JUDGMENT OF THE COURT

25 February 2003 *

In Case C-59/01,

Commission of the European Communities, represented by C. Tufvesson and A. Aresu, acting as Agents, with an address for service in Luxembourg,

applicant,

v

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

defendant,

* Language of the case: Italian.

APPLICATION for a declaration that, by introducing and maintaining in force rate-freezing rules applicable to all contracts of insurance in respect of third-party liability arising from the use of motor vehicles in relation to risks situated within Italian territory, without distinguishing between insurance companies having their head office in Italy and those carrying on business in Italy through branch offices or under the freedom to provide services, in breach of:

(a) the principle of the freedom to set premiums and the abolition of prior or systematic controls over premiums and contracts, as dealt with in Articles 6, 29 and 39 of Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC (third non-life insurance Directive) (OJ 1992 L 228, p. 1);

(b) the provisions of Article 44 of that directive, which concern arrangements for gathering information on the amount of the premiums, claims and commission, the frequency and average cost of claims, and the exchange of information between the regulatory authorities of the home Member State and those of the host Member State,

the Italian Republic has failed to fulfil its obligations under that directive,

THE COURT,

composed of: G.C. Rodríguez Iglesias, President, J.-P. Puissochet, M. Wathelet and C.W.A. Timmermans (Presidents of Chambers), D.A.O. Edward, P. Jann, F. Macken, N. Colneric, S. von Bahr, J.N. Cunha Rodrigues (Rapporteur) and A. Rosas, Judges,

Advocate General: S. Alber,

Registrar: L. Hewlett, Principal Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 16 April 2002,

after hearing the Opinion of the Advocate General at the sitting on 4 July 2002,

gives the following

Judgment

1 By application lodged at the Court Registry on 12 February 2001, Commission of the European Communities brought an action under Article 226 EC for a

declaration that, by introducing and maintaining in force rate-freezing rules applicable to all contracts of insurance in respect of third-party liability arising from the use of motor vehicles in relation to risks situated within Italian territory, without distinguishing between insurance companies having their head office in Italy and those carrying on business in Italy through branch offices or under the freedom to provide services, in breach of:

(a) the principle of the freedom to set premiums and the abolition of prior or systematic controls over premiums and contracts, as dealt with in Articles 6, 29 and 39 of Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC (third non-life insurance Directive) (OJ 1992 L 228, p. 1);

(b) the provisions of Article 44 of that directive, which concern arrangements for gathering information on the amount of the premiums, claims and commission, the frequency and average cost of claims, and the exchange of information between the regulatory authorities of the home Member State and those of the host Member State,

the Italian Republic has failed to fulfil its obligations under that directive.

Legal background

The relevant Community provisions

2 According to Article 1 of Directive 92/49:

'For the purposes of this Directive:

...

(c) "home Member State" shall mean the Member State in which the head office of the insurance undertaking covering a risk is situated;

....'

3 In Title II, headed 'The taking up of the business of insurance', Article 6 of Directive 92/49 provides:

'Article 8 of Directive 73/239/EEC shall be replaced by the following:

"*Article 8*

...

(3) Nothing in this Directive shall prevent Member States from maintaining in force or introducing laws, regulations or administrative provisions requiring approval of the memorandum and articles of association and communication of any other documents necessary for the normal exercise of supervision.

Member States shall not, however, adopt provisions requiring the prior approval or systematic notification of general and special policy conditions, scales of premiums and forms and other printed documents which an undertaking intends to use in its dealings with policyholders.

Member States may not retain or introduce prior notification or approval of proposed increases in premium rates except as part of general price-control systems.

....'

4 Under Article 28 of Directive 92/49, which appears in Title III thereof headed 'Harmonisation of the conditions governing the business of insurance':

'The Member State in which a risk is situated shall not prevent a policyholder from concluding a contract with an insurance undertaking authorised under the conditions of Article 6 of Directive 73/239/EEC, as long as that does not conflict with legal provisions protecting the general good in the Member State in which the risk is situated.'

5 Again in Title III, Article 29 provides as follows:

'Member States shall not adopt provisions requiring the prior approval or systematic notification of general and special policy conditions, scales of premiums, or forms and other printed documents which an insurance undertaking intends to use in its dealings with policy-holders. They may only require non-systematic notification of those policy conditions and other documents for the purpose of verifying compliance with national provisions concerning insurance contracts, and that requirement may not constitute a prior condition for an undertaking's carrying on its business.

Member States may not retain or introduce prior notification or approval of proposed increases in premium rates except as part of general price-control systems.'

6 Article 30(2) of Directive 92/49, which also appears in Title III, provides:

'Notwithstanding any provision to the contrary, a Member State which makes insurance compulsory may require that the general and special conditions of the compulsory insurance be communicated to its competent authority before being circulated.'

7 Under Title IV of Directive 92/49, headed 'Provisions relating to [the] right of establishment and the freedom to provide services', Article 39(2) and (3) provides:

'(2) The Member State of the branch or of the provision of services shall not adopt provisions requiring the prior approval or systematic notification of general and special policy conditions, scales of premiums, or forms and other printed documents which an undertaking intends to use in its dealings with policyholders. It may only require an undertaking that proposes to carry on insurance business within its territory, under the right of establishment or the freedom to provide services, to effect non-systematic notification of those policy conditions and other documents for the purpose of verifying compliance with its national provisions concerning insurance contracts, and that requirement may not constitute a prior condition for an undertaking's carrying on its business.

(3) The Member State of the branch or of the provision of services may not retain or introduce prior notification or approval of proposed increases in premium rates except as part of general price-control systems.'

8 In addition, under Article 44 of Directive 92/49, also under Title IV:

'(1) Article 22 of Directive 88/357/EEC is hereby repealed.

(2) Every insurance undertaking shall inform the competent authority of its home Member State, separately in respect of transactions carried out under the right of establishment and those carried out under the freedom to provide services, of the amount of the premiums, claims and commissions, without deduction of reinsurance, by Member State and by group of classes, and also as regards class 10 of point A of the Annex to Directive 73/239/EEC, not including carrier's liability, the frequency and average cost of claims.

The groups of classes are hereby defined as follows:

...

— motor (classes 3, 7 and 10, the figures for class 10, excluding carriers' liability, being given separately),

...

The competent authority of the home Member State shall forward that information within a reasonable time and in aggregate form to the competent authorities of each of the Member States concerned which so request.'

The relevant national provisions

9 Article 2(2) to (5)d of Decree-Law No 70 of 28 March 2000 containing urgent provisions to limit inflationary pressures (GURI No 73 of 28 March 2000, p. 4), as amended by Law No 137 of 26 May 2000 converting into law the said Decree-Law with amendments (GURI No 122 of 27 May 2000, p. 4) (hereinafter 'the Decree-Law') provides as follows:

'(2) In respect of compulsory insurance policies covering third-party liability in connection with the use of motor vehicles and boats which are renewed within one year of the date of entry into force of this Decree under terms providing for differential premium rates based on the claims record, insurance undertakings may not apply any increase in premium rates to policyholders to whom no accident caused by the driver is attributable during the most recent reference period. In the case of policies taken out within one year of such date on terms providing for differential premium rates based on the claims record, the premium rates in force on that date shall be applied.

(2)(a) Paragraph 2 above shall apply, from the date of the entry into force of this Decree, to insurance contracts for automobiles, mopeds and motorcycles, which apply the scales of premium referred to in Article 12 of Law No 990 of

24 December 1969, as well as to contracts proposed by telephone, fax or e-mail, and to contracts which do not provide for automatic renewal or which are terminated by the undertaking, if they are entered into afresh with the same insurer.

(3) For a period of one year from the date of entry into force of this Decree, insurance undertakings may not alter the number of discount categories, the coefficients for calculating premiums, or differential premium rate systems under which the premium payable depends on the claims record.

(4) The following paragraph is added to Article 12 of Law No 990 of 24 December 1969: "(2)a. Undertakings engaged in the business of compulsory insurance under Article 2(2) of Decree-Law No 70 of 28 March 2000, as amended by the converting law, are required, if the client so requests, to draw up insurance contracts providing for a no-claims-bonus arrangement, subject to an excess — which may not be relied upon against an injured third party — in an amount not less than ITL 500 000 and not more than ITL 1 000 000. It is for the insured person alone to opt for a no-claims-bonus system with an excess, and to determine the excess amount."

(5) Once Article 2(2) and (3) has exhausted its effects, the insured person may, where the premium is increased — save in the case of increases resulting from differential-premium rate systems — by an amount in excess of the targeted rate of inflation, terminate the contract by giving notice to that effect by registered letter with advice of receipt, or by fax, sent to the head office of the undertaking concerned or to the agency where the policy was taken out. In that case the insured person shall not be entitled to the days of grace provided for by the second paragraph of Article 1901 of the Civil Code.'

(5)a The Istituto per la Vigilanza sulle Assicurazioni private e di interesse collettivo ("the ISVAP", the authority responsible for supervising insurance undertakings offering compulsory motor insurance) shall ensure that insurance undertakings comply with the provisions of this article.

(5)b An administrative fine of ITL 3 to 9 million shall be imposed on insurance undertakings which do not observe the provisions laid down in paragraphs (2), (2)a, (3) and (4) in respect of each infringement.

(5)c A data-bank concerning claims involving motor vehicles registered in Italy shall be set up within the ISVAP with a view to combating fraudulent practices in connection with the compulsory insurance of those vehicles. The ISVAP shall ensure that that data-bank is fully operational as from 1 January 2001. As from that date, once every quarter every insurance undertaking shall be required to communicate to the ISVAP in accordance with detailed rules laid down by the ISVAP data concerning the claims made by persons insured by that undertaking. The ISVAP shall fix the procedures and conditions for the operation of the data-bank after consulting the insurance undertakings. The costs of operating the data-bank shall be borne by the insurance undertakings in accordance with the criteria applied for the sharing of the costs of the supervision carried out by the ISVAP.

(5)d Failure to comply with the duty to communicate the requisite data to the ISVAP shall lead to the imposition of the following administrative fines:

(a) from ITL 2 to 6 million in the case of failure to forward data;

(b) from ITL 1 to 3 million in the case of late or incomplete transmission of data.

Those fines shall be increased by 10% in each case of a further offence.'

The pre-litigation procedure

10 By letter of 14 April 2000 the Commission drew to the attention of the Italian authorities the problems in relation to Community law raised by the application of the Decree-Law in its version of 28 March 2000, and asked them to provide explanations. The Italian authorities replied by letter of 5 June 2000.

11 Since it was not satisfied with the response of the Italian authorities, by letter of formal notice of 13 July 2000 the Commission gave them three weeks from receipt of that letter to submit their observations on the complaints concerning the Decree -Law. The Italian authorities replied by two letters of 3 August and 3 October 2000 respectively.

12 Since it did not find the replies given by the Italian authorities satisfactory, by letter of 27 October 2000 the Commission sent the Italian Republic a reasoned opinion inviting it to comply therewith within three weeks of its notification.

13 The Italian authorities answered that opinion by letter of 20 November 2000, enclosing a letter from the Minister for Industry, Trade and Trade Crafts.

14 Taking the view that the infringements set out in the reasoned opinion had not been brought to an end and that the response of the Italian authorities to the reasoned opinion was not satisfactory, the Commission decided to initiate these proceedings.

The action

Alleged infringement of Articles 6, 29 and 39 of Directive 92/49

Arguments of the parties

15 By its first complaint the Commission alleges that the Italian Republic has adopted in the Decree-Law measures intended to:

— prohibit insurance undertakings from increasing the premium rates for compulsory insurance policies covering third-party liability arising from the use of motor vehicles which were to be renewed during the year of the Decree-Law's validity and which provide for variation in premium rates

based on claims made ('no-claims bonus' clause), where the insured has caused any accident during the reference period (the first sentence of Article 2(2) of the Decree-Law);

— require insurance undertakings to apply the premium rates applicable on 29 March 2000 to all new contracts concluded in the year following the entry into force of the Decree-Law and varying premium rates by reference to claims made (second sentence, Article 2(2));

— extend the application of Article 2(2) of the Decree-Law to the sale of insurance products by telephone, fax or e-mail (Article 2(2)a);

— prohibit insurance undertakings from altering, during the year following the entry into force of the Decree-Law, the number of discount categories, the coefficients for calculating premiums or the differential premium rate system varying according to the claims record (Article 2(3));

— require insurance undertakings, at the request of the other party to the contract, to draw up contracts providing for a no-claims-bonus arrangement subject to an excess, which cannot be relied upon against injured third parties, of between ITL 500 000 and ITL 1 000 000, it being provided that it is for the insured person to choose the no-claims-bonus system and to determine the amount of the excess (Article 2(4)), and

— to enable insured persons, after Article 2(2) and (3) of the Decree-Law has ceased to have effect, to terminate the contract where the premium is increased by more than the targeted rate of inflation, except where the increase is due to the application of the differential-premium-rate system (Article 2(5)).

16 The Commission maintains that the measures laid down in Article 2(2), (3), (4) and (5) of the Decree-Law are contrary to Articles 6, 29 and 39 of Directive 92/49. They entail, first, the freezing of rates, inasmuch as the undertakings concerned are no longer entitled to set insurance premiums freely on the basis of the claims record and operating costs and, second, a limitation of contractual freedom by introducing, for example, a mandatory excess system. Consequently, insurance undertakings carrying on business in Italy, including those operating under the right of establishment or the freedom to provide services, are no longer free to alter the rates for their policies, whereas those provisions of Directive 92/49 lay down the principle that undertakings in the non-life sector should be free to set their rates and should not be subject to prior or systematic control of rates or of the terms of the contract.

17 The Commission observes that Member States may impose on insurance undertakings a requirement of non-systematic notification of general and special conditions of insurance policies and contracts, provided that, for those undertakings, that requirement does not amount to a precondition for carrying on business. As regards compulsory insurance, under Article 30(2) of Directive 92/49 Member States may maintain the requirement of prior systematic communication of the general and special conditions of insurance policies, but that does not imply review of the economic adequacy of the corresponding rates.

18 The Commission maintains that there can be no derogations from or limitations to the principle that undertakings should be free to set rates, recently recognised by the Court in Case C-296/98 *Commission* v *France* [2000] ECR I-3025,

paragraph 29, other than in the circumstances exhaustively listed in Directive 92/49, namely, where the measures concerned form part of 'general price-control systems' (the third paragraph of Article 8(3) of First Council Directive 73/239/EEC of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance (OJ 1973 L 228, p. 3), as amended by Directive 92/49, and also the second paragraph of Article 29 and Article 39(3) of Directive 92/49), or where those measures are taken pursuant to 'legal provisions protecting the general good in the Member State in which the risk is situated' (Article 28 of Directive 92/49). Thus, the powers of the Member State in which the risk is situated must be exercised in accordance with the provisions of Directive 92/49 and, in particular, the principle that undertakings should be free to set rates, which means that there must be no system of prior or systematic substantive control of the policies or rates of the insurance undertakings in business in the territory of the European Union.

19 According to the Commission, the rules covering rates laid down by the Decree-Law cannot be classified as forming part of a 'general price-control system' or as 'provisions protecting the public good' for the purposes of Directive 92/49.

20 The Italian Republic contends that the measures at issue form part of a 'general price-control system'. It observes that the Decree-Law, in its original wording of 28 March 2000, contained a series of measures intended to limit inflationary effects in a number of economic sectors and that when it was converted into law the Parliament, wishing to rationalise the legislation, decided to draw up a separate text for the sector in question, so that the provisions concerning insurance covering third-party liability arising from the use of motor vehicles no longer appeared with the measures intended to combat inflation in other economic sectors.

21 The Italian Republic considers that the various price measures, including the measures at issue, must be regarded as forming part of a 'general price-control

system', even though they were not adopted by means of a single legal instrument or for the same period.

22 It states that the measures forming part of the general price-control system include Resolution No 30/2000 of the Comitato Interministeriale per la Programmazione Economica (Inter-ministerial Economic Planning Committee), entitled 'Direttive per il contenimento dell'inflazione' (Inflation Control Guidelines) setting out Government guidelines concerning rates for public services under the control of regions and local authorities, and an administrative measure taken by the Minister for Finance and Industry reducing the excise duty on petroleum products until 31 December 2000, subsequently reproduced in Article 24 of Law No 388 of 23 December 2000 (GURI No 302, Supplement No 219, of 29 December 2000, p. 1).

23 According to the Italian Republic, in order for a measure to be regarded as 'general' it is not necessary for it to concern all prices in a single category of goods or services and it may be confined to the areas most affected by inflation. A general price-control system exists where, as in this case, there is a body of initiatives designed to counter inflationary pressure and involving actions adapted in line with changing prices in each sector.

24 The Italian Republic also maintains that the measures at issue constitute 'provisions protecting the general good' within the meaning of Article 28 of Directive 92/49. They make it possible to take appropriate and proportionate action to tackle inflation. In so far as a temporary ban on raising the rates under certain contracts is the only means capable of having immediate effect on the increasing growth of those rates it is justified on grounds of consumer protection and of social policy, having regard to the compulsory nature of insurance covering third-party liability arising from the use of motor vehicles. The contested measures also make it possible to combat fraud and anti-competitive conduct on the market concerned.

Findings of the Court

25 According to the first recital in the preamble to Directive 92/49, the object of the directive is to complete the internal market in direct insurance other than life assurance from the point of view both of the right of establishment and of the freedom to provide services, to make it easier for insurance undertakings with head offices in the Community to cover risks situated within the Community. In addition, according to the 19th recital in the preamble to that directive, within the framework of an internal market it is in the policyholder's interest that he should have access to the widest possible range of insurance products available in the Community so that he can choose that which is best suited to his needs.

26 Thus Directive 92/49 is designed to secure freedom to market insurance products in the sector concerned within the Community (*Commission* v *France*, cited above, paragraph 29).

27 For that purpose, the second subparagraph of Article 8(3) of Directive 73/239, the first paragraph of Article 29 and Article 39(2) of Directive 92/49 prohibit the Member States from requiring prior approval or systematic notification of, in particular, general and special insurance policy conditions or the scales of premium which an undertaking intends to use in their territory in its dealings with policy-holders.

28 Furthermore, under the third subparagraph of Article 8(3) of Directive 73/239, the second paragraph of Article 29 and Article 39(3) of Directive 92/49 the Member States may not retain or introduce prior notification or approval of

proposed increases in premium rates except as part of general price-control systems. In addition, Article 30(2) of Directive 92/49 provides that where a Member State makes insurance compulsory it is only the general and special conditions of the compulsory insurance that it may require to be communicated to its competent authority before they are circulated.

29 It is apparent that the Community legislature clearly meant to secure the principle of freedom to set rates in the non-life insurance sector, including the area of compulsory insurance such as insurance covering third-party liability arising from the use of motor vehicles. That principle implies the prohibition of any system of prior or systematic notification or approval of the rates which an undertaking intends to use in its dealings with policy-holders. The only derogation from that principle allowed by Directive 92/49 concerns prior notification and approval of 'increases in premium rates' in the framework of a 'general price-control system'.

30 It is true that Article 28 of Directive 92/49 permits the Member State in which the risk is situated to prevent a policy-holder from concluding a contract with an insurance undertaking where that would conflict with legal provisions protecting the general good in force in that State.

31 Nevertheless, that provision cannot in any circumstances be so interpreted as to negate the effectiveness of the provisions mentioned in paragraph 28 above, which expressly set out the grounds justifying derogation from the principle that undertakings should be free to set rates. That conclusion is supported by the fact that Article 28 of Directive 92/49 comes immediately before a provision in the same Chapter explicitly repeating that the Member States are prohibited from restricting the freedom to fix rates except as part of general price-control systems.

32 In this case, the parties agree that the rules governing premium rates laid down in Article 2(2) to (5) of the Decree-Law significantly restrict the freedom of insurance undertakings, including those operating under the right of establishment or the freedom to provide services, with regard to the fixing and altering of the rates for insurance policies covering third-party liability arising from the use of motor vehicles in relation to risks situated within Italy.

33 The Italian Government maintains, none the less, that those rules, although restrictive of the freedom of insurance undertakings to fix rates, can be justified, first, on the ground that they form part of a 'general price-control system' within the meaning of the third subparagraph of Article 8(3) of Directive 73/239, the second paragraph of Article 29 and Article 39(3) of Directive 92/49.

34 In so far as the prior notification or approval of increases in premium rates which a Member State may require of insurance undertakings in accordance with those provisions derogates from the principle of freedom to set rates, that derogation must be interpreted restrictively. In any event, a general price-control system presupposes, in particular, that its component elements should be binding in nature and that the system should to a certain degree be of a general and homogenous nature.

35 The rules on premium rates at issue involve selective intervention in a specific field of non-life insurance, that is to say, compulsory motor vehicle insurance, and they cannot therefore of themselves satisfy the criterion that a control system should be of a general nature if a derogation from the freedom of undertakings to fix rates is to be justified, *a fortiori* because, as the Commission has observed without being contradicted by the Italian Republic, insurance premiums in the sector concerned represent only 0.22% of the basket of goods and services used in calculating movements in Italian inflation.

36 As regards the other measures relied on by the Italian Government to prove the existence of a general price-control system, it is sufficient to note that while they concern economic sectors other than that of insurance covering third-party liability arising from the use of motor vehicles, they are none the less very specific, heterogenous measures, not wholly binding and without any direct connection either between themselves or between them and the rules relating to premium rates laid down by the Decree-Law.

37 Accordingly, the rules relating to premium rates at issue cannot be regarded as forming part of a general price-control system within the meaning of the third subparagraph of Article 8(3) of Directive 73/239, the second paragraph of Article 29 and Article 39(3) of Directive 92/49 and they are not therefore covered by the exception provided for by those provisions, irrespective of the extent to which the various components of those rules form part of a system of 'increases in premium rates' for the purposes of those provisions.

38 As regards, second, the various public-interest considerations relied upon by the Italian Republic in order to justify the rules relating to premium rates at issue on the basis of Article 28 of Directive 92/49, paragraph 31 above makes it clear that the general good referred to in that provision cannot in any case be relied upon for the purpose of conferring legitimacy on the introduction or retention of national provisions which prejudice the principle of freedom to set rates, the exceptions to which have been specified in the harmonised rules laid down by Articles 6, 29 and 39 of that directive.

39 The Commission's first complaint, alleging infringement of Articles 6, 29 and 39 of Directive 92/49, must therefore be upheld.

The allegation of infringement of Article 44 of Directive 92/49

Arguments of the parties

40 The Commission asserts that Article 2(5)c of the Decree-Law makes insurance undertakings operating under the right of establishment or the freedom to provide services in the field of third-party liability arising from the use of motor vehicles subject to an obligation to supply information incompatible with the machinery set up by Article 44 of Directive 92/49, under which it is only the competent authorities of those undertakings' home Member States which must be informed of, *inter alia*, the number of claims. The information which the Italian Republic considers necessary in order to combat fraud has to be obtained exclusively through the authorities of the home Member State at the risk of damaging the cooperation machinery set up by Directive 92/49. Mere administrative considerations cannot justify a derogation from the rule laid down by Article 44. It also follows, according to the Commission, that the requirement that insurance undertakings, including those carrying on business under the right of establishment or the freedom to provide services, should contribute to the funding of the data-bank provided for by Article 2(5)c is contrary to Community law.

41 The Italian Government maintains, on the basis of Case C-275/92 *Schindler* [1994] ECR I-1039, paragraph 58, that the prevention of crime can justify derogation from the principle of freedom to provide services and that the communication, on request, of information by the home Member State, rather than the collection of information from the insurance undertakings, does not make it possible to forestall fraud as rapidly and completely as is necessary. Setting up a data-bank in Italy would appear to be the only appropriate method of tackling fraud effectively.

Findings of the Court

42 According to Article 2(5)c of the Decree-Law, every insurance undertaking is required to communicate to the ISVAP data concerning claims made by the persons it insures. To that end, that provision provides for the creation of a data-bank to the funding of which the insurance undertakings have to contribute. Article 2(5)d provides for the payment of a fine in the case of non-compliance or late compliance with the obligation to communicate those data.

43 Article 44(2) of Directive 92/49 provides that every insurance undertaking is to inform the competent authority of its home Member State, separately in respect of transactions carried out under the right of establishment and those carried out under the freedom to provide services, of the amount of the premiums, claims and commissions, by Member State and by group of classes, and, as regards motor vehicle insurance, the frequency and average cost of claims. According to the fourth paragraph of that provision, the information in question must be forwarded within a reasonable time and in aggregate form by the competent authority of the home Member State to the authorities of the Member States requesting it.

44 It is clear from that provision that, in accordance with the machinery set up by Directive 92/49, insurance business information concerning premiums, claims and commission must be supplied by the insurance undertakings to the authorities of the home Member State, which must communicate it within a reasonable time and in aggregate form to the authorities of the other Member States which so request.

45 The purpose of that machinery for communicating essential data concerning the business of insurance undertakings through the national authorities is to avoid unjustified impediments to the exercise of the right of establishment or the freedom to provide services in the sphere covered by Directive 92/49.

46 It is, however, apparent from the documents before the Court that the gathering of individualised information referred to in Article 2(5)c of the Decree-Law pursues an anti-fraud objective different from that pursued by Article 44 of Directive 92/49. Furthermore, as regards, first, the obligation imposed on insurance undertakings to contribute to the funding of the data-bank set up by the Decree-Law and, second, the penalties provided for in case of non-compliance with the obligation to communicate information, the Commission mentions them only to add that they reinforce the machinery set up by the Decree-Law and to conclude that they must for the same reason be declared invalid.

47 Since the Commission has challenged the compatibility of that machinery with Community law only in relation to Article 44 of Directive 92/49, the second complaint must be rejected.

48 It follows that, by introducing and maintaining in force rate-freezing rules applicable to all contracts of insurance in respect of third-party liability arising fromu the use of motor vehicles in relation to risks situated within Italian territory, without distinguishing between insurance companies having their head office in Italy and those conducting their business in Italy through branch offices or under the freedom to provide services, in breach of the principle of freedom to set premiums referred to in Articles 6, 29 and 39 of Directive 92/49, the Italian Republic has failed to fulfil its obligations under that directive.

Costs

49 Under Article 69(3) of the Rules of Procedure, the Court may order that the costs be shared or that the parties bear their own costs if each party succeeds on some and fails on other heads. Since the Commission's application has been upheld only in part, each party is to bear its own costs.

On those grounds,

THE COURT

hereby:

1. Declares that, by introducing and maintaining in force rate-freezing rules applicable to all contracts of insurance in respect of third-party liability arising from the use of motor vehicles in relation to risks situated within Italian territory, without distinguishing between insurance companies having their head office in Italy and those conducting their business in Italy through branch offices or under the freedom to provide services, in breach of the

principle of freedom to set premiums referred to in Articles 6, 29 and 39 of Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC (third non-life insurance Directive), the Italian Republic has failed to fulfil its obligations under that directive;

2. **Dismisses the remainder of the application;**

3. **Orders each party to bear its own costs.**

Rodríguez Iglesias Puissochet Wathelet Timmermans

Edward Jann Macken Colneric

von Bahr Cunha Rodrigues Rosas

Delivered in open court in Luxembourg on 25 February 2003.

R. Grass G.C. Rodríguez Iglesias

Registrar President