with Community provisions, even provisions which are directly applicable, can be finally remedied only by means of national provisions of a binding nature which have the same legal force as those which must be amended (see, in particular, Case C-207/96 *Commission* v *Italy* [1997] ECR I-6869, paragraph 26).

26 It therefore follows that those national provisions infringe Article 28 EC. Since the Commission's action does not relate specifically to Article 11 of the EEA Agreement, unlike the subject-matter of the pre-litigation procedure, the Court's findings must be restricted to Article 28 EC.

27 In the light of the foregoing, it should be held that, by keeping in force legislation under which products in respect of which there has not yet been full harmonisation, intended for use on merchant vessels flying the Italian flag, may be marketed only if a certificate of conformity has been issued by a national body — so that in some cases the right to market the products is enjoyed only by the grantee of the certificate — and by not recognising the validity of tests carried out in accordance with international standards by bodies recognised in the other Member States, even where the relevant information is made available to the competent authority and it is clear from the certificates that the equipment guarantees a degree of safety equivalent to that required for Italian products, the Italian Republic has failed to fulfil its obligations under Article 28 EC.

Costs

28 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 Italian Republic must be ordered to pay the costs.

On those grounds,

THE COURT (Fourth Chamber)

hereby:

1. Declares that, by keeping in force legislation under which products in respect of which there has not yet been full harmonisation, intended for use on merchant vessels flying the Italian flag, may be marketed only if a certificate of conformity has been issued by a national body — so that in some cases the right to market the products is enjoyed only by the grantee of the certificate — and by not recognising the validity of tests carried out in accordance with international standards by bodies recognised in the other Member States, even where the relevant information is made available to the competent authority and it is clear from the certificates that the equipment guarantees a degree of safety equivalent to that required for Italian products, the Italian Republic has failed to fulfil its obligations under Article 28 EC;

2. Orders the Italian Republic to pay the costs.

Timmermans Edward von Bahr

Delivered in open court in Luxembourg on 16 October 2003.

R. Grass

Registrar

V. Skouris

President