

JUDGMENT OF THE COURT (Third Chamber)

25 March 2010\*

In Case C-392/08,

ACTION under Article 226 EC for failure to fulfil obligations, brought on 9 September 2008,

**European Commission**, represented by S. Pardo Quintillán and A. Sipos, acting as Agents, with an address for service in Luxembourg,

applicant,

v

**Kingdom of Spain**, represented by B. Plaza Cruz, acting as Agent, with an address for service in Luxembourg,

defendant,

\* Language of the case: Spanish.

THE COURT (Third Chamber),

composed of K. Lenaerts, President of the Chamber, R. Silva de Lapuerta, E. Juhász, T. von Danwitz and D. Šváby (Rapporteur), Judges,

Advocate General: J. Kokott,  
Registrar: R. Grass,

having regard to the written procedure,

after hearing the Opinion of the Advocate General at the sitting on 10 December 2009,

gives the following

### **Judgment**

- <sup>1</sup> By its application, the Commission of the European Communities claims that the Court should declare that, by failing to draw up external emergency plans for all establishments to which Article 9 of Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances (OJ 1997 L 10, p. 13) applies, the Kingdom of Spain has failed to fulfil its obligations under Article 11(1)(c) of that directive.

## Legal framework

2 In accordance with Article 1 thereof, Directive 96/82 is aimed at the prevention of major accidents which involve dangerous substances, and the limitation of their consequences for man and the environment, with a view to ensuring high levels of protection throughout the European Community in a consistent and effective manner.

3 Article 11 of Directive 96/82 provides:

‘1. Member States shall ensure that, for all establishments to which Article 9 applies:

(a) the operator draws up an internal emergency plan for the measures to be taken inside the establishment:

— for new establishments, prior to commencing operation,

— for existing establishments not previously covered by [Council] Directive 82/501/EEC [of 24 June 1982 on the major-accident hazards of certain industrial activities (OJ 1982 L 230, p. 1)], three years from the date laid down in Article 24(1),

— for other establishments, two years from the date laid down in Article 24(1);

(b) the operator supplies to the competent authorities, to enable the latter to draw up external emergency plans, the necessary information within the following periods of time:

— for new establishments, prior to the start of operation,

— for existing establishments not previously covered by Directive 82/501/EEC, three years from the date laid down in Article 24(1),

— for other establishments, two years from the date laid down in Article 24(1);

(c) the authorities designated for that purpose by the Member State draw up an external emergency plan for the measures to be taken outside the establishment.

2. The emergency plans must be established with the objectives of:

— containing and controlling incidents so as to minimise the effects, and to limit damage to man, the environment and property,

- implementing the measures necessary to protect man and the environment from the effects of major accidents,
  
- communicating the necessary information to the public and to the services or authorities concerned in the area,
  
- providing for the restoration and clean-up of the environment following a major accident.

Emergency plans shall contain the information set out in Annex IV.

...

4. Member States shall ensure that internal and external emergency plans are reviewed, tested, and where necessary revised and updated by the operators and designated authorities at suitable intervals of no longer than three years. The review shall take into account changes occurring in the establishments concerned or within the emergency services concerned, new technical knowledge, and knowledge concerning the response to major accidents.

...'

- 4 Under Articles 24 and 25 of Directive 96/82, Member States were to bring into force the provisions necessary to comply with the directive not later than 3 February 1999.

### **Pre-litigation procedure**

- 5 Having concluded that Article 11(1)(c) of Directive 96/82 had not been complied with by the Kingdom of Spain, on 23 March 2007 the Commission initiated the infringement procedure under Article 226 EC, formally calling on that Member State to submit its observations in that respect.
- 6 By letters of 12 and 25 June 2007, the Spanish authorities replied to the letter of formal notice from the Commission, informing it of the number of establishments to which the provisions of Directive 96/82 apply and the number of those establishments with an external emergency plan.
- 7 Observing, in the light of that information, that there were still establishments without an external emergency plan, the Commission issued a reasoned opinion on 23 October 2007, calling on the Kingdom of Spain to take the necessary measures to comply with the reasoned opinion within two months of its receipt.
- 8 By letter of 10 January 2008, the Spanish authorities replied to that opinion, stating that, of the establishments concerned, 238 in 2005 and 280 in December 2007, 186 had an approved external emergency plan. They also pointed out that, although

Article 11(1)(b) of Directive 96/82 lays down periods of time within which the operator of an establishment concerned must supply the necessary information to the competent authorities, it does not, by contrast, fix a period for external emergency plans to be drawn up by them.

- 9 Taking the view that the situation remained unsatisfactory, the Commission brought the present action.

### **The action**

- 10 The Kingdom of Spain concedes that, at the end of the period laid down in the reasoned opinion, that is to say, 23 December 2007, 94 establishments on its territory that are covered by Article 9 of Directive 96/82 did not have an external emergency plan.
- 11 However, it submits that Article 11(1)(c) of Directive 96/82 does not prescribe a period within which the competent authorities are to draw up external emergency plans and that they cannot be subject to the same period as that provided for under Article 11(1)(a) of that directive for the operators of the establishments concerned to draw up internal emergency plans. Alternatively, it submits that the failure to supply the necessary information by those operators, required under Article 11(1)(b) of Directive 96/82, would, in any event, justify the lack of an external emergency plan for some of the establishments concerned. Lastly, it points out that seven external emergency plans were drawn up in the course of 2008.

- 12 First of all, it should be observed that the provisions of Article 11 of Directive 96/82, on establishments where dangerous substances are present in significant quantities, form a set of rules designed to ensure a coherent and effective system for limiting the consequences of major accidents.
- 13 The drawing-up of external emergency plans therefore forms part of a several-stage process involving, first, the drawing-up of internal emergency plans by the operators of the establishments concerned and the supply of the necessary information to the competent authorities, second, the drawing-up of external emergency plans by those authorities and, third, the review and, where necessary, the revision and updating of the internal and external emergency plans by the operators and the competent authorities respectively.
- 14 Admittedly, Article 11(1) and (4) of Directive 96/82 lays down time-limits only for the first and third of those stages. However, the absence in that provision of a specific time-limit for drawing up external emergency plans does not in itself mean that there is no period within which the Member States are required to comply with the obligation to draw up those plans.
- 15 The obligation would be rendered meaningless, and the system of protection established by Article 11 of Directive 96/82 rendered redundant, if the production of those plans by the competent authorities could remain outstanding indefinitely.
- 16 In that connection, it must be recalled that, as is apparent from Article 11(2) of Directive 96/82, the internal and external emergency plans are to be established, in particular, with the objectives of containing and controlling incidents so as to minimise the effects, and to limit damage to man, the environment and property, and of implementing the measures necessary to protect man and the environment from the effects of major accidents.



- 17 In addition, as is apparent in particular from Annex IV to Directive 96/82, on information to be included in the emergency plans, the internal and external emergency plans are interdependent, and their coordination ensures that the mechanism laid down in Article 11 of Directive 96/82 is effective.
- 18 It follows that the competent national authorities must put to effective use without delay the information supplied by the operators of the establishments concerned to enable external emergency plans to be drawn up.
- 19 That is particularly true in the case of some of the information required, whose short period of validity can render an emergency plan based on such information ineffective. For that reason, moreover, the Member States are to ensure that, in accordance with Article 11(4) of Directive 96/82, internal and external emergency plans are reviewed, and where necessary revised and updated at suitable intervals of no longer than three years.
- 20 Consequently, the period for complying with the obligation under Article 11(1)(c) of that directive may, as a rule, start to run only from when the information is supplied.
- 21 In the light of those considerations, it must be concluded that the competent authorities are required to draw up the external emergency plans under Article 11 of Directive 96/82 within a period which is not likely to jeopardise the effectiveness of the provisions of that article, while taking account of the time needed to finalise those plans, and thus within a reasonable period from when the necessary information is supplied by the operators.

- 22 In the present case, it is not in dispute that the required external emergency plans have not, for many years, been available for all the establishments covered by the Directive.
- 23 In that connection, it must be recalled that Article 11(1)(b) of Directive 96/82 prescribes several periods according to the different categories of establishment. The fact remains that the operators of the establishments covered by that provision were to have supplied the competent authorities with the information necessary for drawing up the external emergency plans either before those establishments began operating, or by no later than 3 February 2002, that is to say, three years after the period for transposing the directive expired.
- 24 The time elapsed between that date and the date of expiry of the period laid down in the reasoned opinion, that is to say, 23 December 2007, is manifestly unreasonable, so that, in the present case, the failure to draw up external emergency plans for all establishments concerned by the Directive cannot be justified.
- 25 Moreover, although, under Article 11(1) of Directive 96/82, the obligation to draw up external emergency plans is linked to that requiring the operators of the establishments concerned to communicate the necessary information to the competent authorities to enable them to draw up those plans, the fact remains that that provision requires the Member States to ensure that the operators supply the information necessary within the periods prescribed. In those circumstances, as the Advocate General has noted in point 20 of her Opinion, the fact that in some cases the competent authorities do not have the information necessary within those periods cannot justify the absence of external emergency plans.
- 26 As regards the drawing-up of a number of external emergency plans during the year 2008, it should be pointed out that, in accordance with settled case-law, 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, *inter alia*, Case C-456/05 *Commission v Germany* [2007] ECR I-10517, paragraph 15).

- 27 In those circumstances, the Commission's action must be held to be well founded.
- 28 It must therefore be held that, by failing to draw up external emergency plans for all establishments to which Article 9 of Directive 96/82 applies, the Kingdom of Spain has failed to fulfil its obligations under Article 11(1)(c) thereof.

### Costs

- 29 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 Kingdom of Spain has been unsuccessful, the latter must be ordered to pay the costs.

On those grounds, the Court (Third Chamber) hereby:

- 1. Declares that, by failing to draw up external emergency plans for all establishments to which Article 9 of Directive 96/82/EC of 9 December 1996 on the control of major accident hazards involving dangerous substances applies,**

**the Kingdom of Spain has failed to fulfil its obligations under Article 11(1)(c) thereof;**

**2. Orders the Kingdom of Spain to pay the costs.**

[Signatures]