JUDGMENT OF THE COURT
20 September 1994 *

In Case C-249/92,

Commission of the European Communities, represented by Eugenio de March, Legal Adviser, acting as Agent, with an address for service in Luxembourg at the office of Georgios Kremlis, of the Commission's Legal Service, Wagner Centre, Kirchberg,

applicant,

v

Italian Republic, represented by Professor Luigi Ferrari Bravo, Head of the Department for Legal Affairs of the Italian 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-Adelaïde,

defendant,

APPLICATION for a declaration that, by requiring prior authorization for all imports of plants susceptible to fire blight (*Erwinia amylovora*), the Italian Republic has failed to fulfil its obligations under

* Language of the case: Italian.

— Article 11 of Council Directive 77/93/EEC of 21 December 1976 on protective measures against the introduction into the Member States of harmful organisms of plants or plant products (OJ 1977 L 26, p. 20) ('the directive'), as amended by Council Directive 88/572/EEC of 14 November 1988 (OJ 1988 L 313, p. 39) and Council Directive 89/439/EEC of 26 June 1989 (OJ 1989 L 212, p. 106); and

— Article 30 of the EEC Treaty, in conjunction with Article 10(1) of Regulation (EEC) No 234/68 of the Council of 27 February 1968 on the establishment of a common organization of the market in live trees and other plants, bulbs, roots and the like, cut flowers and ornamental foliage (OJ, English Special Edition 1968 (I), p. 26),

THE COURT,

composed of: G. F. Mancini, President of Chamber, acting as President, M. Diez de Velasco and D. A. O. Edward (Presidents of Chambers), C. N. Kakouris, R. Joliet, F. A. Schockweiler, G. C. Rodríguez Iglesias, P. J. G. Kapteyn and J. L. Murray (Rapporteur), Judges,

Advocate General: C. O. Lenz,
Registrar: L. Hewlett, Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 6 July 1993,

after hearing the Opinion of the Advocate General at the sitting on 28 September 1993,

gives the following

Judgment

1 By application lodged at the Court on 27 May 1992, the Commission of the European Communities brought an action under Article 169 of the EEC Treaty for a declaration that, by requiring prior authorization for all imports of plants susceptible to fire blight (*Erwinia amylovara*), the Italian Republic has failed to fulfil its obligations under

— Article 11 of Council Directive 77/93/EEC of 21 December 1976 on protective measures against the introduction into the Member States of harmful organisms of plants or plant products (OJ 1977 L 26, p. 20), as amended by Council Directive 88/572/EEC of 14 November 1988 (OJ 1988 L 313, p. 39) and Council Directive 89/439/EEC of 26 June 1989 (OJ 1989 L 212, p. 106); and

— Article 30 of the EEC Treaty, in conjunction with Article 10(1) of Regulation (EEC) No 234/68 of the Council of 27 February 1968 on the establishment of a common organization of the market in live trees and other plants, bulbs, roots and the like, cut flowers and ornamental foliage (OJ, English Special Edition 1968 (I), p. 26).

2 The Italian Republic introduced two measures designed to prevent the spread within its territory of *Erwinia amylovora*, a bacterium commonly known as 'fire blight', which destroys certain plant species. The first measure consists in the prohibition, between 16 April and 31 October each year (the period favourable to the spread of the bacterium), of the importation of susceptible species, as permitted under Annex III, Point B(10), to the directive, as amended by Council Directive 84/378/EEC of 28 June 1984 (OJ 1984 L 207, p. 1). The second measure at issue in this case imposes a requirement of prior authorization for imports of those species during the rest of the year.

3 The second measure follows from Article 9 of the Ministerial Decree of 5 February 1991 concerning plant-health rules relating to the import, export and transit of plants and plant products (GURI (*Official Gazette of the Italian Republic*), ordinary supplement to No 43 of 20 February 1991) in conjunction with paragraph 17 of Annex III to that decree.

4 Article 9 of the decree is worded as follows:

'During the period when their importation is authorized, the plants referred to in paragraph 17 of Annex III, originating in Community countries, may be imported on request and after prior authorization from the Ministry of Agriculture and Forestry, which may determine the specific plant-health measures designed to reduce the risk of the introduction and spread of *Erwinia amylovora*.'

5 The request for authorization must therefore be addressed to the Italian Ministry of Agriculture and Forestry before the plants have been imported into Italy.

According to information supplied to the Commission by individuals and not contested by the Italian Republic, the period required for the issue of authorizations may amount to, and even exceed, four and a half months. The products cannot be imported so long as authorization has not been granted.

6 Paragraph 17 of Annex III, referred to in the abovementioned national provision, sets out the species susceptible to fire blight which are subject to protective measures. It is common ground that the measures relating to these plants form the subject-matter of these proceedings.

7 Those plants are as follows:

'Chaenomeles Lindl., Cydonia Mill., Malus Mill., Pyracantha M. J. Roem, Pyrus L., Sorbus L. other than Sorbus Intermedia L. and Stranvaesia Lindl., other than fruit and seeds.'

8 The measures to be adopted by Member States with a view to preventing the introduction or spread of fire blight within the Community were harmonized by the directive, as amended at the date on which the pre-litigation procedure began (dispatch of the letter of formal notice on 20 March 1990), in particular by Directives 88/572 and 89/439, cited above.

9 Under the directive, the Member State of origin must meticulously examine plants grown within its territory in order to detect the presence of any harmful organisms (Article 6). If the plant is healthy, that State must issue to the trader concerned a certificate attesting to the good condition of the product and certifying that the

product comes from an area which is not contaminated (Annex IV, Point A(15), second column). Only plants accompanied by a certificate may be exported to another Member State (Article 7(2)).

10 In addition, the directive authorizes or requires (as the case may be) Member States of destination to take certain measures in order to ensure the protection of plants within their territory. Thus, it provides that these States may introduce inspections designed to determine whether the products have in fact undergone the required examination in the Member State of origin.

11 Those measures are regulated in the following terms by Article 11 of the directive, as amended by Directives 88/572 and 89/439:

'1. Without prejudice to the provisions of paragraph 3, Member States may lay down that plants, plant products and other objects and their packaging and the vehicles transporting them be subject, in the event of their introduction into their territory from another Member State, to an inspection to ascertain compliance with the prohibitions and restrictions laid down in Articles 3, 4 and 5. Member States shall ensure that these plants, plant products and other objects, where their introduction is not prohibited under Article 3, 4 or 5, are not subjected to prohibitions or restrictions relating to plant-health measures except where:

(a) the certificates referred to in Article 4, 5, 7, 8 or 9 are not produced;

(b) [deleted]

(c) the plants, plant products or other objects are not submitted as laid down in the regulations to an official inspection permitted in accordance with paragraph 3;

...

2. They shall not require any additional declaration on the certificates referred to in Article 4, 5, 7, 8 or 9.

...

3. Member States may not supplement the measures permitted under the second sentence of paragraph 1 by systematic official checks on compliance with the provisions adopted pursuant to Articles 3 and 5, except where:

(a) there is serious reason to believe that one of these provisions has not been complied with;

(b) the plants referred to above originate in a non-member country and the examination provided for in Article 12(1)(a) has not already been carried out in another Member State.

In all other cases, only occasional official phytosanitary inspections including identity checks shall be carried out, by sampling. They shall be deemed occasional if they are made on no more than one-third of the consignments introduced from a given Member State and are as evenly spread as possible over time and over all the

products. Member States shall take the appropri-ate steps to ensure that the carrying-out of these inspec-tions at the border is progressively reduced, save in cases specified in accordance with the procedure laid down in Article 16. They shall be carried out either at the place of destination of the plants, plant products or other objects, or at another designated place instead, provided that the routing of the plants, plant products or other objects is interfered with as little as possible.'

The compatibility of the Italian rules with the directive

12 The Commission argues that the Italian rules are contrary to Article 11 of the directive in so far as those rules, in contrast with Article 11, make the importation into Italian territory of plants originating in other Member States subject to prior authorization and that requirement is applied systematically to all the products concerned, whereas the directive limits to certain specified cases the inspections which may be carried out within the Member State of destination. The action challenges the requirement of prior and systematic authorization in itself and not the delay on the part of the competent authorities in dealing with some requests for authorization.

13 The Italian Government contends that the system of prior authorization is lawful on the ground, first, that it makes it possible to monitor compliance by traders with the substantive requirements imposed by the directive and, second, that the option of inspecting plants brought into the national territory is provided for in Article 11 of the directive.

14 It is important to note in that regard that the directive is designed to remove gradually the obstacles to intra-Community trade in plants, while reorganizing the plant-health inspections which may be carried out in the different Member States (eighth recital in the preamble).

15 To that end, the directive provides that the examination of plants must be conducted in the State of origin and specifies the inspections which may be carried out in the State of destination and the circumstances under which such inspections may be conducted (see paragraphs 8 to 11 above).

16 These inspections and circumstances are limited by the combined provisions of Article 11(1) and (3) of the directive. Article 11(1) provides that Member States may lay down that plants are to undergo, if they are introduced into their territory from another Member State, an inspection to ascertain compliance with the requirements laid down by the directive. Article 11(3) provides *inter alia* that Member States must take appropriate steps to ensure that the carrying-out of inspections at the border is progressively reduced, in order that inspections may be carried out only at the place of destination of the plants or at another place resulting in less interference with the routing of the products. It follows from those two paragraphs that the inspections authorized by the directive can take place at the earliest when the plants are imported into the State of destination, that is to say at the border.

17 The requirement of authorization from the Minister of Agriculture and Forestry prior to the introduction into Italian territory of plants from other Member States does not feature among the protective measures which the Member State of destination is authorized to adopt under the directive.

18 The Italian Government raises the objection that the directive sets out substantive requirements for the protection of plants but does not introduce any machinery which would make it possible to monitor compliance with those requirements. In its view, it is a matter for the Member States to introduce the inspection measures which they deem necessary to that end.

19 That objection cannot be accepted.

20 In the first place, the aim of the directive is to remove barriers to trade while reorganizing phytosanitary inspections within the Community. Second, in order to achieve that aim a system has been introduced under which the Member State of origin determines whether the products satisfy the relevant health requirements, the measures permitted in the State of destination being strictly limited. The view must therefore be taken that the directive is designed to harmonize all inspection measures relating to plants and that Member States consequently no longer have the power to lay down such measures unilaterally at national level (see, to the same effect, the judgment in Case 29/87 *Dansk Denkavit* v *Danish Ministry of Agriculture* [1988] ECR 2965, paragraph 16).

1 It should also be noted that Article 11(3) of the directive provides, first, that systematic inspections may be carried out only if there is serious reason to believe that the directive is not being complied with or if the plants originate in a non-member country and, second, that in all other cases only occasional inspections may be carried out by way of sampling. Inspections are deemed to be occasional if they are made on no more than one-third of the consignments introduced from a

given Member State and are as evenly spread as possible over time and over all the products.

22 Apart from the fact that prior authorization goes beyond what is necessary for such inspections, which are to be carried out at the time of importation, such a requirement is also contrary to Article 11(3) since it applies to all imports of plants and is not confined to products originating in non-member countries or to cases where there is serious reason to believe that the directive has not been complied with.

23 It follows that, by requiring prior authorization for all imports of plants susceptible to fire blight (*Erwinia amylovara*), the Italian Republic has failed to fulfil its obligations under Article 11 of the directive, as amended by Directives 88/572 and 89/439.

The compatibility of the Italian rules with the free movement of goods

24 The Commission submits that the requirement of prior authorization constitutes an unjustified barrier to Community trade and that it contravenes Article 30 of the Treaty in conjunction with the second indent of Article 10(1) of Regulation No 234/68, cited above.

25 Article 10 of Regulation No 234/68 is worded as follows:

'The following shall be prohibited in the internal trade of the Community:

— ...

— any quantitative restriction or measure having equivalent effect'.

26 While it acknowledges that the rules at issue do obstruct trade, the Italian Government takes the view that the obstruction is justified by the objective of protecting plants (Article 36 of the Treaty) and that it is proportionate to the objective pursued; the measure in question, it argues, does not impose a new obligation, but is confined to introducing a formal arrangement intended to monitor compliance with the requirements laid down by the directive.

27 In that regard, suffice it to note, with reference to paragraph 20 above, that, in contrast to the contention of the Italian Government, the directive introduced a consistent and exhaustive set of measures capable of being implemented in order to ensure the protection of plants within the Community. Where, in application of Article 100 of the Treaty, Community directives provide for the harmonization of the measures necessary to ensure the protection of animal and human health and establish Community procedures to check that they are observed, recourse to Article 36 is no longer justified and the appropriate checks must be carried out and the protective measures adopted within the framework outlined by the harmonizing directive (see, in particular, the judgment in Case 5/77 *Tedeschi* v *Denkavit* [1977] ECR 1555, at paragraph 35). The same solution applies where a directive harmonizes the measures necessary for the protection of plants.

28 In those circumstances, it must be held that, by requiring prior authorization for all imports of plants susceptible to fire blight (*Erwinia amylovara*), the Italian Republic has also failed to fulfil its obligations under Article 30 of the Treaty in conjunction with Article 10(1) of Regulation No 234/68.

Costs

29 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 Italian Republic has been unsuccessful, it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

1. Declares that, by requiring prior authorization for all imports of plants susceptible to fire blight (*Erwinia amylovora*), the Italian Republic has failed to fulfil its obligations under

— Article 11 of Council Directive 77/93/EEC of 21 December 1976 on protective measures against the introduction into the Member States of

harmful organisms of plants or plant products, as amended by Council Directive 88/572/EEC of 14 November 1988 and Council Directive 89/439/EEC of 26 June 1989; and

— Article 30 of the EEC Treaty, in conjunction with Article 10(1) of Regulation (EEC) No 234/68 of the Council of 27 February 1968 on the establishment of a common organization of the market in live trees and other plants, bulbs, roots and the like, cut flowers and ornamental foliage.

2. Orders the Italian Republic to pay the costs.

Mancini Diez de Velasco Edward

Kakouris Joliet Schockweiler

Rodríguez Iglesias Kapteyn Murray

Delivered in open court in Luxembourg on 20 September 1994.

R. Grass
Registrar

G. F. Mancini,
President of Chamber
acting as President