Form of order sought

— declare that, by failing to draw up external emergency plans for all the establishments for which those plans are required, the Italian Republic has failed to fulfil its obligations under Article 11(1)(c) of Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances ([1]), as amended by Directive 2003/105/EC ([2]);

— order the Italian Republic to pay the costs.

Pleas in law and main arguments

The Seveso II directive pursues the objective of preventing major-accident hazards involving dangerous substances and limiting their consequences for man and the environment. It is clear that the drawing up of external emergency plans is a fundamental provision of that directive: it ensures that in the case of accidents urgent measures are adopted to limit their consequences.

Article 11 applies, by virtue of the references made in Article 9 and Article 2 of the directive, to all establishments where dangerous substances are present in quantities equal to or in excess of the quantities listed in Annex I, Parts 1 and 2, column 3.

The Italian authorities confirm with data from their own sources that not all the establishments which ought to have external emergency plans have actually been provided with such plans.

([1]) OJ L 10 of 14.1.1997, p. 13.
([2]) OJ L 345 of 31.12.2003, p. 97.

Reference for a preliminary ruling from the Østre Landsret (Denmark) lodged on 28 May 2008 — Dansk Transport og Logistik v Skatteministeriet

(Case C-230/08)

(2008/C 197/24)

Language of the case: Danish

Referring court

Østre Landsret

Parties to the main proceedings

Applicant: Dansk Transport og Logistik

Defendant: Skatteministeriet (Danish Ministry of Taxation)

Questions referred

1. Is the expression 'seized … and simultaneously or subsequently confiscated' contained in Article 233d of the Customs Code ([1]) to be interpreted as meaning that the provision covers situations where goods detained under the first sentence of Paragraph 83(1) of the Customs Law on unlawful importation are simultaneously or subsequently destroyed by the customs authorities without their having left the authorities' possession?

2. Is the System Directive ([2]) to be interpreted as meaning that unlawfully imported goods which are seized on importation or simultaneously or subsequently destroyed are to be deemed to have been placed under 'a suspension arrangement' with the effect that the excise duty is not incurred or is extinguished (see the first subparagraph of Article 5(2) and Article 6(1)(c) of the System Directive, read in conjunction with Articles 84(1)(a) and 98 of the Customs Code, and Article 876a of the implementing provisions ([3]))? Is the answer affected by whether or not a customs debt incurred on such unlawful importation is extinguished under Article 233d of the Customs Code?

3. Is the Sixth Directive ([4]) to be interpreted as meaning that unlawfully imported goods seized on importation and simultaneously or subsequently destroyed by the authorities are to be deemed to have been placed under a 'customs warehousing procedure' with the effect that the VAT debt is not incurred or is extinguished (See Articles 7(3), 10(3) and 16(1)(B)(c) of the Sixth Directive and Article 876a of the implementing provisions)? Is the answer affected by whether or not a customs debt incurred on such unlawful importation is extinguished under Article 233d of the Customs Code?

4. Are the Customs Code, the implementing provisions and the Sixth Directive to be interpreted as meaning that the customs authorities in the Member State where unlawful importation of goods during a TIR operation is detected are competent to charge customs duty, excise duty and VAT on the operation where the authorities in another Member State, where the unlawful importation into the Community occurred, did not detect the irregularity and consequently did not charge customs duty, excise duty and VAT (see Article 215 of the Customs Code, read in conjunction with

Article 217 thereof, Articles 454(2) and (3) of the implementing provisions then in force, and Article 7 of the Sixth Directive)?

(1) Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ L 302, 19.10.1992, p. 1).
(2) Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products (OJ L 76, 23.3.1992, p. 1).
(3) Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ L 253, 11.10.1993, p. 1).
(4) Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ L 145, 13.6.1977, p. 1).

Action brought on 2 June 2008 — Commission of the European Communities v French Republic

(Case C-241/08)

(2008/C 197/25)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: D. Recchia and J.-B. Laignelot, Agents)

Defendant: French Republic

Form of order sought

— Declare that, by not adopting the laws or regulations necessary to transpose correctly Article 6(2) and (3) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (1), the French Republic has failed to fulfil its obligations under that directive;

— Order the French Republic to bear the costs.

Pleas in law and main arguments

The Commission refers to two grounds for complaint in support of its action, alleging the infringement of Article 6(2) and 6(3) of Directive 92/43/EEC ('the Habitats Directive'), respectively.

By its first ground for complaint, the applicant insists on the clarity of Article 6(2) of the Habitats Directive, which prohibits any deterioration of protected habitats. The introduction into national law of the concept of 'significant effects' in order to limit the application of the abovementioned provision to certain human activities, is therefore not justified. Equally, the national legislature may not assert in a peremptory fashion that certain activities such as hunting or fishing 'do not cause a disturbance' to 'Natura 2000' sites, even if they are carried out for a temporary period or under the national legislation in force.

By its second ground for complaint, the Commission points out first that Article 6(3) of the Habitats Directive requires that any plan or project not directly connected with or necessary to the management of the site is to be subject to appropriate assessment, except in strictly defined cases. The defendant's legislation is problematic in the light of Community law since it systematically exempts from the procedure for assessment of the environmental implications the works, projects or schemes provided for under 'Natura 2000' contracts.

The Commission points out second that, under French law, there are projects which do not require authorisation or administrative approval and which therefore avoid the assessment procedure. Yet some of these projects have significant effects on the 'Natura 2000' sites, having regard to the objectives of conservation of species.

According to the Commission, national legislation should finally impose on applicants a clear obligation to provide for alternative solutions where there are negative assessments of the implications of a project or management plan for a site.

(1) OJ 1992 L 206, p. 7.

Action brought on 12 June 2008 — Commission of the European Communities v Republic of Malta

(Case C-252/08)

(2008/C 197/26)

Language of the case: English

Parties

Applicant: Commission of the European Communities (represented by: L. Flynn and A. Alcover San Pedro, Agents)

Defendant: Republic of Malta