JUDGMENT OF THE COURT (First Chamber)

10 May 2001 *

In Case C-444/99,

Commission of the European Communities, represented by M. Wolfcarius and S. Dragone, acting as Agents, with an address for service in Luxembourg,

applicant,

v

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

defendant,

* Language of the case: Italian.

APPLICATION for a declaration that, by keeping in force a system of authorisations and quotas for combined transport operations between Member States, despite having converted all special authorisations into general authorisations, the Italian Republic has failed to fulfil its obligations under Council Directive 92/106/EEC of 7 December 1992 on the establishment of common rules for certain types of combined transport of goods between Member States (OJ 1992 L 368, p. 38), in particular Article 2 thereof,

THE COURT (First Chamber),

composed of: M. Wathelet, President of the Chamber, P. Jann (Rapporteur) and L. Sevón, Judges,

Advocate General: L.A. Geelhoed,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 22 February 2001,

gives the following

Judgment

1 By application lodged at the Court Registry on 22 November 1999, the Commission of the European Communities brought an action under Article 226 EC for a declaration that, by keeping in force a system of authorisations and quotas for combined transport operations between Member States, despite having converted all special authorisations into general authorisations, the Italian Republic has failed to fulfil its obligations under Council Directive 92/106/EEC of 7 December 1992 on the establishment of common rules for certain types of combined transport of goods between Member States (OJ 1992 L 368, p. 38) (hereinafter 'the Directive'), in particular Article 2 thereof.

The Directive

2 The Directive, which applies to certain combined transport operations defined in Article 1, aims, according to its fifth recital, to promote greater recourse to combined transport by eliminating still existing quantitative restrictions and administrative constraints in the field of road transport.

3 Article 2 of the Directive provides:

'[E]ach of the Member States shall, by 1 July 1993, liberalise the combined transport operations referred to in Article 1 from all quota systems and systems of authorisation.'

National legislation

4 The Ministerial Decree of 27 February 1992 (GURI No 50, 29 February 1992, p. 17) abolished the restrictions, which had been in force until then in Italy, on special authorisations for the commercial transport of goods, by converting them into general authorisations without any constraints or limitations.

5 The Ministerial Decree of 27 June 1992 (GURI No 163, 13 July 1992, p. 12) lays down the detailed rules for the issue of such general authorisations. Article 1 provides that the number of authorisations issued for the commercial transport of goods is to be fixed annually at a number which may not exceed three times the number of such authorisations surrendered in the previous year. The second paragraph of Article 4 of the decree provides that, within each category, requests for authorisations are to be classified according to an order of preference determined by the number of authorisations which an undertaking already holds.

6 Legislative Decree No 85 of 14 March 1998 (GURI No 83, 9 April 1998, p. 42), adopted under the powers conferred by Law No 454/97 of 23 December 1997, on the restructuring of road transport and the development of combined transport (GURI No 303, 31 December 1997, p. 4) provides that, from 1 January 2001, all undertakings registered in the register of road hauliers are

to be authorised to carry on the business of road haulage operator. The same decree provides for an increase in transport capacity, during the transitional period, of up to double that previously authorised.

Pre-litigation procedure

7 Taking the view that the Directive had not been completely transposed into Italian law within the prescribed period, the Commission initiated the Treaty-infringement procedure. Having given the Italian Republic formal notice to submit its observations, the Commission, on 24 July 1998, sent it a reasoned opinion requesting it to take, within two months, the measures necessary to comply with the opinion. As the Italian Republic did not reply to the reasoned opinion, the Commission brought the present action.

Substance

8 In its action the Commission submits that the measures taken to transpose the Directive into Italian law do not attain the objective sought by the Directive. The Directive aims to bring about, in the field of combined transport operations, a system without authorisations or quotas, yet the Italian authorities have maintained, in this field, a system of authorisations and quotas which continued to apply after 1 July 1993, the date of expiry of the period allowed for the transposition of the Directive.

9 The Italian Government admits that the system of general authorisations established by the Ministerial Decrees of 27 February and 27 June 1992 is contrary to the Directive. However, it submits that Legislative Decree No 85 has

brought into effect, from 1 January 2001, a system which complies with the Directive. The brief transitional period for the gradual implementation of the liberalisation process, for which it was necessary to provide, has not entailed any difficulties for operators.

10 In this respect, it is sufficient to point out that there is no possibility under the Directive for the Member States to introduce a transitional period for the gradual implementation of the liberalisation process in the field of road transport.

11 It follows that, for the reasons given by the Advocate General at paragraph 5 of his Opinion as to the relevant date for the purpose of determining whether there has been a failure to fulfil obligations, the action must be considered well founded.

12 It must therefore be held that, by keeping in force a system of authorisations and quotas for combined transport operations between Member States, despite having converted all special authorisations into general authorisations, the Italian Republic failed to fulfil its obligations under Article 2 of the Directive.

Costs

13 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 latter must be ordered to pay the costs.

On those grounds,

THE COURT (First Chamber),

hereby:

1. Declares that, by keeping in force a system of authorisations and quotas for combined transport operations between Member States and despite having converted all special authorisations into general authorisations, the Italian Republic failed in its obligations under Article 2 of Council Directive 92/106/EEC of 7 December 1992 on the establishment of common rules for certain types of combined transport of goods between Member States;

2. Orders the Italian Republic to pay the costs.

Wathelet Jann Sevón

Delivered in open court in Luxembourg on 10 May 2001.

R. Grass

Registrar

M. Wathelet

President of the First Chamber