JUDGMENT OF THE COURT
27 November 1990 *

In Case C-39/88,

Commission of the European Communities, represented by P. Oliver, a member of its Legal Department, acting as Agent, with an address for service in Luxembourg at the office of Guido Berardis, also a member of the Commission's Legal Department, Wagner Centre, Kirchberg,

applicant,

v

Ireland, represented by L. J. Dockery, Chief State Solicitor, acting as Agent, with an address for service in Luxembourg at the Irish Embassy, 28 route d'Arlon,

defendant,

APPLICATION for a declaration that, by omitting to notify certain prices relating to the market in fish, Ireland has failed to fulfil its obligations under Article 11 of Council Regulation (EEC) No 3796/81 on the common organization of the market in fishery products and Articles 1 and 2 of Commission Regulation (EEC) No 3598/83 on the notification of prices and fixing the list of representative wholesale markets and ports for fishery products,

THE COURT,

composed of: O. Due, President, G. F. Mancini, T. F. O'Higgins, G. C. Rodríguez Iglesias and M. Díez de Velasco (Presidents of Chambers), C. N. Kakouris, R. Joliet, F. A. Schockweiler and P. J. G. Kapteyn, Judges,

Advocate General: J. Mischo
Registrar: H. A. Rühl, Principal Administrator,

* Language of the case: English.

having regard to the Report for the Hearing and further to the hearing on 19 September 1990,

after hearing the Opinion of the Advocate General delivered at the sitting on 9 October 1990,

gives the following

Judgment

1 By an application lodged at the Court Registry on 3 February 1988, the Commission of the European Communities brought an action under Article 169 of the EEC Treaty for a declaration that Ireland, through its omission to notify certain prices relating to the market in fish, had failed to fulfil its obligations under Article 11(1) and (3) of Council Regulation (EEC) No 3796/81 of 29 December 1981 on the common organization of the market in fishery products (Official Journal 1981 L 379, p. 1) and Articles 1 and 2 of Commission Regulation (EEC) No 3598/83 of 20 December 1983 on the notification of prices and fixing the list of representative wholesale markets and ports for fishery products (Official Journal 1983 L 357, p. 17).

2 The Commission has made two complaints against Ireland.

3 The first of those complaints relates to Article 11(1) of Regulation No 3796/81 and Article 1 of Regulation No 3598/83. With a view to fixing the guide price for the products listed in Annex I(A) and (D), Article 11(1) of Regulation No 3796/81 requires Member States to notify the Commission of the prices recorded for those products on representative wholesale markets or in representative ports. Article 1 of Regulation No 3598/83 stipulates that those notifications of prices shall contain, for each of the products covered and for each representative market and port, the average price on the market day, the total quantities landed and marketed, and the total quantity withdrawn from the market. Those notifications

must be sent to the Commission by telex on the 10th and 25th days of each month, and each market day if there is a threat of crisis or market disturbance.

4 As the implementing regulation did not mention any representative Irish port for the market in shrimps, with which Annex I(D) to Regulation No 3796/81 is concerned, the present action, in so far as it relates to Article 11(1) of that regulation, must be limited to the products covered by Annex I(A).

5 The second complaint made by the Commission concerns Article 11(3) of Regulation No 3796/81 and Article 2 of Regulation No 3598/83. Member States are required under Article 11(3) of Regulation No 3796/81 to notify the Commission every quarter of wholesale prices for products listed in Annex IV(B) frozen on board and frozen on land. The Commission, in answer to a question put to it by the Court, explained that notification of those prices was necessary to enable it to establish the reference price which, in accordance with Article 21 of Regulation No 3796/81, served to obviate disturbances which might be caused by products imported from non-member countries. Under Article 2 of Regulation No 3598/83, that information must be sent by telex not later than the end of the sixth week following the quarter concerned.

6 It should be pointed out immediately that during the written procedure the Commission first limited the scope of the second complaint to products frozen on board. It appeared to the Commission that the gathering of information concerning products frozen on land gave rise to difficulties in the majority of Member States and that it was not absolutely vital for the proper functioning of the common organization of that market. After the Irish Government had pointed out that no wholesale market existed in Ireland for products frozen on board, the Commission also abandoned, during the hearing, the second heading of its complaint relating to Article 11(3) of Regulation No 3796/81, with the result that a decision has now to be reached only on the first complaint concerning Article 11(1) of that regulation.

7 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the course of the procedure and the submissions and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

8 Ireland acknowledges that it failed to comply with the obligation arising under Article 11(1) of Regulation No 3796/81. However, it points out that it has always provided the information required on an annual basis and that this rate of frequency should be adequate to enable the Commission to fix annually the guide price in accordance with Article 10 of the abovementioned regulation. The Irish Government stresses in this regard that Commission Regulation (EEC) No 1106/90 of 18 April 1990 on the communication of information for the purposes of the common organization of the market in fishery products (Official Journal 1990 L 111, p. 50), which is intended to replace Regulation No 3598/83 as from 1 January 1991, has appreciably reduced the obligations imposed on Member States. Under that new regulation, Member States are in fact required to notify only the average monthly price of the products listed in Annex I(A).

9 In this connection, it should first be pointed out that the scope and binding nature of a regulation cannot be affected, during the period of its validity, by the adoption of a subsequent regulation which has the same objectives and which imposes less stringent requirements on Member States.

10 Ireland also submits that, as it has already pointed out on several occasions during the discussions on the regulations in question, it is not possible for it to deploy its limited number of fisheries inspectors at the representative ports for the purpose of gathering the pricing information in question and submitting it to the Commission on a bi-monthly basis. Those inspectors are required to monitor some 900 ports and landing places in addition to the representative ports.

11 That submission cannot be accepted. It is well established in the case-law of the Court (see, for instance, the judgment in Case 254/83 *Commission* v *Italy* [1984] ECR 3395) that a Member State may not plead internal circumstances in order to

justify a failure to comply with obligations and time-limits resulting from Community law. Moreover, it has been held on several occasions (see the judgments in Case 39/72 *Commission* v *Italy* [1973] ECR 101 and in Case 128/78 *Commission* v *United Kingdom* [1979] ECR 419) that practical difficulties which appear at the stage when a Community measure is put into effect cannot permit a Member State unilaterally to opt out of fulfilling its obligations.

12 In those circumstances, it must be held that by its omission to notify certain prices relating to the market in fish, Ireland has failed to fulfil its obligations under Article 11(1) of Regulation No 3796/81 and Article 1 of Regulation No 3598/83.

Costs

13 Article 69(2) of the Rules of Procedure provides that the unsuccessful party is to be ordered to pay the costs. However, under the first subparagraph of Article 69(3), the Court may order that the parties bear their own costs in whole or in part in cases where the circumstances are exceptional. As the Commission abandoned one of its two submissions during the procedure, it is appropriate to apply this provision and to rule that each party shall bear its own costs.

On those grounds,

THE COURT

hereby:

(1) Declares that by omitting to notify certain prices relating to the market in fish, Ireland has failed to fulfil its obligations under Article 11(1) of Council Regulation (EEC) No 3796/81 of 29 December 1981 on the common organization of the market in fishery products and under Article 1 of Commission Regulation (EEC) No 3598/83 of 20 December 1983 on the notification of prices and fixing the list of representative wholesale markets and ports for fishery products;

(2) Dismisses the remainder of the application;

(3) Orders each party to bear its own costs.

Due Mancini O'Higgins Rodrígues Iglesias

Díez de Velasco Kakouris Joliet Schockweiler Kapteyn

Delivered in open court in Luxembourg on 27 November 1990.

J.-G. Giraud
Registrar

O. Due
President