JUDGMENT OF THE COURT (First Chamber)

11 December 2001 *

In Case C-376/00,

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 forward to the Commission, for the period from 1995 to 1997, the reports required under Article 18 of Council Directive 75/439/EEC of 16 June 1975 on the disposal of waste oils

* Language of the case: Italian.

(OJ 1975 L 194, p. 23), as amended by Council Directive 91/692/EEC of 23 December 1991 standardising and rationalising reports on the implementation of certain Directives relating to the environment (OJ 1991 L 377, p. 48), and under Article 12 of Council Directive 75/442/EEC of 15 July 1975 on waste (OJ 1975 L 194, p. 39), as amended by Directive 91/692/EEC, within the periods fixed by those provisions, the Italian Republic has failed to fulfil its obligations under the said directives,

THE COURT (First Chamber),

composed of: P. Jann, President of the Chamber, L. Sevón (Rapporteur) and M. Wathelet, Judges,

Advocate General: D. Ruiz-Jarabo Colomer,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 4 October 2001,

gives the following

Judgment

1 By application lodged at the Court Registry on 11 October 2000, the Commission of the European Communities brought an action under Article 226 EC for a declaration that, by failing to forward to the Commission, for the period from 1995 to 1997, the reports required under Article 18 of Council Directive 75/439/EEC of 16 June 1975 on the disposal of waste oils (OJ 1975 L 194, p. 23), as amended by Council Directive 91/692/EEC of 23 December 1991 standardising and rationalising reports on the implementation of certain Directives relating to the environment (OJ 1991 L 377, p. 48) ('Directive 75/439, as amended'), and under Article 12 of Council Directive 75/442/EEC of 15 July 1975 on waste (OJ 1975 L 194, p. 39), as amended by Directive 91/692/EEC ('Directive 75/442, as amended'), within the periods fixed by those provisions, the Italian Republic has failed to fulfil its obligations under the said directives.

2 According to Article 1 thereof, the purpose of Directive 91/692 is to rationalise and improve on a sectoral basis the provisions on the transmission of information and the publication of reports concerning certain Community directives on the protection of the environment.

3 Article 5 of Directive 91/692 replaced the provisions listed in Annex VI to that directive, among which were Article 18 of Directive 75/439 and Article 12 of Directive 75/442, by the following:

'At intervals of three years Member States shall send information to the Commission on the implementation of this Directive, in the form of a sectoral

report which shall also cover other pertinent Community Directives. The report shall be drawn up on the basis either of a questionnaire or outline drafted by the Commission in accordance with the procedure laid down in Article 6 of Directive 91/692/EEC... . The questionnaire or outline shall be sent to the Member States six months before the start of the period covered by the report. The report shall be made to the Commission within nine months of the end of the three-year period covered by it.

The first report shall cover the period 1995 to 1997 inclusive.

The Commission shall publish a Community report on the implementation of the Directive within nine months of receiving the reports from the Member States.'

4 In accordance with the procedure laid down in the first paragraph of Article 226 EC, the Commission, having sent the Italian Republic formal notice to submit its observations, by letter of 26 January 2000 sent a reasoned opinion to that Member State requesting it to bring into force the measures necessary to comply with, among others, its obligations under Article 18 of Directive 75/439, as amended, and Article 12 of Directive 75/442, as amended, for the period 1995 to 1997 inclusive, within two months of notification of that opinion.

5 As it received no response from the Italian Republic concerning the reports required by those provisions of Directives 75/439 and 75/442, as amended, the Commission brought the present action.

6 The Commission submits that it adopted, by its Decision 94/741/EC of 24 October 1994 concerning questionnaires for Member States' reports on the

implementation of certain Directives in the waste sector (implementation of Council Directive 91/692/EEC) (OJ 1994 L 296, p. 42), the questionnaires relating to Directives 75/439 and 75/442, as amended. The Member States were therefore required to send the Commission the first reports relating to the period from 1995 to 1997 no later than 30 September 1998.

7 In relation to the report on waste required under Article 12 of Directive 75/442, as amended, the Commission asserts that it became aware of this when it read the annexes to the statement of defence. As that report satisfies the criteria laid down by Directive 75/442, as amended, and complies with the questionnaire drawn up by the Commission, the latter has withdrawn its case insofar as that directive is concerned.

8 In relation to the report on waste oils required under Article 18 of Directive 75/439, as amended, the Commission received on 18 December 2000 from the Italian Ministry of Industry a report covering the years 1995 and 1996. No information was, however, given for the year 1997 and the information provided for 1995 and 1996 did not satisfy the requirements of the questionnaire drawn up by the Commission. The notification of that report, the Commission argues, therefore does not make good the failure to fulfil obligations under Article 18 of Directive 75/439, as amended.

9 The Italian Government does not dispute the Commission's claims.

10 In those circumstances, it must be held, first, that, since the Commission has discontinued its action insofar as Directive 75/442, as amended, is concerned, there is no need to rule on the part of its claims relating to that directive.

11 Second, as the report required under Article 18 of Directive 75/439, as amended, relating to the period from 1995 to 1997, was not forwarded within the period laid down by that provision, the Commission's action must be held to be well founded insofar as that directive is concerned.

12 It must accordingly be held that, in failing to forward to the Commission, for the period from 1995 to 1997, the report required under Article 18 of Directive 75/439, as amended, within the period fixed by that provision, the Italian Republic has failed to fulfil its obligations under that directive.

Costs

13 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. In accordance with Article 69(5) of those Rules, a party who discontinues must be ordered to pay the costs if they have been applied for by the other party in its observations on the discontinuance. First, the Commission has applied for its costs against the Italian Republic. Second, the latter has been unsuccessful as to that part of the action relating to Directive 75/439, as amended, and has not applied for its costs to be paid by the Commission for the part of the action which was discontinued, namely that concerning Directive 75/442, as amended. The Italian Republic must for those reasons be ordered to pay the costs.

On those grounds,

THE COURT (First Chamber)

hereby:

1. **Declares that, by failing to forward to the Commission, for the period from 1995 to 1997, the report required under Article 18 of Council Directive 75/439/EEC of 16 June 1975 on the disposal of waste oils, as amended by Council Directive 91/692/EEC of 23 December 1991 standardising and rationalising reports on the implementation of certain Directives relating to the environment, within the period fixed by that provision, the Italian Republic has failed to fulfil its obligations under that directive;**

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

Jann Sevón Wathelet

Delivered in open court in Luxembourg on 11 December 2001.

R. Grass

Registrar

P. Jann

President of the First Chamber