

JUDGMENT OF THE COURT (Second Chamber)

13 July 2000 *

In Case C-261/98,

Commission of the European Communities, represented by F. de Sousa Fialho, of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of C. Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

applicant,

v

Portuguese Republic, represented by L. Fernandes, Director of the Legal Service of the European Communities Directorate-General in the Ministry of Foreign Affairs, and M. Telles Romão, a jurist in the same service, and J. Lopes Fernandes, Director of the Legal Department of the National Water Institute, acting as Agents, 1 Rua da Cova da Moura, Lisbon,

defendant,

* Language of the case: Portuguese.

APPLICATION for a declaration that, by failing to adopt or communicate a summary of the pollution reduction programmes laying down quality objectives and the results thereof for the 99 priority substances referred to in the first indent of List II of the Annex to Council Directive 76/464/EEC of 4 May 1976 on pollution caused by dangerous substances discharged into the aquatic environment of the Community (OJ 1976 L 129, p. 23), the Portuguese Republic has failed to fulfil its obligations under Article 7 of that directive and Article 189(3) of the EC Treaty (now Article 249(3) EC),

THE COURT (Second Chamber),

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

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

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 9 March 2000,

gives the following

Judgment

- 1 By application lodged at the Registry of the Court on 17 July 1998, 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 adopt or communicate a summary of the pollution reduction programmes laying down quality objectives and the results thereof for the 99 priority substances referred to in the first indent of List II of the Annex to Council Directive 76/464/EEC of 4 May 1976 on pollution caused by dangerous substances discharged into the aquatic environment of the Community (OJ 1976 L 129, p. 23, hereinafter 'the Directive'), the Portuguese Republic has failed to fulfil its obligations under Article 7 of the Directive and Article 189(3) of the EC Treaty (now Article 249(3) EC).

Legal background

- 2 The first recital in the preamble to the Directive states that the purpose of the Directive is to protect the aquatic environment of the Community from pollution, particularly that caused by certain persistent, toxic and bioaccumulable substances, belonging to the families and groups listed in the Annex to the Directive.
- 3 To that end, it draws a distinction between two categories of hazardous substances, which are set out in Lists I and II of that Annex.

- 4 List I contains substances which are particularly harmful to the aquatic environment by reason of their toxicity, persistence and bioaccumulation in the environments into which they are discharged.
- 5 List II, according to the first indent, identifies substances belonging to the families and groups of substances in List I but in relation to which the limit values referred to in Article 6 of the Directive have not yet been determined by the Council. The first indent of List II currently comprises 99 substances within List I (hereinafter ‘the 99 priority substances’).
- 6 As the second indent indicates, List II also contains certain substances whose deleterious effect on the aquatic environment can be confined to a given area and which depend on the characteristics and location of the water into which they are discharged.
- 7 Articles 3 to 6 of the Directive lay down rules on the substances within List I. These rules provide that any discharge of those substances is to be subject to a requirement to obtain prior authorisation laying down emission standards, which may not exceed certain limit values, laid down by the Council, acting on a proposal from the Commission.
- 8 Article 7 of the Directive provides:

‘1. In order to reduce pollution of the waters referred to in Article 1 by the substances within List II, Member States shall establish programmes in the implementation of which they shall apply in particular the methods referred to in paragraphs 2 and 3.

2. ...

3. The programmes referred to in paragraph 1 shall include quality objectives for water; these shall be laid down in accordance with Council Directives, where they exist.

4. The programmes may also include specific provisions governing the composition and use of substances or groups of substances and products and shall take into account the latest economically feasible technical developments.

5. The programmes shall set deadlines for their implementation.

6. Summaries of the programmes and the results of their implementation shall be communicated to the Commission.

7. The Commission, together with the Member States, shall arrange for regular comparisons of the programmes in order to ensure sufficient coordination in their implementation. If it sees fit, it shall submit relevant proposals to the Council to this end.'

- 9 The Directive does not specify any period for transposition. However, Article 12(2) provides that the Commission is to forward the first proposals made on the basis of a comparative study of the programmes established by the Member States, where possible within 27 months following notification of the Directive. The Commission, considering that the Member States would not be in a position to provide any relevant information within that period, informed them by letter of 3 November 1976 that it was setting 15 September 1981 as the date for establishing programmes and 15 September 1986 as the date for implementing them.

- 10 Pursuant to Articles 392 and 395 of the Act concerning the conditions of accession of the Kingdom of Spain and the Portuguese Republic and the adjustments to the Treaties (OJ 1985 L 302, p. 23), the Directive became binding on the Portuguese Republic on 1 January 1986.

Background to the dispute and pre-litigation procedure

- 11 By letters to the Portuguese Government of 26 September 1989 and 4 April 1990, the Commission requested summaries of the pollution reduction programmes in respect of the substances within List II of the Annex to the Directive.
- 12 As it received no reply to those letters and had no other information available to it, by letter of 2 April 1991, the Commission, pursuant to the procedure laid down in Article 169 of the Treaty, charged the Portuguese Republic with having failed to submit programmes designed to reduce pollution caused by the 99 priority substances mentioned in the annex to that letter and formally called upon the Portuguese authorities to submit, within one month, their observations on that failure to comply with Article 7 of the Directive within one month.
- 13 In reply, on 25 April 1991, the Portuguese Government sent the Commission a copy of a contract signed on 20 November 1990 between the Directorate-General for the quality of the environment and a private company relating to a study at national level of chemical substances produced, imported or exported. Under cover of a further letter of 25 June 1992, the Portuguese Government submitted a document entitled 'Levantamento nacional dos quantitativos de produção e exportação de produtos químicos' (National study to assess the amounts of chemical substances produced, imported and exported) containing the results of that study, together with a document entitled 'Directiva 76/464/

CEE — Programas de redução de poluição' (Directive 76/464/EEC — pollution reduction programmes), purporting to summarise the pollution reduction programmes adopted pursuant to the Directive.

- 14 The Commission, finding the Portuguese Government's response to be unsatisfactory, sent to the Portuguese Republic on 25 May 1993, a reasoned opinion calling upon it to take the measures necessary to comply with its obligations under the Directive within two months of notification of the opinion.
- 15 By letter of 9 June 1993, the Portuguese Government replied to that reasoned opinion by submitting, *inter alia*, a document entitled 'Programas de redução de poluição' (Pollution Reduction Programmes), containing another list of water-pollution reduction programmes which were under way or being planned. Further replies followed in the form of letters of 26 August 1993, 21 June 1994, 12 December 1994 and 29 May 1995, attaching, *inter alia*, a programme relating to the region of Alcanena and a preliminary study of the system for treating, and the ultimate destination of, residual waters in Matosinhos. The Portuguese Government also mentioned a study of discharges of hazardous substances in Portugal and a study involving the collection and analysis of existing information on hazardous substances in the aquatic environment.
- 16 By letter of 30 May 1996, the Portuguese Government declared that it was launching an external competition for a study of water contamination by pesticides and other hazardous substances in Portugal. It also sent the Commission a document entitled 'Implementação do artigo 7º da directiva 76/464/CEE — Ponto da situação em Março 1996 — Relatório para a Comissão europeia' (Application of Article 7 of Directive 76/464/EEC — Summary of the situation as at March 1996 — Report for the European Commission) containing a timetable of actions to be taken in application of Article 7 of the Directive, from which it emerged that the plans to effect reductions would be realised at the end of 1997 for chromiums, at the end of 1998 for metals, and at the end of 2000 for 'miscellaneous industrial sectors'.

- 17 Finally, by letter of 5 December 1996 the Portuguese Government sent the Commission a programme for cleaning up the riverbed of the Guadiana, a cooperation agreement in respect of a study of water resources in Alentejo, a memorandum on the drainage and clearing of the river Alviela, a programme for monitoring underground water and a proposal for restructuring the network for supervising aquatic resources.
- 18 Taking the view that none of those replies were fully satisfactory, the Commission brought this action.

Substance

- 19 On the basis of its analysis of the current situation in Portugal in relation to the implementation of the obligations imposed by Article 7 of the Directive, the Commission contends that the Portuguese authorities have decided to apply an integrated strategy by drainage basin/area and/or specific sector rather than a substance-by-substance strategy, as required by the Directive.
- 20 According to the Commission, the Portuguese authorities acknowledge, following the studies carried out by them, that there are indeed 26 substances in Portugal, either produced there or imported, which appear on the list of 99 priority substances to which the Commission's reasoned opinion refers. However, the timetable of pollution reduction actions drawn up in March 1996 and reproduced in the document entitled 'Application of Article 7 of Directive 76/464/EEC — Summary of the situation as at March 1996 — Report for the European Commission', itself confirms that not all hazardous substances in Portugal have been identified, that the plans for reducing pollution caused by the 99 priority substances have still not been adopted, that such pollution emanates from a variety of industrial sectors or sources, and that not all the quality objectives have been laid down.

- 21 Furthermore, the Commission points out that, of the 26 substances which the Portuguese Government confirms are found in Portugal, quality objectives have been fixed for only 18. As regards those 18 substances, there is no information on the establishment of emission standards. Nor, furthermore, do the few pollution reduction measures, which appear haphazardly in various voluntary agreements between the authorities and industrial associations, define quality objectives.
- 22 Finally, the Commission contends that the handful of programmes put together by the Portuguese authorities in respect of certain drainage basins or areas are only at the planning stage (Matosinhos), or do not lay down quality objectives (Alviela, Agueda) or emission standards (Alcanena), or do not relate to substances among the 99 priority substances. Furthermore, no proper plans have ever been drawn up to implement those programmes.
- 23 The Commission concludes from this that the Portuguese Republic has not yet adopted water-pollution reduction programmes laying down quality objectives for the 99 priority substances or, in the alternative, that it has not communicated such programmes or the results of their implementation to the Commission, thus infringing the provisions of Article 7 of the Directive and, accordingly, failing to fulfil its obligations under the Treaty.
- 24 Referring to the information already provided to the Commission during the pre-litigation procedure and the various measures adopted since then, the Portuguese Government admits that the efforts it has made are not yet sufficient to comply fully with the requirements of Article 7 of the Directive. It contends, however, that those measures show that the Portuguese Republic has made serious efforts to comply with its obligations under the Directive and points out that various measures to implement the Directive have been taken or are in the course of being adopted.

- 25 It must first of all be pointed out that it is settled case-law that the question whether a Member State has failed to fulfil its obligations must be determined by reference to the situation prevailing in the Member State at the end of the period laid down in the reasoned opinion and the Court cannot take account of any subsequent changes (see in particular Case C-289/94 *Commission v Italy* [1996] ECR I-4405, paragraph 20, and Case C-60/96 *Commission v France* [1997] ECR I-3827, paragraph 15).
- 26 In this case, the period laid down in the reasoned opinion expired on 25 July 1993.
- 27 It is clear from the case-file that the Portuguese Government sent to the Commission first, on 25 June 1992, the results of a technical study of chemical substances produced, imported or exported at national level. However, as the Portuguese Government itself acknowledges in its letter of 25 June 1992, that study is merely a preparatory act and is general in nature. It cannot therefore be considered to constitute a programme within the meaning of Article 7 of the Directive.
- 28 As regards, secondly, the document entitled ‘Directive 76/464/EEC — Pollution reduction programmes’, which was also sent to the Commission on 25 June 1992, it must be observed that, under Articles 7(3) and (5) of the Directive, the programmes referred to therein must, on the one hand, lay down quality objectives for water and, on the other, set deadlines for their implementation.
- 29 However, the five programmes contained in that document, apart from the fact that they relate to certain locations only, describe in very broad terms the plans to be implemented but give no indication either as to the quality objectives pursued as regards the substances referred to in the first indent of List II or as to the deadlines for implementing those plans.

- 30 It must therefore be found that that document does not constitute a programme within the meaning of Article 7 of the Directive either.
- 31 The same is true, thirdly, as regards the document entitled 'Pollution reduction programmes' sent to the Commission on 9 June 1993. As the Advocate General has pointed out at point 16 of his Opinion, that document is no more than a simple catalogue, which merely indicates the title, the relevant drainage basin, the municipality concerned and a cost estimate for the plans, but says nothing about their content, objectives or duration.
- 32 Furthermore, it must be pointed out that, even if the measures communicated to the Commission by the Portuguese Government after the period laid down in the reasoned opinion were actually adopted, the Portuguese Government itself acknowledges in its defence that the efforts made are still not sufficient in order fully to comply with the requirements of Article 7 of the Directive.
- 33 It must therefore be concluded that, by failing to adopt the water pollution reduction programmes laying down quality objectives to reduce pollution by the substances falling within the first indent of List II of the Annex to the Directive, the Portuguese Republic has failed to fulfil its obligations under Article 7 of the Directive.

Costs

- 34 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 Portuguese Republic has been unsuccessful, the latter must be ordered to pay the costs.

On those grounds,

THE COURT (Second Chamber)

hereby:

1. Declares that, by failing to adopt water pollution reduction programmes laying down quality objectives to reduce pollution by the substances falling within the first indent of List II of the Annex to Council Directive 76/464/EEC of 4 May 1976 on pollution caused by dangerous substances discharged into the aquatic environment of the Community, the Portuguese Republic has failed to fulfil its obligations under Article 7 of that directive.
2. Orders the Portuguese Republic to pay the costs.

Schintgen

Hirsch

Skouris

Delivered in open court in Luxembourg on 13 July 2000.

R. Grass

R. Schintgen

Registrar

President of the Second Chamber