JUDGMENT OF THE COURT
18 May 1994 *

In Case C-303/93,

Commission of the European Communities, represented by Antonio Aresu, of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of Georgios Kremlis, of its Legal Service, Wagner Centre, Kirchberg,

applicant,

v

Italian Republic, represented by Professor Luigi Ferrari Bravo, Head of the Contentious Diplomatic Affairs Department of the Ministry of Foreign Affairs, acting as Agent, assisted by Ivo M. Braguglia, Avvocato dello Stato, with an address for service in Luxembourg at the Italian Embassy, 5 Rue Marie Adélaïde,

defendant,

APPLICATION for a declaration that, by failing to adopt and publish the provisions laid down by law, regulation and administrative action necessary to comply with Council Directive 90/486/EEC of 17 September 1990 amending Directive 84/529/EEC on the approximation of the laws of the Member States relating to electrically-operated lifts (OJ 1990 L 270, p. 21) and to inform the Commission forthwith, the Italian Republic has failed to fulfil its obligations under the first paragraph of Article 5 and the third paragraph of Article 189 of the EEC Treaty, and under Article 2(1) of Directive 90/486,

* Language of the case: Italian.

THE COURT,

composed of: O. Due, President, G. F. Mancini, D. A. O. Edward (Presidents of Chambers), R. Joliet, F. A. Schockweiler, G. C. Rodríguez Iglesias (Rapporteur), F. Grévisse, M. Zuleeg and J. Murray, Judges,

Advocate General: F. G. Jacobs,
Registrar: L. Hewlett, Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 13 April 1994,

after hearing the Opinion of the Advocate General at the sitting on 13 April 1994,

gives the following

Judgment

1 By application lodged at the Court Registry on 28 May 1993, the Commission of the European Communities brought an action under Article 169 of the EEC Treaty for a declaration that, by failing to adopt and publish the provisions laid down by law, regulation and administrative action necessary to comply with Council Directive 90/486/EEC of 17 December 1990 amending Directive 84/529/EEC on the approximation of the laws of the Member States relating to electrically-operated lifts (OJ 1990 L 270, p. 21) ('the directive') and to inform the Commission forthwith, the Italian Republic has failed to fulfil its obligations under Article 5 and 189 of the Treaty and Article 2(1) of the directive.

2 Article 2(1) of the directive provides that 'Member States shall adopt and publish the laws, regulations and administrative provisions necessary in order to comply with this directive within the six months following its notification. They shall forthwith inform the Commission thereof.' Since the directive was notified on 24 September 1990, that period expired on 24 March 1991.

3 Since it had received no information from the Italian Government concerning transposition of the directive into national law, the Commission sent it a formal notice dated 28 June 1991. Since there was no reply to the notice, the Commission sent a reasoned opinion on 9 March 1992 requesting the Italian Government to comply with the provisions of the directive within a period of two months. The Italian Government did not respond to that reasoned opinion. The Commission therefore brought the present action.

4 The Italian Government does not deny that the directive was not transposed within the time-limit. At the hearing, however, it produced a decree adopted for the purpose of implementing the directive and to be published shortly in the Official Journal of the Italian Republic.

5 Since there has been no transposition within the period prescribed in the reasoned opinion, there must be a declaration of failure to fulfil obligations in that respect, as claimed by the Commission.

6 On the other hand, contrary to what the Commission maintained, the Court does not have to take account of the failure to publish and provide information concerning the laws, regulations and administrative provisions necessary in order to comply with the directive, since the Italian Republic had not adopted those provisions within the period prescribed in the reasoned opinion.

7 Furthermore, since the Italian Republic has failed to fulfil its specific obligations under the directive, it serves no purpose to consider the question whether it has thereby also failed to fulfil its obligations under Article 5 of the Treaty.

8 It must therefore be held that, by failing to adopt within the period laid down all the laws, regulations and administrative provisions necessary in order to comply with Directive 90/486, the Italian Republic has failed to fulfil its obligations under the Treaty. The remainder of the application must be dismissed.

Costs

9 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the Italian Republic has been unsuccessful, it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

1. Declares that, by failing to adopt within the period prescribed all the laws, regulations and administrative provisions necessary in order to comply with Council Directive 90/486/EEC of 17 September 1990 amending Directive 84/529/EEC on the approximation of the laws of the Member States relating to electrically-operated lifts, the Italian Republic has failed to fulfil its obligations under the EEC Treaty;

2. Dismisses the remainder of the application;

3. Orders the Italian Republic to pay the costs.

Due Mancini Edward Joliet

Schockweiler Rodríguez Iglesias Grévisse

Zuleeg Murray

Delivered in open court in Luxembourg on 18 May 1994.

R. Grass
Registrar

O. Due
President