JUDGMENT OF THE COURT (Third Chamber)

9 June 2005 *

In Case C-270/03,

ACTION under Article 226 EC for failure to fulfil obligations, brought on 23 June 2003,

Commission of the European Communities, represented by L. Visaggio 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.

THE COURT (Third Chamber),

composed of A. Rosas, President of the Chamber, J.-P. Puissochet (Rapporteur), S. von Bahr, J. Malenovský and U. Lõhmus, Judges,

Advocate General: C. Stix-Hackl,
Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 22 February 2005,

after hearing the Opinion of the Advocate General at the sitting on 14 April 2005,

gives the following

Judgment

1 By its application the Commission of the European Communities seeks a declaration from the Court that, by permitting undertakings, in accordance with Article 30(4) of Decree-Law No 22 of 5 February 1997 implementing Directive 91/156/EEC on

waste, Directive 91/689/EEC on hazardous waste and Directive 94/62/EC on packaging and packaging waste (Ordinary supplement to *GURI* (Official Journal of the Italian Republic) No 38 of 15 February 1997), as amended by Article 1(19) of Law No 426 of 9 December 1998 (*GURI* No 291 of 14 December 1998) ('the decree-law'):

— to collect and transport their own non-hazardous waste, as a normal and regular activity, without being required to be entered in the Albo nazionale delle imprese esercenti servizi di smaltimento rifiuti (national register of undertakings carrying out waste-disposal services) and

— to transport their own hazardous waste in quantities not exceeding 30 kg and 30 l per day, without being required to be entered in that register,

the Italian Republic has failed to fulfil its obligations under Article 12 of Council Directive 75/442/EEC of 15 July 1975 on waste (OJ 1975 L 194, p. 39), as amended by Council Directive 91/156/EEC of 18 March 1991 (OJ 1991 L 78, p. 32) ('the directive').

Law

Community legislation

2 The first subparagraph of Article 1(a) of the directive defines waste as 'any substance or object in the categories set out in Annex I which the holder discards or intends or is required to discard'.

3 Article 1(c) of the directive defines the 'holder' as 'the producer of the waste or the natural or legal person who is in possession of it'.

4 Article 4 of the directive provides:

'Member States shall take the necessary measures to ensure that waste is recovered or disposed of without endangering human health and without using processes or methods which could harm the environment, and in particular:

— without risk to water, air, soil and plants and animals,

— without causing a nuisance through noise or odours,

— without adversely affecting the countryside or places of special interest.

Member States shall also take the necessary measures to prohibit the abandonment, dumping or uncontrolled disposal of waste.'

5 Article 8 of the directive provides:

'Member States shall take the necessary measures to ensure that any holder of waste:

— has it handled by a private or public waste collector or by an undertaking which carries out the operations listed in Annex IIA or B,

or

— recovers or disposes of it himself in accordance with the provisions of this directive.'

6 Article 9 of the directive states that, for the purposes, inter alia, of Article 4 of that directive, any establishment or undertaking which carries out the waste-disposal operations specified in Annex IIA must obtain a permit from the competent authority. Such permit is to cover, in particular, the types and quantities of waste, the technical requirements, the security precautions to be taken, the disposal site and the treatment method.

7 Article 12 of the directive provides:

'Establishments or undertakings which collect or transport waste on a professional basis or which arrange for the disposal or recovery of waste on behalf of others (dealers or brokers), where not subject to authorisation, shall be registered with the competent authorities.'

National legislation

8 Article 30(4) of the decree-law provides:

'Undertakings which collect and transport non-hazardous waste produced by others and undertakings which collect and transport hazardous waste, with the exception of hazardous waste transported by its producer in quantities not exceeding 30 kg or 30 l per day, shall be entered in the [national register of undertakings carrying out waste-disposal services].'

The pre-litigation procedure

9 The Commission took the view that Article 30(4) of the decree-law infringed Article 12 of the directive and so, by letter of formal notice of 24 October 2001,

invited the Italian Republic to submit its observations on the matter within two months.

10 The Italian authorities replied to that letter of formal notice by letter of 27 February 2002 in which they disputed the Commission's position, relying, inter alia, on a memorandum of 25 January 2002 of the Ministry for the Environment and the Protection of Natural Resources.

11 Unconvinced by that reasoning, on 27 June 2002 the Commission sent the Italian Republic a reasoned opinion and granted it a period of two months from notification of that opinion to comply with it.

12 The Commission received no reply to that opinion and so brought the present action before the Court.

The action

Arguments of the parties

13 The Commission submits, as it did in the case giving rise to the order of the Court of 29 May 2001 in Case C-311/99 *Caterino*, not published in the ECR, that the concept

of 'undertakings which collect or transport waste on a professional basis', used in Article 12 of the directive, is not confined to undertakings which carry out those activities on behalf of others. It also covers undertakings carrying out those activities on their own behalf where that transport or collection is, together with their other tasks, one of the normal activities from which they derive a profit or other economic advantage. That interpretation accords with the environmental protection objectives of the directive, the 12th recital in the preamble to Directive 91/156 and Article 8 of the directive, which applies to any 'holder of waste', and was incidentally confirmed by the Court in paragraph 25 of the *Caterino* order.

14 First, by using in respect of non-hazardous waste the phrase 'produced by others' instead of the expression 'on a professional basis', referred to in Article 12 of the directive, Article 30(4) of the decree-law, in breach of the directive, excludes from the obligation of registration undertakings which collect or transport waste on their own account as part of their particular professional activity. Those two terms necessarily convey different meanings and are not interchangeable.

15 Second, Article 12 of the directive provides that all undertakings which collect or transport waste on a professional basis, regardless of the quantity of waste and whether or not it is hazardous, are required to be registered with the competent authorities, where not subject to authorisation. Article 30(4) of the decree-law therefore infringes the directive, by establishing an exception to that obligation in favour of undertakings which do not transport in excess of 30 l or 30 kg of waste per day.

16 In the defence, the Italian Government submits that no provision of Community law prescribes that the collection and transport of waste has to be carried out by third-party operators which are distinct from the producers of the waste. The key consideration, in order to achieve the directive's objectives of the prevention and integrated management of waste, is to monitor the waste cycle. Under the Community rules, the waste producer is responsible for the waste until such time as he discards it to be reused, recovered or disposed of. Article 12 of the directive is therefore concerned with the monitoring of waste at the time when its producer ceases to be responsible for it.

17 The waste producer who directly transports waste to his recovery or disposal establishment 'discards' that waste only when it is delivered to that establishment. There is therefore no need for him to register since the obligation to register applies only to undertakings which collect or transport waste on a professional basis, that is, as their 'habitual activity'.

18 The Italian Government therefore contends that Article 30(4) of the decree-law does not infringe the objectives of the directive.

Findings of the Court

19 The provisions of the directive must be interpreted in the light of its objective which, according to its third recital, is the protection of human health and the environment

against harmful effects caused by the collection, transport, treatment, storage and tipping of waste, and Article 174(2) EC, which provides that Community policy on the environment is to aim at a high level of protection and is to be based, in particular, on the precautionary principle and the principle that preventive action should be taken (see, to that effect, Case C-9/00 *Palin Granit and Vehmassalon kansanterveystyön kuntayhtymän hallitus* [2002] ECR I-3533, paragraph 23).

20 In its original version, Article 10 of the directive provided that undertakings transporting waste were subject merely to 'supervision' by the competent authority whether that transport was carried out on their own behalf or on behalf of third parties. That provision was echoed in the seventh recital in the preamble to that directive, which stated that 'in order to ensure the protection of the environment, provision should be made ... for a supervisory system for undertakings which dispose of their own waste and for those which collect the waste of others ...'.

21 The objective of Directive 91/156 was, inter alia, to reinforce control by the public authorities. The 12th recital in the preamble thus states that, 'in order that waste can be monitored from its production to its final disposal, other undertakings involved with waste, such as waste collectors, carriers and brokers should also be subject to authorisation or registration and appropriate inspection'. New provisions were inserted into Article 12 of the directive for that purpose. Those provisions specifically state that undertakings which transport waste, where not subject to authorisation, are required to be registered and that the undertakings subject to that obligation are those which carry out such transport 'on a professional basis'. Directive 91/156 thus replaced mere 'supervision', which no longer appears as such in the directive, with an obligation of registration.

22 Since Directive 91/156 was intended to adopt a higher level of control by public authorities of the transport of waste than that under the original version of the directive, it would be contrary to that objective to interpret the term 'undertakings which ... transport waste on a professional basis' in Article 12 of the directive as excluding undertakings which, in the course of their business activity, transport waste on their own account. If that interpretation were upheld, those undertakings would escape all control of their transport of waste.

23 Moreover, the Court has already held that the concept of 'transport of waste on a professional basis' used in Article 12 of the directive covers not only those who, in the course of their business as carriers, transport waste produced by others, but also those who, whilst not professional carriers, nevertheless in the course of their own business activity, transport waste which they have produced (the order in *Caterino*, paragraph 25).

24 Contrary to the Italian Government's submission, the directive's objective of the monitoring of the waste cycle implies the monitoring of waste from the moment it is produced and, in particular, as Article 12 of the directive provides, the monitoring of the conditions in which it is collected and transported. Whilst, in certain circumstances, it is true that the producer of waste may collect or transport it himself and in fact discard that waste only once the collection or transport is completed, that fact has no bearing on the status as waste of the substances or objects collected or transported or, therefore, on that producer's obligation to register in respect of such an operation.

25 Article 12 of the directive does not, however, cover all undertakings which, in the course of their business activity, transport waste which they have produced.

26 First of all, the words 'on a professional basis' used in that article are not synonymous with the expressions 'in the course of their business activity' or 'as part of their business activity' which the Community legislature probably would have employed if it had intended to refer to all undertakings which, in the course of their business activity, transport waste which they have produced.

27 Next, it is clear from the 12th recital in the preamble to Directive 91/156 that the new obligations of authorisation and registration laid down by that directive apply to 'undertakings involved with waste, such as waste collectors, carriers and brokers'. The use of the words 'involved with' and the indicative list of specialised professions in the waste sector indicate that Article 12 of the directive applies to undertakings which habitually collect or transport waste.

28 Lastly, the requirement that the transport be 'on a professional basis' means that, even if Article 12 does not provide that the transport of waste must be the sole or even the principal activity of the undertakings concerned, it must be a normal and regular activity of those undertakings.

29 It follows from the foregoing considerations that Article 12 of the directive imposes an obligation of registration on establishments or undertakings which, in the course of their activities, normally and regularly transport waste, whether that waste is produced by them or by others. Furthermore, there is no provision in the directive for any exceptions to that obligation, based on the type or quantity of waste.

30 However, Article 30(4) of the decree-law imposes obligations to register which depend on whether or not the waste collected or transported is hazardous.

31 In respect of non-hazardous waste, that provision imposes an obligation to be entered in the national register of undertakings carrying out waste-disposal services only on undertakings which collect and transport waste produced by others, thereby excluding undertakings which collect or transport their own waste.

32 It is true that in respect of hazardous waste Article 30(4) of the decree-law provides that all undertakings which collect and transport such waste are subject to an obligation of registration. That provision contains no restriction dependent upon whether or not that collection and transport are carried out professionally and, therefore, in that respect has a wider scope than does Article 12 of the directive.

33 However, that provision relieves from the obligation of registration which it imposes 'hazardous waste transported by its producer in quantitities not exceeding 30 kg or

30 l per day'; the directive makes no provision for such exceptions. Furthermore, the Italian Government has not explained the logic underpinning the setting of those minimum quantities.

34 It follows from the foregoing that Article 30(4) of the decree-law infringes Article 12 of the directive. In those circumstances, the Court finds that the Commission's action is well founded.

35 Accordingly, it must be declared that, by permitting undertakings, in accordance with Article 30(4) of the decree-law:

— to collect and transport their own non-hazardous waste, as a normal and regular activity, without being required to be entered in the national register of undertakings carrying out waste-disposal services, and

— to transport their own hazardous waste in quantities not exceeding 30 kg and 30 l per day, without requiring them to be entered in that register,

the Italian Republic has failed to fulfil its obligations under Article 12 of the directive.

Costs

36 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. As the Commission has asked that costs be awarded against the Italian Republic, and as the latter has been unsuccessful, the Italian Republic must be ordered to pay the costs.

On those grounds, the Court (Third Chamber) hereby:

1. **Declares that, by permitting undertakings, in accordance with Article 30(4) of Decree-Law No 22 of 5 February 1997 implementing Directive 91/156/EEC on waste, Directive 91/689/EEC on hazardous waste and Directive 94/62/EC on packaging and packaging waste, as amended by Article 1(19) of Law No 426 of 9 December 1998:**

   — **to collect and transport their own non-hazardous waste, as a normal and regular activity, without being required to be entered in the Albo nazionale delle imprese esercenti servizi di smaltimento rifiuti (national register of undertakings carrying out waste-disposal services) and**

— **to transport their own hazardous waste in quantities not exceeding 30 kg and 30 l per day, without being required to be entered in that register,**

the Italian Republic has failed to fulfil its obligations under Article 12 of Council Directive 75/442/EEC of 15 July 1975 on waste, as amended by Council Directive 91/156/EEC of 18 March 1991;

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

[Signatures]