

Form of order sought

— Declare that, by failing to transpose into Walloon law Article 2(f), (j) and (k) of, and point 4C of Annex III to, Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste, ⁽¹⁾ the Kingdom of Belgium has failed to fulfil its obligations under that directive;

— order the Kingdom of Belgium to pay the costs.

Pleas in law and main arguments

The European Commission raises two grounds of complaint in support of its action.

First, it alleges that the defendant has not transposed into the law of the Walloon Region the concepts of 'underground storage', 'landfill gas' and 'eluate' provided for by the provisions of Article 2(f), (j) and (k) of Directive 1999/31/EC on the landfill of waste. The Commission draws attention to the importance of those concepts which, being key concepts for the application of the directive, are also referred to in other provisions adopted on the basis of and in application of that directive.

Secondly, the applicant complains that Walloon law does not include any provisions relating to the trigger levels from which it can be considered that the location of the landfill has a significant adverse effect on groundwater quality. Point 4C of Annex III to the directive, which provides for the drawing up of such provisions, is crucially important in order to ensure effective control of groundwater quality and, consequently, to guarantee the protection of the environment which constitutes the essential objective of the directive.

⁽¹⁾ OJ 1999 L 182, p. 1.

Action brought on 1 April 2009 — Commission of the European Communities v Italian Republic

(Case C-121/09)

(2009/C 141/51)

Language of the case: Italian

Parties

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

Defendant: Italian Republic

Form of order sought

— a declaration that the Italian Republic has failed to fulfil its obligations under Article 7 of Directive 90/314/EEC; ⁽¹⁾

— an order that the Italian Republic should pay the costs.

Pleas in law and main arguments

1. By fixing a period of three months from the foreseen date of the end of travel for the purpose of making an application for action by the Guarantee Fund for package travel consumers, the Italian Republic has failed to fulfil its obligations under Article 7 of Directive 90/314.
2. Article 7 of Directive 90/314 provides that the organiser and/or retailer party to the contract is to provide sufficient evidence of security for the refund of money paid over and for the repatriation of the consumer in the event of insolvency. According to the interpretation given in Community case-law, that provision imposes an obligation of result on the Member States, which entails affording the purchaser of package travel the right to effective protection against the risks of the organisers' insolvency and, in particular, the refunding of sums paid over and repatriation.
3. Next, Article 8 allows Member States to adopt more stringent provisions, but only if the latter offer greater consumer protection.
4. In the instant case, the object of the Italian legislation in question, according to information sent by the national authorities during the infringement procedure, is to ensure that the State budget has the opportunity of recovering sums paid to consumers and so of preserving the State's financial interests instead of ensuring greater protection for the purchasers of package travel.
5. Although the Commission understands that Italy has an interest in ensuring the proper balanced running of the Guarantee Fund, making it easier for the latter to bring an action for indemnity against the tour operator, it takes the view that such a measure, by imposing an absolute limit on the presentation of the application for action by the Fund, introduces a condition capable of depriving the consumer of the rights guaranteed by Directive 90/314.
6. It is true, as the Italian authorities maintain, that consumers may make their application for action by the Fund as soon as they are aware of circumstances that threaten to prevent the performance of the contract. However, in order to avail themselves of that opportunity they must be aware of those circumstances. Excluding those cases in which the travel organiser's insolvency is obvious, by reason of a declaration of insolvency, in most cases consumers do not know the exact financial situation of the operator. It is therefore reasonable that they should in the first place turn to the operator to obtain repayment of sums paid, sending it a letter, perhaps a reminder, and finally an order to pay. In that manner there is a risk that the period of three months fixed by Article 5 of Ministerial Decree No 349/1999 may already have long elapsed when the application is made for action by the Fund, with the result that consumers are deprived of the right to obtain the refund of the sums paid.

7. To remedy the infringement alleged in these proceedings, the Italian authorities declared, first, that they wished to extend from three to 12 months the period in which the application may be made and then that they intended to abolish it.
8. In addition, they published in the Official Gazette of the Italian Republic a communication informing potentially interested persons that, pending abolition of the period in question, for the purposes of ensuring consumer protection applications may be made to the Guarantee Fund at any time.
9. The Commission considers that such measures, while a laudable attempt to make good the consequences of the infringement complained of, do not do enough to eliminate the risk that purchasers of package travel may be deprived of their right to effective protection in the event of the organiser's insolvency.
10. For the purpose of fully ensuring legal certainty, so enabling individuals to know the full extent of their rights and to rely on them before the courts, the provisions of a directive must be given effect with unquestionable force, precision and clarity and not by means of mere administrative practices which, by their nature, are alterable at will by the national authorities.
11. The coexistence, in the Italian legal order, of a provision, never formally repealed, prescribing a period of three months beyond which the introduction of an application for the Fund to take action will not be valid, on the one hand, and an administrative communication inviting the public to take no notice of that time-limit, on the other, clearly creates a situation of uncertainty for purchasers of package travel.

⁽¹⁾ Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours (OJ 1990 L 158, p. 59).

Reference for a preliminary ruling from the Simvoulío tis Epikratias (Greece) lodged on 2 April 2009 — Enosi Efopliston Aktoploias, ANEK, Minoikes Grammes, N.E. Lesvou and Blue Star Ferries v Ipourgós Emporikis Naftilias and Ipourgós Aigaiou

(Case C-122/09)

(2009/C 141/52)

Language of the case: Greek

Referring court

Simvoulío tis Epikratias

Parties to the main proceedings

Claimants: Enosi Efopliston Aktoploias, ANEK, Minoikes Grammes, N.E. Lesvou and Blue Star Ferries

Defendants: Ipourgós Emporikis Naftilias and Ipourgós Aigaiou

Questions referred

- (a) In accordance with the second paragraph of Article 10 and the second paragraph of Article 249 of the Treaty estab-

lishing the European Community: (i) was the Greek legislature obliged, for the duration of the temporary exemption until 1 January 2004 from the implementation of Council Regulation (EEC) No 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage) (OJ 1992 L 364, p. 7) which was introduced by Article 6(3) of that regulation and relates to Greece, to refrain from adopting provisions liable seriously to compromise the full and effective application of the regulation in Greece from 1 January 2004 onwards; (ii) are individuals entitled to rely on that regulation to contest the validity of provisions adopted by the Greek legislature before 1 January 2004 in the event that those national provisions seriously compromise the full and effective application of the regulation in Greece from 1 January 2004?

- (b) If the first question referred for a preliminary ruling is answered in the affirmative, is the full application from 1 January 2004 of Regulation No 3577/92 in Greece seriously compromised by reason of the adoption by the Greek legislature, before 1 January 2004, of provisions which are exhaustive and permanent in nature, do not lay down that they cease to have force from 1 January 2004 and are contrary to provisions of that regulation?

- (c) If the answers to the first two questions referred for a preliminary ruling are in the affirmative, do Articles 1, 2, and 4 of Regulation (EEC) No 3577/92 permit the adoption of national rules under which shipowners may provide maritime cabotage services only on specific operational routes determined each year by a national authority competent for that purpose and after first obtaining an administrative licence granted under an authorisation scheme having the following characteristics: (i) it relates to all operational routes, without exception, which serve islands, and (ii) the competent national authorities may approve an application submitted for the grant of a licence to operate a service by unilaterally amending, in the exercise of their discretion and without prior definition by a rule of law of the criteria applied, the elements of the application which relate to the frequency and the period of interruption of the service and to the fare tariff?

- (d) If the answers to the first two questions referred for a preliminary ruling are in the affirmative, is a restriction on the freedom to provide services that is impermissible for the purposes of Article 49 of the Treaty establishing the European Community introduced by national legislation which provides that a shipowner to whom the administration has granted a licence to operate a ship on a specified route (either after his application in that regard has been approved as it stands, or after it has been approved with amendments to certain of its elements, which he accepts) is in principle obliged to work the particular operational route continuously for the entire duration of the annual operational period, and that to secure compliance with this obligation imposed on him he must deposit, before the operational service commences, a letter of guarantee all or part of whose amount will be forfeited if the obligation in question is not complied with or not complied with precisely?