

Pleas in law and main arguments

By this action the Commission asks the Court to find that the Hellenic Republic has failed to fulfil its obligations under Article 4(2)(a) and (c), Article 5(2)(c), Article 6(2)(b) and Articles 10, 11, 12, 13, 14, 15, 17, 18 and 26 of Regulation (EC) No 1774/2002 of the European Parliament and of the Council of 3 October 2002 laying down health rules concerning animal by-products not intended for human consumption ('the animal by-products regulation'). It should be noted that this action concerns two sets of infringement proceedings (Infringements 2001/5217 and 2006/2221) which arose from breach of the Hellenic Republic's obligations under specific articles of that regulation.

In particular the regulation states that once animal waste is collected, transported and identified without undue delay, it must, *inter alia*, be disposed of as waste, having been processed in the ways provided for in the Regulation in accordance with the category to which the waste belongs (Articles 4(2)(c), 5(2)(c) and 6(2)(b)). Procedures are also laid down for the disposal of specified risk material by incineration (Article 4(2)(a)). Further, the animal by-products regulation lays down the conditions governing the approval of waste processing plants, intermediate, storage, incineration and co-incineration plants, Category 1 and Category 2 processing plants, Category 2 and Category 3 oleo-chemical plants, biogas plants and composting plants (Articles 10-15). Similarly, the animal by-products regulation lays down the conditions governing the approval by the competent authorities of Category 3 material processing plants and the approval of petfood plants and technical plants (Articles 17-18). In addition, in accordance with the regulation, the competent authority must carry out at regular intervals inspections and supervision to ascertain that the regulation's provisions are being observed, on the basis of various criteria which are laid down, and to take the appropriate action in the case of non-compliance (Article 26).

On the basis of a large number of reports drawn up by the Commission's Food and Veterinary Office (FVO), the Commission points out that neither at the end of the time-limits laid down in the reasoned opinion and in the supplementary reasoned opinion nor after those dates had the Hellenic Republic taken all the requisite measures to correct the infringements with which it was charged and consequently to comply with its obligations under the above-mentioned articles of the by-products regulation.

Since 2004 the FVO has carried out a number of fact-finding trips in Greece to ascertain what defects there are in the application of the by-products regulation. Despite ascertaining that there had been some progress following the advice of the FVO and the adoption of specific legislation in October 2006 which aimed to introduce the requisite administrative measures to

apply the provisions of the by-products regulation, in particular as regards the approval of waste processing plants, the FVO inspectors repeatedly found, on-the-spot and until April 2007, when the last fact-finding trip took place, that the Greek authorities had not taken the requisite action to comply with the obligations incumbent on them under the above-mentioned articles of the by-products regulation.

It should also be pointed out that the non-implementation, or inadequate implementation, of the above-mentioned articles is due, to a large extent, to the ineffective coordination of the competent authorities at the level of the prefectural administration. Furthermore, as is clear from the response of the Greek authorities to the findings set out in the FVO's reports, the level of the controls carried out by the competent authorities and of the penalties imposed by the national legislation do not effectively ensure the effective application of the by-products regulation.

(¹) OJ L 273 of 10.10.2002, p. 1.

Action brought on 10 June 2008 — Commission of the European Communities v Italian Republic

(Case C-249/08)

(2008/C 209/45)

Language of the case: Italian

Parties

Applicant: Commission of the European Communities (represented by: K. Banks and C. Cattabriga, Agents)

Defendant: Italian Republic

Form of order sought

— Declare that:

— by failing to provide appropriate measures for the control, inspection and surveillance of fishing activities within its territory and within maritime waters subject to its sovereignty or jurisdiction, in particular with regard to compliance with the provisions governing the retention on board and use of drift-nets, and

- by failing to comply sufficiently with its obligation to ensure that appropriate measures are taken against those responsible for infringements of the Community legislation on the retention on board and use of drift nets, in particular by imposing dissuasive penalties on those persons,

the Italian Republic has failed to fulfil its obligations under Article 1(1) of Council Regulation (EEC) No 2241/87 ⁽¹⁾ of 23 July 1987 establishing certain control measures for fishing activities and Article 2(1) and Article 31(1) and (2) of Council Regulation (EEC) No 2847/93 ⁽²⁾ of 12 October 1993 establishing a control system applicable to the common fisheries policy;

- order the Italian Republic to pay the costs.

Pleas in law and main arguments

1. Since it was introduced in 1992, the prohibition on retaining on board and using drift-nets of a length greater than 2.5 Km and, since 2001, drift-nets of any length, has been systematically infringed on a massive scale by the Italian fishing fleet.
2. According to the Commission, the extent and seriousness of the situation are directly attributable to the inefficiencies in the Italian system for monitoring compliance with that prohibition and the inadequacy of the penalties imposed under Italian legislation for infringement of that prohibition.
3. In that connection, the Commission observes that the supervision of the use of drift-nets is conducted by numerous organisations which are competing with each other and in such a way that other tasks entrusted to them take precedence over that supervision, which is, moreover, not adequately coordinated. The lack of human resources, time and the necessary means prevents effective control being carried out.
4. Adequate strategic programming and planning for the control of the use of drift-nets is also lacking. The Commission observes that the controls should be carefully programmed on the basis of specific risk factors and a comprehensive, integrated and rational strategy. There should also be a greater focus on certain periods of the year and on specific regions and control posts. At present, however, no such action is being taken by the Italian authorities.
5. The authorities responsible for surveillance of the use of drift-nets do not have access to information on the location of fishing vessels gathered by the satellite vessel monitoring system (VMS) provided for in Article 3 of Regulation No 2847/93. It is apparent from an investigation carried out by the Commission that a significant number of fishing vessels are still not equipped with the satellite-tracking devices necessary for the proper functioning of the VMS. As regards the collection of data, the computerisation of logbooks, landing declarations and sales notes required under Regulation No 2847/93 and, *a fortiori*, the cross-analysis of those data with the information collected by the VMS, are far from being fully implemented.
6. If the surveillance of the use of drift-nets carried out by the Italian authorities appears to be wholly unsatisfactory, then

no more efficient is their prevention of infringements of Community provisions on the retention and use of such nets.

7. In that connection, the Commission observes, first of all, that, contrary to Article 9a of Regulation No 3094/86 ⁽³⁾ and the measures which subsequently repeated and expanded the content of that provision, the Italian legislation in force governing penalties prohibits, essentially, only the use or attempted use of drift-nets but not their simple retention on board.
8. Secondly, when it is found that an infringement of the prohibition on the use of drift-nets has actually occurred, it is not duly reported by the local surveillance authorities to the competent authorities, principally due to existing social pressures, and it is not in any event effectively pursued and penalised. The number and range of penalties imposed is, in fact, derisory.
9. The Commission therefore considers that it has been amply demonstrated that the system of controls and penalties put in place in Italy to ensure compliance with the Community provisions on drift-nets is wholly inadequate for the purposes of securing compliance with the obligations imposed on the Member States by Article 1(1) of Regulation No 2241/87 and Article 2(1) and Article 31(1) and (2) of Regulation No 2847/93.

⁽¹⁾ OJ 1987 L 207, p. 1.

⁽²⁾ OJ 1993 L 261, p. 1.

⁽³⁾ Council Regulation (EEC) No 3094/86 of 7 October 1986 laying down certain technical measures for the conservation of fishery resources (OJ 1986 L 288, p. 1).

Reference for a preliminary ruling from the Tribunale Amministrativo Regionale della Campania (Italy) lodged on 16 June 2008 — Futura Immobiliare Srl Hotel Futura and Others v Comune di Casoria

(Case C-254/08)

(2008/C 209/46)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale della Campania

Parties to the main proceedings

Applicant: Futura Immobiliare Srl Hotel Futura and Others

Defendant: Comune di Casoria