# JUDGMENT OF THE COURT (Third Chamber)

19 February 2002 *

In Case C-295/00,

**Commission of the European Communities,** represented by E. Traversa and B. Mongin, 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,

APPLICATION for a declaration that, by maintaining in force a tax applicable to passengers embarking and disembarking in the ports of Genoa, Naples and Trieste (Italy) when arriving from or travelling to ports in another Member State

* Language of the case: Italian.

or a third country, but not in the case of carriage between two ports located on Italian territory, the Italian Republic has failed to fulfil its obligations under Article 1 of Council Regulation (EEC) No 4055/86 of 22 December 1986 applying the principle of freedom to provide services to maritime transport between Member States and between Member States and third countries (OJ 1986 L 378, p. 1),

THE COURT (Third Chamber),

composed of: F. Macken, President of the Chamber, C. Gulmann and J.-P. Puissochet (Rapporteur), Judges,

Advocate General: S. Alber,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 25 October 2001,

gives the following

## Judgment

1 By application lodged at the Court Registry on 1 August 2000, the Commission of the European Communities brought an action under Article 226 EC for a declaration that, by maintaining in force a tax applicable to passengers embarking and disembarking in the ports of Genoa, Naples and Trieste (Italy) when arriving from or travelling to ports in another Member State or a third country, but not in the case of carriage between two ports located on Italian territory, the Italian Republic has failed to fulfil its obligations under Article 1 of Council Regulation (EEC) No 4055/86 of 22 December 1986 applying the principle of freedom to provide services to maritime transport between Member States and between Member States and third countries (OJ 1986 L 378, p. 1).

## Legal framework

2 Article 1(1) of Regulation No 4055/86 provides: 'Freedom to provide maritime transport services between Member States and between Member States and third countries shall apply in respect of nationals of Member States who are established in a Member State other than that of the person for whom the services are intended.'

3 Italian Law No 82/1963 of 9 February 1963 revising maritime taxes and duties (GURI No 52 of 23 February 1963, hereinafter 'Law No 82/1963') imposes a special tax on the embarkation or disembarkation of passengers in the ports of Genoa, Naples and Trieste. That tax, which varies in amount depending on the class of travel and destination, is in principle payable by all passengers.

4 However, Article 32(d) of Law No 82/1963 exempts from that tax 'passengers travelling to or arriving from another national port'. Since the amendment of Article 224 of the Italian Navigation Code by Article 7 of Decree-Law No 457 of 30 December 1997, converted into a statute by Law No 30/1998 of 27 February 1998 (GURI No 49 of 28 February 1998), which authorised vessels registered in a Member State other than Italy to operate between Italian ports, that exemption has applied to the latter vessels as well as to Italian vessels.

## Pre-litigation procedure

5 By a letter of formal notice of 20 January 1998, the Commission informed the Italian Republic that the imposition of a tax on passengers embarking and disembarking in the ports of Genoa, Naples and Trieste when arriving from or travelling to ports in another Member State or a third country, but not in the case of carriage between two ports situated on Italian territory, was incompatible with the principle of freedom to provide services enshrined in Article 1 of Regulation No 4055/86.

6 Following an exchange of correspondence between the Italian Republic and the Commission, the latter issued a reasoned opinion on 14 December 1998 calling on that Member State to adopt the measures necessary to comply therewith within two months of notification of that opinion.

7 Since the Commission did not receive the text of any legislative amendment bringing the provisions of Law No 82/1963 into line with Regulation No 4055/86, in accordance with the intention expressed by the Italian authorities, it brought the present action.

## Substance

8 The Italian Government does not dispute the Commission's complaint. It states that the rules necessary to stop the discrimination which is the subject of that complaint were to be laid down in the Finance Law 2001.

9 It should be recalled that Regulation No 4055/86, which was adopted on the basis of Article 84(2) EC Treaty (now, after amendment, Article 80(2) EC), lays down measures for the application in the maritime transport sector of the principle of freedom to provide services laid down in Article 59 of the EC Treaty (now, after amendment, Article 49 EC). Moreover, the Court has decided to that effect by ruling that Article 1(1) of the regulation defines the beneficiaries of the freedom to provide maritime transport services between Member States and between Member States and third countries in terms which are substantially the same as those in Article 59 of the Treaty (Case C-381/93 *Commission* v *France* [1994] ECR I-5145, paragraph 10).

10 The freedom laid down by Article 59 of the Treaty precludes the application of any national legislation which has the effect of making the provision of services between Member States more difficult than the provision of services purely within one Member State (*Commission* v *France*, cited above, paragraph 17).

11 Consequently, the provision of maritime transport services between Member States cannot be subject to stricter conditions than those to which analogous provisions of services at domestic level are subject (*Commission* v *France*, cited above, paragraph 18).

12 Furthermore, it must be recalled that the question whether a Member State has failed to fulfil its obligations must be determined by reference to the situation prevailing in the Member State at the end of the period laid down in the reasoned opinion (see, in particular, Case C-147/00 *Commission* v *France* [2001] ECR I-2387, paragraph 26).

13 In the present case it is not disputed that the Italian Republic did not take the measures necessary to comply with the reasoned opinion within the period prescribed.

14 Accordingly, it must be held that, by maintaining in force a tax applicable to passengers embarking and disembarking in the ports of Genoa, Naples and Trieste when arriving from or travelling to ports in another Member State or a third country, but not in the case of carriage between two ports located on Italian territory, the Italian Republic has failed to fulfil its obligations under Article 1 of Regulation No 4055/86.

## Costs

15 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. Since the Commission has applied for costs and the Italian Republic 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 maintaining in force a tax applicable to passengers embarking and disembarking in the ports of Genoa, Naples and Trieste (Italy) when arriving from or travelling to ports in another Member State or a third country, but not in the case of carriage between two ports located on Italian territory, the Italian Republic has failed to fulfil its obligations under Article 1 of Council Regulation (EEC) No 4055/86 of 22 December 1986 applying the principle of freedom to provide services to maritime transport between Member States and between Member States and third countries;

2. Orders the Italian Republic to pay the costs.

Macken Gulmann Puissochet

Delivered in open court in Luxembourg on 19 February 2002.

R. Grass

Registrar

F. Macken

President of the Third Chamber