JUDGMENT OF THE COURT (Sixth Chamber)
1 October 1998 *

In Case C-285/96,

Commission of the European Communities, represented by Götz zur Hausen, Legal Adviser, and 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, of the same service, Wagner Centre, Kirchberg,

applicant,

v

Italian Republic,

defendant,

APPLICATION for a declaration that, by failing to adopt pollution reduction programmes with quality objectives for 99 dangerous substances set out in List I of the Annex, alternatively by failing to communicate to the Commission summaries of those programmes and the results of their implementation, contrary to Article 7 of Council Directive 76/464/EEC of 4 May 1976 on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community (OJ 1976 L 129, p. 23), and by failing to provide the relevant information requested in breach of Article 5 of the EC Treaty, the Italian Republic has failed to fulfil its obligations under the EC Treaty,

* Language of the case: Italian.

THE COURT (Sixth Chamber),

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

Advocate General: J. Mischo,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 18 June 1998,

gives the following

Judgment

1 By application lodged at the Court Registry on 22 August 1996, the Commission of the European Communities brought an action under Article 169 of the EC Treaty for a declaration that, by failing to adopt pollution reduction programmes with quality objectives for the 99 dangerous substances listed in the Annex, alternatively by failing to communicate to the Commission summaries of those programmes and the results of their implementation, in breach of Article 7 of Council Directive 76/464/EEC of 4 May 1976 on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community (OJ 1976 L 129, p. 23, hereinafter 'the Directive'), and by failing to provide the relevant information requested to the Commission in breach of Article 5 of the EC Treaty, the Italian Republic has failed to fulfil its obligations under the EC Treaty.

2 The Directive is intended to secure the elimination of pollution of the aquatic environment by certain particularly dangerous substances, which are set out in List I of the Annex to the Directive, and the reduction of pollution of the aquatic environment by certain other dangerous substances, which are set out in List II of the Annex. In order to attain that objective, Member States are required by Article 2 of the Directive to take the appropriate measures.

3 List I contains substances selected mainly on the basis of their toxicity, persistence and bioaccumulation. Under Articles 3 and 6 of the Directive, Member States are required to make all discharges of those substances into the aquatic environment conditional on the grant of prior authorisation by the competent authorities and to lay down emission standards which must not exceed limit values laid down by the Council on the basis of the effects of those substances on the aquatic environment.

4 According to the first indent in List II, List II contains substances within List I for which the Council has not yet determined limit values. Accordingly, List II currently includes 99 substances which are contained in List I.

5 Next, according to the second indent in List II, List II contains substances the deleterious effect of which on the aquatic environment can be confined to a given area and depends on the characteristics and location of the water into which the substances are discharged. At a meeting of national experts held on 31 January and 1 February 1989, a list of such substances, regarded as priority substances, was finalised.

6 In order to reduce pollution of the waters by the substances in List II, Article 7 of the Directive requires Member States to establish programmes in the implementation of which they are, *inter alia*, to make any discharge liable to contain one of the substances referred to in List II conditional on prior authorisation and to lay down quality objectives for water. Under Article 7(6) of the Directive, summaries of the programmes and the results of their implementation are to be communicated to the Commission.

7 The Directive does not lay down any time-limit for its transposition. None the less, Article 12(2) requires the Commission to forward to the Council, where possible within 27 months following notification of the Directive, the first proposals made on the basis of the comparative analysis of the programmes established by Member States. The Commission considered that the Member States would not be in a position to provide the relevant details to it within that time-limit and therefore proposed to them, by letter dated 3 November 1976, that the programmes be established by 15 September 1981 and implemented by 15 September 1986.

8 Following the meeting of experts on 31 January and 1 February 1989, the Commission requested the Italian Government, by letter of 26 September 1989, to provide it with information on the adoption of programmes in respect of the substances referred to in the second indent in List II which were regarded as priority substances. The Italian Government did not reply to that request.

9 By letter dated 4 April 1990, the Commission requested the Italian Government to send to it, firstly, an up-to-date list stating which of the 99 substances in List I requiring, according to the first indent in List II, to be treated as substances within List II were being discharged into the aquatic environment in Italy; secondly, the applicable quality objectives at the time when authorisation for discharging waste liable to contain one of those substances was granted; and, finally, the reasons for which those objectives had not been laid down, together with a timetable stating when they would be laid down. No reply was received to that letter.

10 By letter dated 10 July 1991, the Commission gave formal notice to the Italian Government requiring it to submit its observations within two months. The Italian Government did not reply to that letter.

11 On 25 May 1993, the Commission sent to the Italian Government a reasoned opinion stating its view that, by failing to adopt pollution reduction programmes with quality objectives for the 99 dangerous substances listed in the Annex, alternatively by failing to communicate to the Commission summaries of those programmes and the results of their implementation in breach of Article 7 of the Directive, and by failing to provide the Commission with the information requested by it in that regard in breach of Article 5 of the EC Treaty, the Italian Republic had failed to fulfil its obligations under the EC Treaty. The applicant requested the defendant State to take the necessary steps to comply with the reasoned opinion within two months. The reasoned opinion also elicited no response.

12 The Commission then brought these proceedings. The Italian Government, which was duly served with the application initiating proceedings, failed to make any submissions within the time prescribed. The Commission applied for judgment by default in accordance with Article 94(1) of the Rules of Procedure

13 Before considering the heads of complaint relied on by the Commission, it should be noted that where, as in this case, the Court gives judgment by default, under Article 94(2) of the Rules of Procedure, when assessing the merits of the case, it only has to consider 'whether the application appears well founded'.

First head of complaint

14 The Commission's first head of complaint is that the Italian Republic failed to fulfil its obligations under the EC Treaty by failing to establish pollution reduction programmes with quality objectives for the 99 dangerous substances listed in the

Annex to the Directive, or by failing to communicate to the Commission summaries of the programmes and the results of their implementation in breach of Article 7 of the Directive.

15 It must be observed that the objective of the programmes referred to in Article 7(1) of the Directive is to reduce water pollution. The term 'pollution' is defined in Article 1(2)(e) of the Directive as 'the discharge by man, directly or indirectly, of substances or energy into the aquatic environment, the results of which are such as to cause hazards to human health, harm to living resources and to aquatic ecosystems, damage to amenities or interference with other legitimate uses of water'. The obligation to establish programmes under Article 7(1) therefore extends to cover water affected by such waste (Case C-206/96 *Commission* v *Luxembourg* [1998] ECR I-3401, paragraph 20).

16 Since the Italian Government has not contested that obligation, it must be held that, by failing to adopt pollution reduction programmes with quality objectives for 99 substances set out in List I of the Annex, the Italian Republic has failed to fulfil its obligations under the Directive.

Second head of complaint

17 The Commission's second head of complaint is that by failing to provide it with the information requested on the level of water pollution in Italy in order to enable it to establish the extent of the obligations flowing from Article 7 of the Directive,

the Italian Republic failed to fulfil its obligations under Article 5 of the Treaty, which requires Member States to collaborate with the institutions of the Community to facilitate the achievement of their tasks.

18 In that respect, it should be noted that in order to establish the level of water pollution in Italy and thus the extent of the obligations flowing from Article 7 of the Directive, the Commission requested the Italian Government several times to communicate to it, first, an up-to-date list stating which of the 99 substances within List I requiring, according to the first indent in List II, to be treated as substances in List II were being discharged into the aquatic environment in Italy; secondly, the quality objectives applicable at the time when the authorisations for the discharge of waste liable to contain any of those substances were granted; and finally, the reasons for which those objectives had not been laid down together with a timetable specifying the date on which they would be laid down.

19 Since the obligation to communicate summaries under Article 7(6) of the Directive only relates to programmes which have already been established, the Italian Republic, by failing to provide to the Commission the information requested by it on the level of water pollution in Italy in order to enable it to establish the extent of the obligations flowing from Article 7 of the Directive, is in breach of Article 5 of the EC Treaty.

20 It must be concluded from the foregoing that:

(1) by failing to adopt a pollution reduction programme with quality objectives for 99 dangerous substances set out in List I of the Annex to the Directive, the Italian Republic has failed to fulfil its obligations under the Directive;

(2) by failing to provide to the Commission the information requested by it on the level of water pollution in Italy in order to enable it to establish the extent of the obligations flowing from Article 7 of the Directive, the Italian Republic has failed to fulfil its obligations under Article 5 of the EC Treaty.

Costs

21 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. Accordingly, the Italian Republic must be ordered to pay the costs.

On those grounds,

THE COURT (Sixth Chamber)

hereby:

1) Declares that, by failing to adopt pollution reduction programmes with quality objectives for 99 dangerous substances set out in List I of the Annex to Council Directive 76/464/EEC of 4 May 1976 on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community, the Italian Republic has failed to fulfil its obligations under that Directive;

2) Declares that, by failing to provide the Commission with the information requested by it on the level of water pollution in Italy in order to enable it to establish the extent of the obligations flowing from Article 7 of Directive 76/464, the Italian Republic has failed to fulfil its obligations under Article 5 of the EC Treaty;

3) Orders the Italian Republic to pay the costs.

Ragnemalm Schintgen Mancini

Kapteyn Hirsch

Delivered in open court in Luxembourg on 1 October 1998.

R. Grass H. Ragnemalm

Registrar President of the Sixth Chamber