JUDGMENT OF THE COURT (Fifth Chamber)
4 December 1997 *

In Case C-225/96,

Commission of the European Communities, represented initially by Antonio Aresu, and subsequently 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, also of its Legal Service, Wagner Centre, Kirchberg,

applicant,

v

Italian Republic, represented by Professor Umberto Leanza, Head of the Legal Department 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,

— by failing to designate waters needing protection or improvement in order to support shellfish life and growth in accordance with Article 4 of Council Directive 79/923/EEC of 30 October 1979 on the quality required of shellfish waters (OJ 1979 L 281, p. 47) and/or to notify such designation to the Commission in accordance with Article 13 of Directive 79/923;

* Language of the case: Italian.

— by failing to establish programmes in order to reduce pollution in accordance with Article 5 of Directive 79/923, and

— by failing to set values for the parameters listed at points 8 and 9 of the Annex to Directive 79/923, other than for mercury and lead, in accordance with Article 3 of Directive 79/923,

the Italian Republic has failed to fulfil its obligations under the EC Treaty.

THE COURT (Fifth Chamber),

composed of: C. Gulmann, President of the Chamber, J. C. Moitinho de Almeida (Rapporteur), D. A. O. Edward, J.-P. Puissochet and P. Jann, Judges,

Advocate General: F. G. Jacobs,
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 September 1997,

gives the following

Judgment

1 By application lodged at the Court Registry on 28 June 1996, the Commission of the European Communities brought an action under Article 169 of the EC Treaty for a declaration that,

— by failing to designate waters needing protection or improvement in order to support shellfish life and growth in accordance with Article 4 of Council Directive 79/923/EEC of 30 October 1979 on the quality required of shellfish waters (OJ 1979 L 281, p. 47, hereafter 'the directive') and/or to notify such designation to the Commission in accordance with Article 13 of the directive;

— by failing to establish programmes in order to reduce pollution in accordance with Article 5 of the directive, and

— by failing to set values for the parameters listed at points 8 and 9 of the Annex to the directive other than for mercury and lead, in accordance with Article 3 of the directive,

the Italian Republic has failed to fulfil its obligations under the EC Treaty.

2 According to the first and second recitals of the directive its aim is to protect waters, including shellfish waters, against pollution and to safeguard certain shellfish populations from various harmful consequences resulting from the discharge of pollutant substances into the sea.

3 Article 1 of the directive states that it 'concerns the quality of shellfish waters and applies to those coastal and brackish waters designated by the Member States as needing protection or improvement in order to support shellfish (bivalve and gasteropod molluscs) life and growth ...'.

4 Article 4(1) and (2) provides that initially within a two-year period following the notification of the directive Member States are to designate shellfish waters and may subsequently make additional designations.

5 Article 3 provides that for the designated waters Member States are to set values for the parameters listed in the Annex, and comply with the comments contained therein.

6 Article 5 provides that Member States are to establish programmes in order to reduce pollution and to ensure that designated waters conform, within six years, to both the values set in accordance with Article 3 and the comments contained in the Annex.

7 Under Article 13 of the directive Member States are to provide the Commission with information concerning the waters designated in accordance with Article 4(1) and (2).

8 Article 15(1) provides that Member States are to bring into force the laws, regulations and administrative provisions necessary to comply with the directive within two years of its notification and forthwith inform the Commission thereof. As the directive was notified on 5 November 1979, the period expired on 5 November 1981.

9 As the Commission considered that the Ministerial Decree of 27 April 1978 (GURI Ordinary Supplement No 125 of 8 May 1978) which the Italian authorities sent to it on 15 December 1981 did not meet the conditions laid down by the directive, particularly as regards the parameters to be monitored and the frequency of such monitoring, by letter of 9 September 1985 it asked those authorities to provide it with detailed information concerning the designation of shellfish waters.

10 By letter of 24 April 1989, the Commission asked the Italian authorities to designate shellfish waters throughout the Italian territory, in accordance with Article 4 of the directive, to inform it of the procedure and the objective criteria used in the selection of waters to be designated, to forward to it the list of waters selected for designation and a topographical map indicating the position of those waters, to set the values for the parameters applicable to the designated waters in accordance with Articles 3 and 4 of the directive and to inform it of them, to establish programmes in accordance with Article 5 of the directive and inform it of them, to monitor the waters in accordance with the provisions of Article 7 and state, by reference to a topographical map, the position of sampling points set up in accordance with Article 7(4) of the directive, to inform it of provisions relating to new parameters pursuant to Article 9 of the directive and, finally, to inform it of derogations pursuant to Article 11 of the directive.

11 As it was not notified of any designation and none of the information requested was sent to it, the Commission gave the Italian Republic formal notice on 5 August 1991 to submit its observations within two months.

12 On 27 January 1992 the Italian Republic adopted Legislative Decree No 131, implementing the directive (GURI Ordinary Supplement No 41, of 19 February 1992).

13 However, the Commission takes the view that, although that Legislative Decree largely transposes the directive into national law, the transposition is not complete because Article 4 refers to measures to be taken by the regions where designation is concerned.

14 Noting that it had been informed of no regional designation measures in accordance with Article 13 of the directive, which meant that the competent authorities had not designated shellfish waters and had not drawn up programmes to reduce pollution pursuant to Article 5 of the directive, and believing that the authorities had not set values for the parameters given in points 8 and 9 of the Annex to the directive, apart from those concerning mercury and lead, in accordance with Article 3 of the directive, the Commission sent the Italian Republic a reasoned opinion on 7 July 1993 calling on it to take the measures necessary to transpose the directive within two months.

15 By note No 488 of 14 March 1994, the Italian authorities informed the Commission of the commitment of the State and regions conference to comply with the Community legislation.

16 The Commission accordingly lodged this application.

17 By order of the President of the Court of 22 November 1996 the United Kingdom was given leave to intervene in support of the forms of order sought by the Italian Republic.

18 By letter lodged at the Court Registry on 21 January 1997, the United Kingdom withdrew its intervention in this case.

19 By order of the President of the Court of 10 March 1997, the United Kingdom was removed from the record as an intervener in the case.

20 In this application, the Commission first observes that the Italian Republic has not yet designated shellfish waters, at least not for the whole of Italy, or the designated waters have not yet been notified to it. It goes on to note that, with few exceptions, the Italian authorities have not established programmes to reduce water pollution. Finally, it is clear from Article 4(4)(c) read in conjunction with points 8 and 9 of Annex I to Legislative Decree No 131 that the setting of limit values for the parameters referred to in points 8 and 9 of the Annex to the directive, except for mercury and lead, has been deferred to a later ministerial decree. The Commission has been notified of no such decree or other implementing measure.

21 The Italian Government contends that regional measures implementing the directive relating to the designation of waters and the establishment of programmes to reduce pollution of designated waters were adopted by 12 of the 15 coastal regions and notified to the Commission, and that those measures constituted sufficient implementation of the directive. As for the setting of the parameters given in points 8 and 9 of the Annex to the directive, the Italian Government states that the procedure for approving the decree relating to this should shortly be completed.

22 In its rejoinder the Commission notes that, rather than the 12 regions mentioned by the Italian Republic, only 11 of Italy's 20 regions have made an initial designation of shellfish waters. As all the shellfish waters designated and notified represent little more than 50% of the national territory this cannot be considered proper implementation of the directive.

23 In that connection, the Italian Republic points out that only regions with access to the sea can designate shellfish waters and that there are 15 such regions. Furthermore, in the absence of specific criteria for the adoption of designation measures,

the Italian Republic takes the view that the designation of waters in number and surface area reasonably proportionate to the total coastal and brackish waters and the value of shellfish farming therein constitutes proper implementation of the directive. The fact that designations for which three regions are responsible have not yet been made is not sufficient to constitute failure to fulfil the obligation imposed by Article 4 of the directive. Article 4(2) permits designation to be gradual, since it envisages the possibility of subsequent designations in addition to those necessary to meet the requirement of transposition within the time set in paragraph 1 of the article. The Italian Republic therefore claims that the first ground of the application should be rejected.

24 Article 4 of the directive provides that Member States are to designate shellfish waters, that is to say, the coastal and brackish waters they consider to need protection or improvement in order to support shellfish (bivalve and gasteropod molluscs) life and growth and thus to contribute to the high quality of shellfish products directly edible by man (Article 1).

25 Member States do have a certain discretion in ascertaining that those conditions (the need for protection or improvement) obtain, within the parameters set in the Annex to the directive.

26 However, contrary to the claims made by the Italian Government, waters must be designated if those conditions obtain. There is nothing in the wording of the directive to support an interpretation which would allow Member States not to designate all shellfish waters; that would, moreover, be contrary to its purpose, which is the protection of the environment and the abolition of unequal conditions of competition (see the first and fourth recitals of the directive).

27 Nor is there any support in the wording of Article 4 for the argument of the Italian Government that that article permits the designation of shellfish waters provided for therein to be gradual. Member States may, of course, make additional designations (paragraph 2), but that option does not imply that they are not obliged to do so where the conditions laid down by the directive are met.

28 Accordingly, it must be held that the Italian Republic has not designated shellfish waters. It follows that the form of order sought by the Commission must be granted.

29 As for the other heads of the Commission's action, the Italian Republic does not deny that it has failed to fulfil its obligations and states that implementing measures will be notified shortly. The Commission's action is thus well founded in that respect.

30 Consequently:

— by failing to designate waters needing protection or improvement in order to support shellfish life and growth in accordance with Article 4 of the directive;

— by failing to establish programmes in order to reduce pollution in accordance with Article 5 of the directive, and

— by failing to set values for the parameters listed at points 8 and 9 of the Annex to the directive other than for mercury and lead, in accordance with Article 3 of the directive,

the Italian Republic has failed to fulfil its obligations under the directive.

Costs

31 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, it must be ordered to pay the costs.

On those grounds,

THE COURT (Fifth Chamber)

hereby declares:

1. — By failing to designate waters needing protection or improvement in order to support shellfish life and growth in accordance with Article 4 of Council Directive 79/923/EEC of 30 October 1979 on the quality required of shellfish waters;

— by failing to establish programmes in order to reduce pollution in accordance with Article 5 of Directive 79/923, and

— by failing to set values for the parameters listed at points 8 and 9 of the Annex to Directive 79/923 other than for mercury and lead, in accordance with Article 3 of Directive 79/923,

the Italian Republic has failed to fulfil its obligations under Directive 79/923.

2. The Italian Republic is ordered to pay the costs.

Gulmann Moitinho de Almeida Edward

Puissochet Jann

Delivered in open court in Luxembourg on 4 December 1997.

R. Grass C. Gulmann

Registrar President of the Fifth Chamber