Case C-77/91

Commission of the European Communities
v
Italian Republic

(Failure of a Member State to fulfil its obligations — Failure to transpose directives)

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Summary of the Judgment

Member States — Obligations — Implementation of directives — Failure to fulfil obligations not disputed
(EEC Treaty, Art. 169)

REPORT OF THE JUDGE-RAPPORTEUR
in Case C-77/91 *

I — Facts of the case

1. The objective of Council Directive 81/851/EEC of 28 September 1981 on the approximation of the laws of the Member States relating to veterinary medicinal products (Official Journal 1981 L 317, p. 1) is to remove hindrances to the establishment and functioning of the common market resulting from differences in national provisions relating to the production and marketing of veterinary medicinal products between Member States.

2. The objective of Council Directive 81/852/EEC of 28 September 1981 on the approximation of the laws of the Member States relating to analytical, pharmaco-toxi-

* Language of the case: Italian.

cological and clinical standards and protocols in respect of the testing of veterinary medicinal products (Official Journal 1981 L 317, p. 16) is to continue the approximation of laws begun by Directive 81/851, by applying the principles laid down in that directive to the conditions under which tests and trials on veterinary medicinal products are performed.

3. Under Article 51 of Directive 81/851 and Article 3 of Directive 81/852 Member States are to bring into force the provisions necessary to comply with the directives within 24 months and forthwith inform the Commission thereof.

4. In its letter of formal notice of 19 April 1989 the Commission initiated the procedure laid down in Article 169 of the EEC Treaty for obtaining a declaration that the Italian Republic had failed to fulfil its obligations, in reliance on the fact that the said directives had not been implemented in their entirety in the prescribed form and time-limits.

In that letter of formal notice particular reference was made to the following:

(a) the extent to which the Italian Republic was implementing numerous provisions of the directives simply by way of administrative circular;

(b) the national rules applicable to pre-prepared veterinary pharmaceutical products and medicinal premixes for feedingstuffs;

(c) the extent to which the Italian authorities were applying Article 17 of Directive 81/851 concerning approval of applications for marketing authorization in the various Member States.

5. By telex of 26 June 1989, the Italian authorities indicated to the Commission that the provisions transposing the said directives had been incorporated in draft delegated legislation which, after approval by the Council of Ministers, had been submitted to the national parliamentary institutions for examination.

6. Since it received no notification from the Italian Republic of any measures adopted, on 26 June 1990 the Commission issued a reasoned opinion with which the Italian Republic was to the conform within a period of two months.

7. No reply to the reasoned opinion was received from the Italian authorities.

II — Written procedure and forms of order sought by the parties

1. By an application lodged at the Court Registry on 26 February 1991, the Commission brought this action under the second paragraph of Article 169 of the Treaty.

The written procedure followed the normal course. The Commission, however, waived its right to lodge a reply.

2. Acting on a report from the Judge-Rapporteur, the Court, with the consent of the parties, decided on the basis of Article 44a of the Rules of Procedure that there would be no oral part.

3. The *Commission* claims that the Court should:

(i) declare that, by failing to adopt within the prescribed period all the provisions necessary to comply with Council Directive 81/851/EEC of 28 September 1981 on the approximation of the laws of the Member States relating to veterinary medicinal products and Council Directive 81/852/EEC of 28 September 1981 on the approximation of the laws of the Member States relating to analytical, pharmaco-toxicological and clinical standards and protocols in respect of the testing of veterinary medicinal products, the Italian Republic has failed to fulfil its obligations under the Treaty establishing the European Economic Community;

(ii) order the Italian Republic to pay the costs.

4. The *Italian Republic* did not seek any form of order in its defence. It confined itself to indicating that the failure to fulfil its obligations alleged by the Commission would soon be remedied.

III — Pleas in law and arguments of the parties

1. The *Commission*, referring to Articles 189 and 5 of the Treaty and to Article 51 of Directive 81/851 and Article 3 of Directive 81/852, maintains that under those provisions the Italian Republic should have adopted the measures necessary to transpose the said directives within the prescribed periods and forthwith informed the Commission thereof.

According to the Court's consistent case-law, the Italian Republic may not plead provisions, practices or situations in its internal legal system to justify a failure to fulfil its obligations.

2. The *Italian Republic* acknowledges that Directives 81/851 and 81/852 have not been transposed into its internal legal system.

It states that a legislative decree will soon be adopted on the basis of a Law of 1990 conferring on the Government the powers necessary to implement directives and that this will enable the failure alleged by the Commission to be remedied.

F. Grévisse
Judge-Rapporteur