JUDGMENT OF THE COURT
13 December 1990 *

In Case C-70/89,

Commission of the European Communities, represented by its legal advisers R. Gosalbo Bono and G. Marenco, acting as Agents, with an address for service in Luxembourg at the office of Guido Berardis, a member of the Commission's legal department, Wagner Centre, Kirchberg,

applicant,

v

Italian Republic, represented by L. Ferrari Bravo, head of the department for contentious diplomatic matters of the Ministry of Foreign Affairs, acting as Agent, assisted by P. G. Ferri, avvocato dello Stato, with an address for service in Luxembourg at the Italian Embassy, 5 rue Marie-Adélaïde,

defendant,

APPLICATION for a declaration that, by not adopting within the prescribed time-limit all the legislative and administrative provisions necessary to transpose Council Directive 83/513/EEC of 26 September 1983 on limit values and quality objectives for cadmium discharges (Official Journal 1983 L 291, p. 1) fully and correctly into its national law, the Italian Republic has failed to fulfil its obligations under the EEC Treaty,

THE COURT,

composed of: O. Due, President, G. F. Mancini, T. F. O'Higgins and G. C. Rodríguez Iglesias (Presidents of Chambers), Sir Gordon Slynn, R. Joliet, F. A. Schockweiler, F. Grévisse and M. Zuleeg, Judges,

* Language of the case: Italian.

Advocate General: C. O. Lenz
Registrar: D. Louterman, Principal Administrator,

having regard to the Report for the Hearing,

after hearing oral argument presented by the parties at the hearing on 21 November 1990,

after hearing the Opinion of the Advocate General delivered at the sitting on the same day,

gives the following

Judgment

1 By application lodged at the Court Registry on 7 March 1989, the Commission of the European Communities brought an action under Article 169 of the EEC Treaty for a declaration that, by not adopting within the prescribed time-limit all the legislative and administrative provisions needed to transpose Council Directive 83/513/EEC of 26 September 1983 on limit values and quality objectives for cadmium discharges (Official Journal 1983 L 291, p. 1), the Italian Republic had failed to fulfil its obligations under the EEC Treaty.

2 In Directive 76/464/EEC of 4 May 1976 on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community (Official Journal 1976 L 129, p. 23), the Council set out a list of substances characterized by their toxicity, persistence and bioaccumulation, one of which was cadmium. Article 6 of the directive provides that the Council is to adopt limit values and quality objectives for those substances.

3 Directive 83/513 (hereinafter referred to as 'the directive') lays down those values and objectives for cadmium. The period for its implementation expired on 28 September 1985.

4 In order to fulfil their obligation to provide information under Article 6(1) of the directive, the Italian authorities informed the Commission on 28 October 1985 that the rules laid down by the directive were already contained in various legislative instruments, namely Law No 319 of 10 May 1976 on protection of water against pollution (*Gazzetta ufficiale della Republica italiana* (GURI) No 141 of 29.5.1976), amending Law No 650 of 24 December 1979 (GURI No 352 of 29.12.1979), the circular of 29 December 1976 from the Interministerial Committee and the decision of that committee of 4 February 1977 (supplemento ordinario alla GURI, No 69 of 21.2.1977).

5 Considering that those instruments did not constitute an adequate transposition of the directive, the Commission initiated the procedure for a declaration of failure by a Member State to fulfil its obligations under the Treaty.

6 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the course of the procedure and the submissions and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

7 The Commission states that the Italian legislation fails to comply with the directive on the following seven points.

8 First, the Italian legislation does not lay down limit values expressed in grammes of cadmium discharged per kilogram of cadmium treated, whereas Annex I to the directive requires such values to be laid down.

9 Secondly, the Italian legislation required certain existing industrial establishments to observe those limit values no later than 1 March 1989, whereas Annex I to the directive required them to observe those values no later than 1 January 1986.

10 Thirdly, the Italian legislation provides that the limit values are to be measured upstream of the point where the waste is discharged into the surrounding environment, whereas Article 3(2) of the directive requires measurement to be carried out at the point of discharge of the waste waters, that is to say where they leave the industrial establishment or treatment plant.

11 Fourthly, the Italian legislation lays down no procedure for monitoring the quantities of cadmium treated, whereas Annex I, point 4, of the directive requires such a procedure to be established.

12 Fifthly, the Italian legislation makes no provision for prior authorization for discharges, whereas a system of authorization is required by Article 3(3) and (4) of the directive.

13 Sixthly, the methods of analysis provided for in the Italian legislation to determine the presence of cadmium in waste waters do not conform to those prescribed by Article 3(5) and Annex III, point 1, of the directive.

14 Finally, since, under the Italian system, authorization for discharge is granted automatically, the provincial laboratories responsible for monitoring discharges cannot carry out the supervisory duty required of the authorities of the Member States by Article 4 of the directive.

15 In its defence, the Italian Republic did not dispute that the Commissions's submissions were well founded.

16 It must therefore be declared that, by not adopting within the prescribed time-limit all the legislative and administrative provisions needed to transpose Council Directive 83/513 of 26 September 1983 on limit values and quality objectives for cadmium discharges fully and correctly into its national law, the Italian Republic has failed to fulfil its obligations under the EEC Treaty.

Costs

17 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the Italian Republic has failed in its submissions, it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

(1) Declares that, by not adopting within the prescribed time-limit all the legislative and administrative provisions needed to transpose Council Directive 83/513/EEC of 26 September 1983 on limit values and quality objectives for cadmium discharges fully and correctly into its national law, the Italian Republic has failed to fulfil its obligations under the EEC Treaty;

(2) Orders the Italian Republic to pay the costs.

Due Mancini O'Higgins Rodríguez Iglesias

Slynn Joliet Schockweiler Grévisse Zuleeg

Delivered in open court in Luxembourg on 13 December 1990.

J.-G. Giraud
Registrar

O. Due
President