JUDGMENT OF THE COURT (Second Chamber)

24 January 2002 *

In Case C-35/00,

Commission of the European Communities, represented by R.B. Wainwright and L. Ström, acting as Agents, with an address for service in Luxembourg,

applicant,

v

United Kingdom of Great Britain and Northern Ireland, represented by R. Magrill, acting as Agent, and by D. Wyatt QC, with an address for service in Luxembourg,

defendant,

APPLICATION for a declaration that, by not drawing up waste management plans complying with all the provisions concerning waste of Council Directive 75/442/EEC of 15 July 1975 on waste (OJ 1975 L 194, p. 39), as amended by Council Directive 91/156/EEC of 18 March 1991 (OJ 1991 L 78, p. 32), of

* Language of the case: English.

Council Directive 91/689/EEC of 12 December 1991 on hazardous waste (OJ 1991 L 377, p. 20), and of European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste (OJ 1994 L 365, p. 10), and/or by not informing the Commission thereof, the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under Article 7 of Directive 75/442, as amended by Directive 91/156, Article 6 of Directive 91/689 and Article 14 of Directive 94/62,

THE COURT (Second Chamber),

composed of: N. Colneric, President of the Chamber, R. Schintgen and V. Skouris (Rapporteur), Judges,

Advocate General: A. Tizzano,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 11 September 2001,

gives the following

Judgment

1 By application lodged at the Registry of the Court of Justice on 8 February 2000, the Commission of the European Communities brought an action under Article 226 EC for a declaration that, by not drawing up waste management plans complying with all the provisions concerning waste of Council Directive 75/442/EEC of 15 July 1975 on waste (OJ 1975 L 194, p. 39), as amended by Council Directive 91/156/EEC of 18 March 1991 (OJ 1991 L 78, p. 32, hereinafter 'amended Directive 75/442'), of Council Directive 91/689/EEC of 12 December 1991 on hazardous waste (OJ 1991 L 377, p. 20), and of European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste (OJ 1994 L 365, p. 10), and/or by not informing the Commission thereof, the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under Article 7 of amended Directive 75/442, Article 6 of Directive 91/689 and Article 14 of Directive 94/62.

Legal framework

Amended Directive 75/442

2 The object of amended Directive 75/442 is to ensure the removal and recovery of waste and to encourage the adoption of measures aimed at restricting the production of waste, particularly by promoting clean technologies and products which can be recycled and re-used.

3 Article 7(1) and (2) of amended Directive 75/442, which result from an amendment of that directive by Directive 91/156, provide:

'1. In order to attain the objectives referred to in Articles 3, 4 and 5, the competent authority or authorities referred to in Article 6 shall be required to draw up as soon as possible one or more waste management plans. Such plans shall relate in particular to:

— the type, quantity and origin of waste to be recovered or disposed of,

— general technical requirements,

— any special arrangements for particular wastes,

— suitable disposal sites or installations.

Such plans may, for example, cover:

— the natural or legal persons empowered to carry out the management of waste,

— the estimated costs of the recovery and disposal operations,

— appropriate measures to encourage rationalisation of the collection, sorting and treatment of waste.

2. Member States shall collaborate as appropriate with the other Member States concerned and the Commission to draw up such plans. They shall notify the Commission thereof.'

4 Under the first subparagraph of Article 2(1) of Directive 91/156, Member States were to bring into force the measures necessary to comply with it no later than 1 April 1993.

Directive 91/689

5 According to Article 1(1) thereof, the object of Directive 91/689 is to approximate the laws of the Member States on the controlled management of hazardous waste.

6 Article 6 of Directive 91/689 provides:

'1. As provided in Article 7 of Directive 75/442/EEC, the competent authorities shall draw up, either separately or in the framework of their general waste management plans, plans for the management of hazardous waste and shall make these plans public.

2. The Commission shall compare these plans, and in particular the methods of disposal and recovery. It shall make this information available to the competent authorities of the Member States which ask for it.'

7 The first sentence of Article 10(1) of Directive 91/689 provided that the Member States were to bring into force the measures necessary to comply with it before 12 December 1993. That date was postponed to 27 June 1995 by Article 1(1) of Council Directive 94/31/EC of 27 June 1994 amending Directive 91/689 (OJ 1994 L 168, p. 28).

Directive 94/62

8 According to Article 1(1) thereof the aim of Directive 94/62 is to harmonise national measures concerning the management of packaging and packaging waste in order, on the one hand, to prevent any impact thereof on the environment of all Member States as well as of third countries or to reduce such impact, thus providing a high level of environmental protection, and, on the other hand, to ensure the functioning of the internal market and to avoid obstacles to trade and distortion and restriction of competition within the Community.

9 Article 14 of Directive 94/62, entitled 'Management Plans', provides:

'In pursuance of the objectives and measures referred to in this Directive, Member States shall include in the waste management plans required pursuant to Article 7 of Directive 75/442/EEC, a specific chapter on the management of packaging and packaging waste ... .'

10 Under Article 22(1) of Directive 94/62:

'Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 30 June 1996. They shall immediately inform the Commission thereof.'

Factual background and pre-litigation procedure

11 By letters of 7 April and 28 July 1995, the Commission requested the United Kingdom Government to notify it of its waste management plans then in force pursuant to Article 7 of amended Directive 75/442. It also requested information concerning the validity of the plans drawn up before 1991 which had already been notified to it.

12 By letter of 21 September 1995, the United Kingdom Government informed the Commission that the plans notified to the Commission in 1990 and 1991 remained valid, save in cases where they had been replaced by new waste disposal plans. A list of the new plans was annexed to that letter.

13 By letters dated 26 October 1995 and 24 October 1996, the United Kingdom authorities sent the Commission a copy of the waste management plan for Gibraltar.

14 Since it considered, on the basis of the plans which it had received, that the United Kingdom had not adopted the measures necessary to comply with its obligations under Article 7 of amended Directive 75/442, Article 6 of Directive 91/689 and Article 14 of Directive 94/62, the Commission commenced infringement proceedings. After giving the United Kingdom formal notice to submit its observations, it sent that Member State, by letter dated 23 April 1999, a reasoned opinion requesting it to adopt the measures necessary to comply with its obligations within two months of the date of notification of that opinion.

15 The United Kingdom authorities replied to the reasoned opinion by letter of 12 August 1999. Not satisfied with that response, the Commission decided to bring this action.

The alleged failure to fulfil Treaty obligations and the findings of the Court

16 The Commission submits, first, that the waste management plans in force that were notified to the Commission do not appear to cover the whole of the United Kingdom. It points out, by way of example, that only 29 out of the 34 County Councils of England have submitted plans. It also appears, according to the Commission, that plans have been submitted by only three London Boroughs, as well as the Waste Management Authorities of East London and West London, and only 19 District Councils of Northern Ireland. Further, there is some disparity between, on the one hand, the number of local authorities in England, Wales, Scotland and Northern Ireland, and, on the other hand, the number which have submitted waste management plans. It follows, therefore, that the waste management plans notified by the United Kingdom do not cover the whole of its territory.

17 Next, the Commission claims that, having evaluated the information supplied by the United Kingdom Government, it concluded that only 53 of the notified plans satisfy all the conditions laid down by amended Directive 75/442 and Directives 91/689 and 94/62.

18 As regards Directive 91/689 more particularly, the Commission submits that 21 of the notified plans do not contain the requisite information relating to hazardous waste, albeit under Article 6 of that directive the United Kingdom authorities are required to draw up plans for the management of hazardous waste.

19 As regards the obligations arising under Directive 94/62, the Commission points out that only one plan seems to contain a chapter on packaging and packaging waste. Under Article 14 of that directive, however, the United Kingdom authorities are required to include a specific chapter on the management of packaging and packaging waste in the waste management plans referred to in Article 7 of amended Directive 75/442.

20 Finally, in respect of a certain number of local authorities, the Commission has received only brief extracts, which cannot be regarded as waste management plans within the meaning of Article 7 of amended Directive 75/442.

21 Therefore, leaving aside the question of the application of Directive 94/62 to Gibraltar, which is the subject of discussions between the Commission and the United Kingdom in the context of another case, the Commission concludes that the United Kingdom has not yet adopted the measures necessary to comply with amended Directive 75/442, and Directives 91/689 and 94/62, and/or has not informed the Commission thereof.

22 The United Kingdom Government does not dispute its alleged failure to fulfil its obligations. It admits that, during the period under consideration, it failed to adopt and/or notify waste management plans capable of covering the entire territory of the United Kingdom and, so far only as regards amended Directive 75/442 and Directive 91/689, of Gibraltar. It accepts that the Commission has valid grounds for a declaration of failure to fulfil Treaty obligations in the terms of the application. It states that the competent authorities are engaged in rectifying that situation, by replacing local plans with national strategies, which should constitute the appropriate means of satisfying the requirements of amended Directive 75/442, and Directives 91/689 and 94/62.

23 It follows from the foregoing that, at the end of the period fixed by the reasoned opinion, the United Kingdom had not adopted and/or notified waste management plans covering the whole of its territory. It also follows that some of the waste management plans adopted and notified to the Commission before that date did not satisfy the conditions laid down by amended Directive 75/442, and Directives 91/689 and 94/62.

24 Accordingly, the United Kingdom has not fulfilled all its obligations under Article 7 of amended Directive 75/442 and Article 6 of Directive 91/689, and, leaving aside Gibraltar, Article 14 of Directive 94/62.

25 Therefore, it must be held that, by not drawing up waste management plans covering the whole of its territory and complying with all the provisions of amended Directive 75/442, and Directives 91/689 and 94/62, and/or by not informing the Commission thereof, the United Kingdom has failed to fulfil its obligations under Article 7 of amended Directive 75/442, Article 6 of Directive 91/689 and, leaving aside Gibraltar, Article 14 of Directive 94/62.

Costs

26 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 United Kingdom has been unsuccessful, the latter must be ordered to pay the costs.

On those grounds,

THE COURT (Second Chamber),

hereby:

1. Declares that, by not drawing up waste management plans covering the whole of its territory and complying with all the provisions of Council Directive 75/442/EEC of 15 July 1975 on waste, as amended by Council Directive 91/156/EEC of 18 March 1991, of Council Directive 91/689/EEC of 12 December 1991 on hazardous waste, and of Directive 94/62/EC of the European Parliament and Council of 20 December 1994 on packaging and

packaging waste, and/or by not informing the Commission thereof, the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under Article 7 of Directive 75/442, as amended by Directive 91/156, Article 6 of Directive 91/689 and, leaving aside Gibraltar, under Article 14 of Directive 94/62.

2. Orders the United Kingdom of Great Britain and Northern Ireland to pay the costs.

Colneric Schintgen Skouris

Delivered in open court in Luxembourg on 24 January 2002.

R. Grass

Registrar

N. Colneric

President of the Second Chamber