JUDGMENT OF THE COURT (Sixth Chamber)

17 June 1999 *

In Case C-336/97,

Commission of the European Communities, represented by Paolo Stancanelli, of its Legal Service, acting as Agent, assisted by Claudio Tesauro, of the Naples Bar, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of the same service, Wagner Centre, Kirchberg,

applicant,

v

Italian Republic, represented by Umberto Leanza, Head of the Legal Department in the Ministry of Foreign Affairs, acting as Agent, assisted by Danilo Del Gaizo, Avvocato dello Stato, with an address for service in Luxembourg at the Italian Embassy, 5 Rue Marie-Adélaïde,

defendant,

APPLICATION for a declaration that, by failing to ensure that emergency plans are drawn up for action outside the establishments in respect of whose industrial activity notification has been given pursuant to Article 5 of Council Directive

* Language of the case: Italian.

82/501/EEC of 24 June 1982 on the major-accident hazards of certain industrial activities (OJ 1982 L 230, p. 1), and by failing to organise inspections or other measures of control proper to the type of industrial activity concerned, in breach of the third indent of Article 7(1) and Article 7(2) of that directive, the Italian Republic has failed to fulfil its obligations under the EC Treaty,

THE COURT (Sixth Chamber),

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

Advocate General: F.G. Jacobs,

Registrar: L. Hewlett, Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 4 February 1999,

after hearing the Opinion of the Advocate General at the sitting on 25 March 1999,

gives the following

Judgment

1 By application lodged at the Registry of the Court on 26 September 1997, the Commission of the European Communities brought an action under Article 169 of the EC Treaty (now Article 226 EC) for a declaration that, by failing to ensure that emergency plans are drawn up for action outside the establishments in respect of whose industrial activity notification has been given pursuant to Article 5 of Council Directive 82/501/EEC of 24 June 1982 on the major-accident hazards of certain industrial activities (OJ 1982 L 230, p. 1), and by failing to organise inspections or other measures of control proper to the type of industrial activity concerned, in breach of the third indent of Article 7(1) and Article 7(2) of that directive, the Italian Republic has failed to fulfil its obligations under the EC Treaty.

2 Article 1(1) of Directive 82/501 provides that the directive is 'concerned with the prevention of major accidents which might result from certain industrial activities and with the limitation of their consequences for man and the environment. It is directed in particular towards the approximation of the measures taken by Member States in this field.'

3 Article 1(2) of the directive defines the terms 'industrial activity', 'manufacturer', 'major accident', and 'dangerous substances'. Under Article 1(2)(b), manufacturer means 'any person in charge of an industrial activity'.

4 Article 3 of the directive provides: 'Member States shall adopt the provisions necessary to ensure that, in the case of any of the industrial activities specified in Article 1, the manufacturer is obliged to take all the measures necessary to prevent major accidents and to limit their consequences for man and the environment.'

5 Article 4 of the directive provides: 'Member States shall take the measures necessary to ensure that all manufacturers are required to prove to the competent authority at any time, for the purposes of the controls referred to in Article 7(2), that they have identified existing major-accident hazards, adopted the appropriate safety measures, and provided the persons working on the site with information, training and equipment in order to ensure their safety.'

6 Article 5(1) provides that, without prejudice to Article 4, Member States are to introduce the necessary measures to require the manufacturer to notify the competent authorities specified in Article 7 if one or more of the dangerous substances listed in Annex III to the directive are involved in an industrial activity, or it is recognised that they may be involved, in the quantities laid down in that annex or if, in an industrial activity, one or more of the dangerous substances listed in Annex II to the directive are stored in the quantities laid down in that annex. The notification must contain information relating to:

(a) the substances listed, respectively, in Annex II and Annex III,

(b) the installations,

(c) possible major-accident situations, including 'any information necessary to the competent authorities to enable them to prepare emergency plans for use outside the establishment in accordance with Article 7(1)' (second indent of Article 5(1)(c)).

7 Article 7 of the directive provides as follows:

'1. The Member States shall set up or appoint the competent authority or authorities who, account being taken of the responsibility of the manufacturer, are responsible for:

— ...

— ...

— ensuring that an emergency plan is drawn up for action outside the establishment in respect of whose industrial activity notification has been given

...

2. The competent authorities shall organise inspections or other measures of control proper to the type of activity concerned, in accordance with national regulations.'

8 Under Article 20(1) of Directive 82/501, Member States are to take the measures necessary to comply with the directive at the latest on 8 January 1984 and to inform the Commission thereof forthwith. Under Article 20(2), Member States are also to communicate to the Commission the provisions of national law which they adopt in the field covered by the directive.

9 Directive 82/501 was transposed into the Italian legal system by Presidential Decree No 175 of 17 May 1988 (*Gazzetta Ufficiale della Repubblica Italiana* No 127 of 1 June 1988, p. 3, hereinafter 'Presidential Decree No 175/88').

10 The Commission, which was notified of Presidential Decree No 175/88, took the view that Directive 82/501 had not been fully implemented in Italy. That being so, by letter of 27 September 1991, it requested the Italian authorities to provide it with further information on the application of the directive, and in particular of the third indent of Article 7(1) and Article 7(2).

11 In a letter of 14 January 1992 the Italian Minister for the Environment stated that he had received the requisite notifications from manufacturers in respect of approximately 210 industrial sites, corresponding to approximately 710 establishments or depots, but that, because of the delay in transposing the directive into Italian law and the large number of industrial activities notified, the emergency plans and inspections and other measures of control referred to in Article 7, though in hand, had not yet been completed.

12 Finding that reply to be unsatisfactory, and taking the view that Directive 82/501 was still not being properly applied, in particular as regards Article 7, the Commission, by letter of 27 November 1992, placed the Italian Government on formal notice to submit its observations on the matter within two months.

13 The Italian Government did not immediately respond to that letter of formal notice but informed the Commission by letter of 3 March 1994 that the National Agency for the Protection of the Environment, established by the law converting Decree-Law No 496 of 4 December 1993 (*Gazzetta Ufficiale della Repubblica Italiana* No 285 of 4 December 1993, p. 40) into law, would be responsible for carrying out the investigations provided for by Presidential Decree No 175/88, as amended by Decree-Law No 13 of 10 January 1994 (*Gazzetta Ufficiale della Repubblica Italiana* No 6 of 10 January 1994, p. 14).

14 Having received no further information as to the implementation of the obligations provided for, in particular, in Article 7 of Directive 82/501, the Commission sent a reasoned opinion to the Italian Government on 21 November 1995 requesting it to adopt the measures necessary to comply with the terms of the opinion within two months of receipt thereof.

15 The Italian Government replied to the Commission's reasoned opinion by letter of 21 May 1997 in which it informed the Commission that, as at that date, 110 emergency plans for action outside the establishments had been drawn up pursuant to the provisions of Presidential Decree No 175/88, compared to the 443 plans which should have been adopted, and 179 establishments had been inspected. Subsequently, under cover of a note of 8 July 1997, the Italian authorities sent to the Commission the text of Law No 137 of 19 May 1997 (*Gazzetta Ufficiale della Repubblica Italiana* No 120 of 26 May 1997, p. 4), which regularised the effects of the decree-laws amending Presidential Decree No 175/88.

16 Notwithstanding all of the foregoing, the Commission remained of the opinion that Directive 82/501 was still not being properly applied in Italy, at least as regards Article 7, and brought this action.

17 The Commission argues in support of its action that, despite the adoption of Presidential Decree No 175/88 and subsequent amendments thereto, the emergency plans for action outside the establishments which have to be drawn up under the third indent of Article 7(1) of Directive 82/501 have not all been

completed, nor have all the inspections and other measures of control provided for by Article 7(2) been carried out. It emphasises that the Italian Government itself recognised in its letter of 14 January 1992 the delay in completing those emergency plans, inspections and measures of control.

18 The Italian Republic contends that, in order to transpose those provisions of Directive 82/501 properly, the Member States merely have to appoint the competent authorities responsible for ensuring that the emergency plans for action are drawn up and organising the relevant inspections and measures of control. It argues that, although it is an objective of Directive 82/501 to ensure that emergency plans are actually drawn up and that inspections and controls are in fact carried out, those tasks cannot in themselves constitute specific obligations imposed on the Member States by the directive; rather, they are merely a logical consequence of its application in practice.

19 In that connection, it should be borne in mind that, under the first paragraph of Article 5 of the EC Treaty (now the first paragraph of Article 10 EC), the Member States are to take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of the Treaty or resulting from action taken by the institutions of the Community. Such action includes directives which, pursuant to the third paragraph of Article 189 of the EC Treaty (now Article 249 EC), are binding as to the result to be achieved upon each Member State to which they are addressed. Under the Court's case-law, that obligation implies, for each Member State to which a directive is addressed, adopting, within the framework of its national legal system, all the measures necessary to ensure that the directive is fully effective, in accordance with the objective which it pursues (see Case C-208/90 *Emmott* [1991] ECR I-4269, paragraph 18).

20 According to Article 1 of the directive, and as the Court confirmed in its judgment in Case C-190/90 *Commission* v *Netherlands* [1992] ECR I-3265, paragraph 18, the purpose of the directive is, *inter alia*, to ensure that the necessary measures are adopted to prevent major accidents caused by certain industrial activities, and to limit the consequences of any such accidents.

21 To that end, Directive 82/501 not only provides for obligations which the Member States are under a duty to impose on manufacturers, such as those arising under Articles 3, 4 and 5, but also imposes certain obligations on the Member States directly, such as those in Article 7(1) and Article 7(2), which are at issue here.

22 In addition, under Articles 4 and 5 of Directive 82/501 the obligations imposed by the directive on manufacturers are expressly intended to contribute to the fulfilment of the Member States' obligations under Article 7.

23 First, it is in order to enable the competent authorities appointed by the Member States pursuant to Article 7 of Directive 82/501 to draw up emergency plans for action outside the establishment referred to in the third indent of Article 7(1), that the second indent of Article 5(1)(c) requires the information relating to possible major-accident situations which manufacturers are to notify to those authorities to include any details necessary to enable such plans to be prepared.

24 Secondly, it is for the purposes of the inspections and controls referred to in Article 7(2) of Directive 82/501 that Article 4 imposes an obligation on manufacturers to prove to the competent authorities of the Member States at any time that they have identified existing major-accident hazards and adopted the measures referred to in that provision.

25 Accordingly, the objective pursued by Directive 82/501, namely to prevent major accidents and limit their consequences by means of the measures favoured by the directive, would be in danger of being seriously compromised if it were open to the Member States merely to set up or appoint the competent authorities for drawing up emergency plans for action outside the establishments and organising inspections and measures of control, without ensuring that those plans and inspections were actually completed.

26 According to the Italian Republic's reply to the reasoned opinion, which post-dates the time-limit within which it was to comply with its obligations under Directive 82/501, only 110 out of a total of 443 emergency plans for action outside the establishments had been drawn up as at that date.

27 Furthermore, whilst the Italian Republic stated in its defence that the number of industrial establishments which were notified to the competent authorities under Directive 82/501 and should accordingly have been inspected or subject to other measures of control only amounted to 391 instead of 710, the figure which it gave in its letter of 14 January 1992, it acknowledged at the same time that only 220 establishments had in fact been inspected.

28 In those circumstances, it is appropriate to allow the Commission's action and declare that, by failing to ensure that emergency plans are drawn up for action outside the establishments in respect of whose industrial activity notification has been given pursuant to Article 5 of Directive 82/501, and by failing to organise inspections or other measures of control proper to the type of industrial activity concerned, in breach of the third indent of Article 7(1) and Article 7(2) of the directive, the Italian Republic has failed to fulfil its obligations thereunder.

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. Since the Commission has applied for costs against the Italian Republic and the latter has been unsuccessful, it must be ordered to pay the costs.

On those grounds,

THE COURT (Sixth Chamber)

hereby:

1. **Declares that, by failing to ensure that emergency plans are drawn up for action outside the establishments in respect of whose industrial activity notification has been given pursuant to Article 5 of Council Directive 82/501/EEC of 24 June 1982 on the major-accident hazards of certain industrial activities, and by failing to organise inspections or other measures of control proper to the type of industrial activity concerned, in breach of the third indent of Article 7(1) and Article 7(2) of the directive, the Italian Republic has failed to fulfil its obligations thereunder;**

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

Kapteyn Mancini Murray

Ragnemalm Schintgen

Delivered in open court in Luxembourg on 17 June 1999.

R. Grass — Registrar

P.J.G. Kapteyn — President of the Sixth Chamber