

— by systematically exempting works and development programmes and projects which are subject to a declaratory system from that procedure,

the French Republic has failed to fulfil its obligations under Article 6(2) and Article 6(3) respectively of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora;

2. Dismisses the action as to the remainder;
3. Orders the French Republic to pay two thirds of the costs and the European Commission to pay the other third.

(<sup>1</sup>) OJ C 197, 02.08.2008.

### Judgment of the Court (Fourth Chamber) of 4 March 2010 — Commission of the European Communities v Italian Republic

(Case C-297/08) (<sup>1</sup>)

*(Failure of a Member State to fulfil obligations — Environment — Directive 2006/12/EC — Articles 4 and 5 — Waste management — Management plan — Integrated and adequate network of disposal installations — Danger for human health or the environment — Force majeure — Civil disturbances — Organised crime)*

(2010/C 113/11)

Language of the case: Italian

#### Parties

*Applicant:* European Commission (represented by: C. Zadra, D. Recchia and J.-B. Laignelot, Agents)

*Defendant:* Italian Republic (represented by: G. Palmieri, acting as Agent, and G. Aiello, avvocato dello Stato)

*Interveners in support of the defendant:* United Kingdom of Great Britain and Northern Ireland (represented by: S. Ossowski, Agent and K. Bacon, Barrister)

#### Re:

Failure of a Member State to fulfil obligations — Infringement of Articles 4 and 5 of Directive 2006/12/EC of the European Parliament and of the Council of 5 April 2006 on waste (OJ 2006 L 114, p. 9) — Region of Campania

#### Operative part of the judgment

The Court:

1. Declares that, by failing to adopt, for the region of Campania, all the measures necessary to ensure that waste is recovered and

disposed of without endangering human health and without harming the environment and, in particular, by failing to establish an integrated and adequate network of disposal installations, the Italian Republic has failed to fulfil its obligations under Articles 4 and 5 of Directive 2006/12/EC of the European Parliament and of the Council of 5 April 2006 on waste;

2. Orders the Italian Republic to pay the costs;
3. Orders the United Kingdom of Great Britain and Northern Ireland to bear its own costs.

(<sup>1</sup>) OJ C 223, 30.8.2008.

Judgment of the Court (Grand Chamber) of 9 March 2010 (reference for a preliminary ruling from the Tribunale amministrativo regionale della Sicilia — Italy) — Raffinerie Mediterranee (ERG) SpA, Polimeri Europa SpA, Syndial SpA v Ministero dello Sviluppo economico, Ministero della Salute, Ministero Ambiente e Tutela del Territorio e del Mare, Ministero delle Infrastrutture, Ministero dei Trasporti, Presidenza del Consiglio dei Ministri, Ministero dell'Interno, Regione siciliana, Assessorato regionale Territorio ed Ambiente (Sicilia), Assessorato regionale Industria (Sicilia), Prefettura di Siracusa, Istituto superiore di Sanità, Commissario Delegato per Emergenza Rifiuti e Tutela Acque (Sicilia), Vice Commissario Delegato per Emergenza Rifiuti e Tutela Acque (Sicilia), Agenzia Protezione Ambiente e Servizi tecnici (APAT), Agenzia regionale Protezione Ambiente (ARPA Sicilia), Istituto centrale Ricerca scientifica e tecnologica applicata al Mare, Subcommissario per la Bonifica dei Siti contaminati, Provincia regionale di Siracusa, Consorzio ASI Sicilia orientale Zona Sud, Comune di Siracusa, Comune di Augusta, Comune di Melilli, Comune di Priolo Gargallo, Azienda Unità sanitaria locale No 8, Sviluppo Italia Aree Produttive SpA, Invitalia (Agenzia nazionale per l'attrazione degli investimenti e lo sviluppo d'impresa) SpA, formerly Sviluppo Italia SpA,

(Case C-378/08) (<sup>1</sup>)

*(‘Polluter pays’ principle — Directive 2004/35/EC — Environmental liability — Applicability ratione temporis — Pollution occurring before the date laid down for implementation of that directive and continuing after that date — National legislation imposing liability on a number of undertakings for the costs of remedying the damage connected with such pollution — Requirement for fault or negligence — Requirement for a causal link — Public works contracts)*

(2010/C 113/12)

Language of the case: Italian

#### Referring court

Tribunale amministrativo regionale della Sicilia

**Parties to the main proceedings**

*Applicants:* Raffinerie Mediterranee (ERG) SpA, Polimeri Europa SpA, Syndial SpA

*Defendants:* Ministero dello Sviluppo economico, Ministero della Salute, Ministero Ambiente e Tutela del Territorio e del Mare, Ministero delle Infrastrutture, Ministero dei Trasporti, Presidenza del Consiglio dei Ministri, Ministero dell'Interno, Regione siciliana, Assessorato regionale Territorio ed Ambiente (Sicilia), Assessorato regionale Industria (Sicilia), Prefettura di Siracusa, Istituto superiore di Sanità, Commissario Delegato per Emergenza Rifiuti e Tutela Acque (Sicilia), Vice Commissario Delegato per Emergenza Rifiuti e Tutela Acque (Sicilia), Agenzia Protezione Ambiente e Servizi tecnici (APAT), Agenzia regionale Protezione Ambiente (ARPA Sicilia), Istituto centrale Ricerca scientifica e tecnologica applicata al Mare, Subcommissario per la Bonifica dei Siti contaminati, Provincia regionale di Siracusa, Consorzio ASI Sicilia orientale Zona Sud, Comune di Siracusa, Comune di Augusta, Comune di Melilli, Comune di Priolo Gargallo, Azienda Unità sanitaria locale N°8, Sviluppo Italia Aree Produttive SpA, Invitalia (Agenzia nazionale per l'attrazione degli investimenti e lo sviluppo d'impresa) SpA, formerly Sviluppo Italia SpA

*Intervening parties:* ENI Divisione Exploration and Production SpA, ENI SpA, Edison SpA

**Re:**

Reference for a preliminary ruling — Tribunale amministrativo regionale della Sicilia — Interpretation of Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage (OJ 2004 L 142, p. 56) and the 'polluter pays' principle — National legislation which allows the authorities to require private undertakings to implement rehabilitation measures, irrespective of whether or not any investigation has been carried out to identify the party responsible for the pollution in question.

*Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage are not met, such a situation is governed by national law, in compliance with the rules of the Treaty, and without prejudice to other secondary legislation.*

*Directive 2004/35 does not preclude national legislation which allows the competent authority acting within the framework of the directive to operate on the presumption, also in cases involving diffuse pollution, that there is a causal link between operators and the pollution found on account of the fact that the operators' installations are located close to the polluted area. However, in accordance with the 'polluter pays' principle, in order for such a causal link thus to be presumed, that authority must have plausible evidence capable of justifying its presumption, such as the fact that the operator's installation is located close to the pollution found and that there is a correlation between the pollutants identified and the substances used by the operator in connection with his activities.*

*Articles 3(1), 4(5) and 11(2) of Directive 2004/35 must be interpreted as meaning that, when deciding to impose measures for remedying environmental damage on operators whose activities fall within Annex III to the directive, the competent authority is not required to establish fault, negligence or intent on the part of operators whose activities are held to be responsible for the environmental damage. On the other hand, that authority must, first, carry out a prior investigation into the origin of the pollution found, and it has a discretion as to the procedures, means to be employed and length of such an investigation. Second, the competent authority is required to establish, in accordance with national rules on evidence, a causal link between the activities of the operators at whom the remedial measures are directed and the pollution.*

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(<sup>1</sup>) OJ C 301, 22.11.2008.

**Operative part of the judgment**

*Where, in a situation entailing environmental pollution, the conditions for the application *ratione temporis* and/or *ratione materiae* of*