

- 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

Question referred

The question arising is whether the national provisions contained in Article 58 et seq of Legislative Decree No 507 of 1993 and the transitional provisions maintaining them in force, by virtue of Article 11 of Presidential Decree No 158 of 1999, as subsequently amended, and Article 1(184) of Law No 296 of 2006, so ensuring the continuation of a system, fiscal in nature, designed to cover the costs of the waste disposal service and postponing the introduction of a tariff regime in which the cost of the service is borne by the persons producing and delivering the waste, are compatible with the abovementioned Article 15 of the Community Directive 75/442/EEC ⁽¹⁾ which replaces Directive 91/156/EEC ⁽²⁾ and the principle of 'the polluter pays' referred to.

⁽¹⁾ OJ L 194, p. 39.

⁽²⁾ OJ L 78, p. 32.

Action brought on 17 June 2008 — Commission of the European Communities v Italian Republic

(Case C-257/08)

(2008/C 209/47)

Language of the case: Italian

Parties

Applicant: Commission of the European Communities (represented by: N. Yerrell and L. Prete, Agents)

Defendant: Italian Republic

Form of order sought

— Declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2006/22/EC ⁽¹⁾ of the European Parliament and of the Council of 15 March 2006 on minimum conditions for the implementation of Council Regulations (EEC) No 3820/85 and (EEC) No 3821/85 concerning social legislation relating to road transport activities and repealing Council Directive 88/599/EEC or, in any event, by failing to communicate such provisions to the Commission, the Italian Republic has failed to fulfil its obligations under that directive:

— order the Italian Republic to pay the costs.

Pleas in law and main arguments

The deadline for implementing the directive expired on 1 April 2007.

⁽¹⁾ OJ 2006 L 102, p. 35.

Action brought on 17 June 2008 — Commission of the European Communities v Hellenic Republic

(Case C-259/08)

(2008/C 209/48)

Language of the case: Greek

Parties

Applicant: Commission of the European Communities (represented by: M. Patakia and D. Recchia)

Defendant: Hellenic Republic

Form of order sought

The Court is asked to:

- declare that, by failing to take the requisite measures to transpose fully and/or correctly the requirements resulting from Article 3(1) and (2), Article 4(1), Article 5 and Article 8(1) of Council Directive 79/409/EEC ⁽¹⁾ of 2 April 1979 on the conservation of wild birds, the Hellenic Republic has failed to fulfil its obligations under those provisions;
- order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

1. The Commission has examined the compatibility of the measures taken by the Hellenic Republic to transpose Directive 79/409/EEC. That check showed that certain provisions of the directive have not been fully and/or correctly transposed.
2. In particular the Commission considers that the Hellenic Republic has not transposed Article 3(1) of Directive 79/409/EEC, because it has not taken all the requisite measures to preserve, maintain or re-establish a sufficient diversity and area of habitats for all the species of birds referred to in Article 1.
3. The Commission also considers that Article 3(2) of Directive 79/409/EEC has not been fully and/or correctly transposed, since the transposing measure does not permit review of the lawfulness of the designation of an area as a special protection area (SPA), does not contain any provision for the protection of habitats outside the SPAs but in their vicinity and also makes no provision as regards re-establishment of destroyed biotopes and the creation of biotopes, despite their being important objectives of the directive.