JUDGMENT OF THE COURT (Sixth Chamber)
16 September 1997 *

In Case C-279/94,

Commission of the European Communities, initially represented by Antonio Aresu, then by Paolo Stancanelli, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

applicant,

v

Italian Republic, represented by Professor Umberto Leanza, Head of the Department for Contentious Diplomatic Affairs in the Ministry of Foreign Affairs, acting as Agent, assisted by Pier Giorgio 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, in adopting Law No 257 of 27 March 1992 laying down rules concerning the cessation of the use of asbestos, without having notified the draft Law to the Commission, the Italian Republic has failed to fulfil its obligations under the first subparagraph of Article 8(1) — or, in the alternative, Article 9(1) — of Council Directive 83/189/EEC of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations (OJ 1983 L 109, p. 8), as amended by Council Directive 88/182/EEC of 22 March 1988 (OJ 1988 L 81, p. 75),

* Language of the case: Italian.

THE COURT (Sixth Chamber),

composed of: G. F. Mancini, President of the Chamber, J. L. Murray, G. Hirsch, H. Ragnemalm (Rapporteur) and R. Schintgen, Judges,

Advocate General: N. Fennelly,
Registrar: L. Hewlett, Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 20 February 1997 at which the Italian Republic was represented by Pier Giorgio Ferri and the Commission by Paolo Stancanelli,

after hearing the Opinion of the Advocate General at the sitting on 20 March 1997,

gives the following

Judgment

1 By application lodged at the Registry of the Court on 13 October 1994, the Commission of the European Communities brought an action under Article 169 of the EC Treaty for a declaration that, in adopting Law No 257 of 27 March 1992 laying down rules concerning the cessation of the use of asbestos (*Gazzetta Ufficiale della Repubblica Italiana*, Ordinary Supplement No 87 of 13 April 1992, p. 5, hereinafter 'Law No 257/92'), without having notified the draft Law to the Commission, the Italian Republic has failed to fulfil its obligations under the first paragraph of Article 8(1) — or, in the alternative, Article 9(1) — of Council Directive 83/189/EEC of 28 March 1983 laying down a procedure for the provision of

information in the field of technical standards and regulations (OJ 1983 L 109, p. 8), as amended by Council Directive 88/182/EEC of 22 March 1988 (OJ 1988 L 81, p. 75, hereinafter 'the Directive').

2 Law No 257/92 contains, in particular, the following provisions:

'Article 1 — *Purpose*

1. This Law concerns the extraction, importation, processing, use, marketing, treatment and disposal in the national territory, as well as the exportation, of asbestos and products containing asbestos, and lays down rules for the cessation of the production and trade, extraction, importation, exportation and use of asbestos and products containing asbestos, for the carrying out of measures to decontaminate and reclaim areas affected by asbestos pollution, for research aimed at identifying substitute materials and reconverting production, and for the monitoring of pollution caused by asbestos.

2. With effect from the expiry of a period of 365 days from the date of the entry into force of this Law, and subject to the various time-limits laid down for the cessation of the production and marketing of the products referred to in the table annexed hereto, the extraction, importation, exportation, marketing and production of asbestos, asbestos products and products containing asbestos, including those listed under letters (c) and (g) of the said table, shall be prohibited.

(...)

Article 3 — *Limits*

1. The concentration of inhalable asbestos fibres at work places where asbestos is used, processed or disposed of, at sites where reclamation is carried out, at the premises of establishments where asbestos is used and of undertakings or bodies authorized to carry out operations for the processing or disposal of asbestos or for the reclamation of the areas concerned, shall not exceed the limits laid down by Article 31 of Legislative Decree No 277 of 15 August 1991, as amended by this Law.

2. The limits, procedures and analytical methods for the measurement of asbestos pollution, including liquid and gaseous effluent containing asbestos, shall be defined in accordance with Council Directive 87/217/EEC of 19 March 1987. The period for promulgation of the legislative decree implementing that directive, referred to in Articles 1 and 67 of Law No 428 of 29 December 1990, is extended until 30 June 1992.

3. Any updating of or amendments to the limits referred to in paragraphs 1 and 2 of this article shall be enacted, also on a proposal from the Commission referred to in Article 4, by decree of the Minister for Health, acting in consultation with the Minister for the Environment and the Minister for Industry, Trade and Crafts.

4. Article 31(1)(a) of Legislative Decree No 277 of 15 August 1991 shall be replaced by the following:

"(a) 0.6 fibre per cubic centimetre for chrysotile".

5. Article 31(2) of Legislative Decree No 277 of 15 August 1991 is repealed.

(...)

Article 8 — *Classification, packaging and labelling*

1. The classification, packaging and labelling of asbestos and products containing asbestos are governed by Law No 256 of 29 May 1974, as subsequently amended and supplemented, and by Presidential Decree No 215 of 24 May 1988.'

3 'Technical regulation', as referred to in Article 8 of the Directive, is defined in Article 1(5) as follows:

'... technical specifications, including the relevant administrative provisions, the observance of which is compulsory, *de jure* or *de facto*, in the case of marketing or use in a Member State or a major part thereof, except those laid down by local authorities.'

4 The first subparagraph of Article 8(1) of the Directive provides:

'1. Member States shall immediately communicate to the Commission any draft technical regulation, except where such technical regulation merely transposes the

full text of an international or European standard, in which case information regarding the relevant standard shall suffice; they shall also let the Commission have a brief statement of the grounds which make the enactment of such a technical regulation necessary, where these are not already made clear in the draft. Where appropriate, Member States shall simultaneously communicate the text of the basic legislative or regulatory provisions principally and directly concerned, should knowledge of such text be necessary to assess the implications of the draft technical regulation.'

5 Taking the view that Law No 257/92 contained technical regulations which, under the first subparagraph of Article 8(1) of the Directive, ought to have been notified to it at the draft stage, the Commission, by letter of 18 November 1992, called upon the Italian Government to submit its observations.

6 Without formally replying to that letter, the Italian Government, by telex of 23 March 1993, informed the Commission that it was withdrawing notification of Law No 257/92 which it had done in relation to State aid. However, it is not disputed between the parties that Law No 257/92 has never been notified to the Commission for the purposes of application of the Directive.

7 On 3 November 1993 the Commission then addressed a reasoned opinion to the Italian Republic calling upon it to comply with the opinion within a period of two months from its notification.

8 The Italian Republic did not reply to the reasoned opinion and did not act upon it.

9 In those circumstances the Commission has brought this action.

Admissibility

10 By a separate document lodged at the Registry of the Court on 19 January 1995, the Italian Republic, pursuant to Article 91 of the Rules of Procedure, raised an objection seeking to have the application declared inadmissible.

11 On 11 July 1995 the Court decided to consider the objection as to admissibility with the substance of the case.

12 In support of its objection of admissibility the Italian Republic raises three pleas in law.

The first plea in law

13 The Italian Republic contends that the letter calling upon it to submit its observations is invalid on the ground that the Commission did not identify precisely the provisions of Law No 257/92 which constituted technical regulations within the meaning of the Directive. The term 'technical regulation' relates not to the Law but to the provisions which it contains. If the subject-matter of the dispute is not properly defined, the Italian Government claims that it is not able to defend itself properly since it is not able to identify the technical regulations in the Law and therefore the breach of obligations of which it is accused.

14 Under Article 169 of the Treaty the Commission may bring an action for failure to bring obligations before the Court only after having given the Member State

concerned an opportunity to submit its observations. Thus, according to settled case-law, the purpose of the letter of formal notice at the pre-litigation stage of the procedure for establishing a State's failure to fulfil its obligations is to delimit the subject-matter of the dispute and to indicate to the Member State asked to submit its observations the factors enabling it to prepare its defence (see, in particular, the judgment in Case C-289/94 *Commission* v *Italy* [1996] ECR I-4405, paragraph 15).

15 Although the reasoned opinion provided for in Article 169 of the Treaty must contain a coherent and detailed statement of the reasons which led the Commission to conclude that the State in question has failed to fulfil one of its obligations under the Treaty, the letter of formal notice cannot be subject to such strict requirements of precision, since it cannot, of necessity, contain anything more than an initial brief summary of the complaints. There is therefore nothing to prevent the Commission from setting out in detail in the reasoned opinion the complaints which it has already made more generally in the letter of formal notice (see the judgment in Case C-289/94 *Commission* v *Italy*, cited above, paragraph 16).

16 In the present case, the letter putting the Italian Republic on notice to submit its observations identified with sufficient precision the breach of obligations of which the Italian Republic was accused, which consisted in the adoption of Law No 257/92 which, although containing, according to the Commission, technical regulations, was not previously notified in draft form to the Commission as the Directive requires. That letter therefore enabled the Italian Government to acquaint itself with the nature of the complaints raised by giving it the possibility of presenting its defence. Moreover, it was preceded by a telex sent on 26 February 1992 setting out the position of the Commission.

17 It follows that the plea of inadmissibility must be dismissed.

The second plea in law

18 The Italian Republic contends that the reasoned opinion is also invalid. In the reasoned opinion, the Commission identified three technical regulations which ought to have been notified. Such late identification, without giving proper reasons, of those three technical regulations constitutes a breach of the rights of the defence and deprives the addressee Member State of the right to know, with the precision required, the complaints directed against it and how to satisfy them.

19 In regard to that argument, it should be noted that the reasoned opinion must contain a coherent and detailed statement of the reasons which persuaded the Commission that the State concerned had failed to fulfil one of its obligations under the Treaty (see the judgment in Case C-247/89 *Commission* v *Portugal* [1991] ECR I-3659, paragraph 22).

20 It appears from the text of the reasoned opinion that it fulfils that requirement. The Commission set out in its opinion the complaints contained in the formal letter, identifying the provisions of Law No 257/92 which, in its view, were technical regulations. It follows that the reasoned opinion identified sufficiently well the subject-matter of the application.

21 The second plea of inadmissibility must therefore also be dismissed.

The third plea in law

22 The Italian Republic contends that the application is inadmissible in that there is a discrepancy between the application and the reasoned opinion. In its view, the

subject-matter of the proceedings is not identical in the reasoned opinion and in the application. In the reasoned opinion the Commission stated that the Italian Republic had failed to fulfil its obligations under Articles 8 and 9 of the Directive whereas in the application it states that there has been a breach of Article 8 of the Directive in relation to the obligation to notify or, alternatively, of Article 9 in relation to the obligation to maintain the status quo once a draft has been notified. Consequently, in claiming that the Italian Republic had acted in breach of Article 8 only and not Article 9, the Commission has altered the subject-matter of the proceedings.

23 The Commission replies that it properly reframed its application in the light of the case-law of the Court. It considers that the reference to Article 9 is not relevant when it is clear that, in the absence of notification, only Article 8 was infringed. However, the Commission wished to be prepared for any defence argument which the Italian Government might use to the effect that, before the pre-litigation procedure, it had communicated the draft Law pursuant to Article 93 of the EC Treaty on State aid. In order to do this, the Commission did not include the complaint based on Article 9, which was already in the reasoned opinion, but relegated it to a subsidiary role.

24 It is true that, according to the settled case-law of the Court, the subject-matter of proceedings brought under Article 169 of the Treaty is circumscribed by the pre-litigation procedure provided for by that provision and that, consequently, the Commission's reasoned opinion and the application must be based on the same complaints (see the judgment in Case C-11/95 *Commission* v *Belgium* [1996] ECR I-4115, paragraph 73).

25 However, that requirement cannot be stretched so far as to mean that in every case the statement of the subject-matter of the proceedings in the reasoned opinion must be exactly the same as the form of order sought in the application if the subject-matter of the proceedings has not been extended or altered but simply limited.

26 It follows that the third plea of inadmissibility must also be dismissed. The application is therefore admissible.

Substance

27 The Commission considers that Law No 257/92 contains technical regulations covered by the Directive. Thus, the mere act of prohibiting, in Article 1(2) of Law No 257/92, the importation, exportation, marketing and production of asbestos, asbestos products and products containing asbestos, as mentioned in the annex to the Law, constitutes in itself a technical regulation within the meaning of Article 1 of the Directive. Furthermore, Article 3 of that Law contains technical regulations since it defines the toleration limits for concentrations of asbestos and the procedures and methods for measuring those limits. Finally, Article 8 of Law No 257/92 makes provision for application to asbestos and products containing asbestos of Law No 256 of 29 May 1974 (hereinafter 'Law No 256/74') and Presidential Decree No 215 of 24 May 1988 (hereinafter 'Decree No 215/88') for their classification, packaging and labelling. Consequently, that latter provision also constitutes a technical regulation since it introduces rules applicable to the products within the meaning of points 1 and 5 of Article 1 of the Directive. The Commission concludes that, when a general measure such as Law No 257/92 contains technical regulations, the entire text of the Law must be notified. If that is not done, it is difficult, if not impossible, for it to assess the implications of the technical regulations and, in particular, to determine whether they may create obstacles to trade.

28 Without even responding to the Commission's argument that Articles 1, 3 and 8 of Law No 257/92 constitute technical regulations, the Italian Republic maintains in any event that this is not sufficient to make it obligatory for the entire text of Law No 257/92 to be notified as a complete technical regulation. It argues that, even if those provisions constitute technical regulations, this cannot entail an obligation to notify the entire Law. It is clear from Article 9 of the Directive that, once a technical regulation is notified at the draft stage, it is necessary to suspend the internal enactment procedure until the procedure provided for by the Directive is completed. So, if the complete text of Law No 257/92 should have been notified, the Italian Parliament would have had to refrain from approving and enacting provisions not related in any way to technical regulations.

29 The first point to be determined is whether, as the Commission contends, Articles 1, 3 and 8 of Law No 257/92 constitute technical regulations within the meaning of the Directive.

30 As far as Article 1(2) of Law No 257/92 is concerned, that provision prohibits the extraction, importation, exportation, marketing and production of asbestos, asbestos products and products containing asbestos after a period of one year after the date of entry into force of the Law. Such a provision, in prohibiting the marketing and use of asbestos, constitutes a technical regulation which the Italian Government ought to have notified in accordance with the first subparagraph of Article 8(1) of the Directive.

31 As regards Article 3 of Law No 257/92, paragraph (1) lays down in particular limits for concentrations of inhalable asbestos fibres at workplaces where asbestos is used, processed or disposed of. Paragraph (2) lays down limits, procedures and analytical methods for the measurement of pollution of the environment by asbestos. Paragraph (3) empowers the Minister for Health to update or amend paragraphs (1) and (2). Paragraphs (4) and (5) amend or repeal previously existing limits.

32 Article 8 of Law No 257/92 provides that the classification, packaging and labelling of asbestos and products containing asbestos are to be governed by Law No 256/74, as amended and supplemented by Decree No 215/88.

33 It should be recalled that when the Commission applies to the Court for a declaration that a Member State has failed to fulfil its obligations under the Treaty, the Commission itself must adduce evidence of the alleged infringement (judgment in Case C-210/91 *Commission* v *Greece* [1992] ECR I-6735, paragraph 22).

34 According to Article 1, point 5 of the Directive, however, a 'technical regulation' is to be understood as meaning 'technical specifications, including the relevant administrative provisions, the observance of which is compulsory, *de jure* or *de facto*, in the case of marketing or use in a Member State'. According to Article 1, point 1, of the Directive, a 'technical specification' is a specification contained in a document which lays down the characteristics required of a product such as levels of quality, performance and safety. Article 3(1) of Law No 257/92 lays down limits for the concentration of inhalable asbestos fibres at workplaces. Since this provision does not define a characteristic required of a product, it does not in principle fall within the definition of a technical specification and consequently cannot be regarded as a technical regulation which has to be notified to the Commission pursuant to the first subparagraph of Article 8(1) of the Directive. Although observance of the value limits for concentrations of inhalable asbestos fibres provided for by Article 3 of Law No 257/92 may have consequences as regards the characteristics of the product in question, as these are provided for by Article 1, point 1 of the Directive, the Commission has not demonstrated how this could be the case.

35 The Commission contends that Article 8 of Law No 257/92 extends to asbestos the application of provisions which did not previously apply to this product. The Italian Republic, on the other hand, maintains that the provision in question merely refers back to provisions already applicable to asbestos.

36 Although the Commission asserts that Article 8 of Law No 257/92 constitutes a new technical regulation but without even showing how this provision produces distinct legal effects in relation to Law No 256/74 and Decree No 215/88 referred to in that Article 8, it must be concluded that it has not supported this assertion with any evidence. Consequently, the Commission's argument on this point must be dismissed and it must also be concluded that it has not been established that this provision constitutes a technical regulation within the meaning of Article 1, point 5, of the Directive.

37 It follows from the foregoing, that in adopting Article 1 of Law No 257/92 without having notified the draft Law to the Commission, the Italian Republic has failed to fulfil its obligations under the first subparagraph of Article 8(1) of the Directive.

38 As regards the Italian Government's obligation to notify the full text of Law No 257/92, including the provisions which do not constitute technical regulations, it must be observed that, according to the last sentence of the first subparagraph of Article 8(1) of the Directive, the Member States must also communicate to the Commission the text of the basic legislative or regulatory provisions principally and directly concerned, should knowledge of such text be necessary to assess the implications of the draft technical regulation.

39 It is apparent from the foregoing that many provisions of Law No 257/92 do not constitute technical regulations within the meaning of Article 1, point 5 of the Directive or even basic legislative or regulatory provisions which principally and directly concern the technical regulation contained in that Law, within the meaning of the first subparagraph of Article 8(1) of the Directive.

40 However, the aim of the last sentence of the first subparagraph of Article 8(1) of the Directive is to enable the Commission to have as much information as possible on any draft technical regulation with respect to its content, scope and general context in order to enable it to exercise as effectively as possible the powers conferred on it by the Directive.

41 Only full communication of Law No 257/92 could enable the Commission to evaluate the exact scope of any technical regulations contained in that Law which, as its title indicates, concerns the cessation of the use of asbestos.

42 However, the mere fact that all the provisions contained in Law No 257/92 are notified to the Commission does not prevent the Italian Republic from bringing into force immediately, and therefore without waiting for the results of the examination procedure provided for by the Directive, the provisions which do not constitute technical regulations.

43 Consequently, it must be declared that, in adopting Law No 257/92 without having notified the draft Law to the Commission, the Italian Republic has failed to fulfil its obligations under the first subparagraph of Article 8(1) of the Directive.

Costs

44 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 been unsuccessful in the main, it must be ordered to pay the costs.

On those grounds,

THE COURT (Sixth Chamber)

hereby:

1. Declares that, in adopting Law No 257 of 27 March 1992 laying down rules concerning the cessation of the use of asbestos, without having notified the

draft Law to the Commission, the Italian Republic has failed to fulfil its obligations under the first subparagraph of Article 8(1) of Council Directive 83/189/EEC of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations, as amended by Council Directive 88/182/EEC of 22 March 1988;

2. Orders the Italian Republic to pay the costs.

Mancini Murray Hirsch

Ragnemalm Schintgen

Delivered in open court in Luxembourg on 16 September 1997.

R. Grass

Registrar

G. F. Mancini

President of the Sixth Chamber