JUDGMENT OF THE COURT (Fifth Chamber)
12 February 1998 *

In Case C-139/97,

Commission of the European Communities, represented by Paolo Stancanelli, of its Legal Service, acting as Agent, assisted by Massimo Merola, of the Rome Bar, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, also of the Commission's Legal Service, Wagner Centre, Kirchberg,

applicant,

v

Italian Republic, represented by Umberto Leanza, Head of the Legal Department in the Ministry of Foreign Affairs, acting as Agent, assisted by Danilo Del Gaizo, 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 the laws, regulations and administrative provisions necessary to comply with Commission Directive 94/2/EC of 21 January 1994 implementing Council Directive 92/75/EEC with regard to energy labelling of household electric refrigerators, freezers and their combinations (OJ 1994 L 45, p. 1), or at least by failing to notify those provisions to the Commission, the Italian Republic has failed to fulfil its obligations under that directive,

* Language of the case: Italian.

THE COURT (Fifth Chamber),

composed of: C. Gulmann, President of the Chamber, D. A. O. Edward, J.-P. Puissochet, P. Jann (Rapporteur) and L. Sevón, Judges,

Advocate General: S. Alber,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 11 December 1997,

gives the following

Judgment

1 By application lodged at the Court Registry on 14 April 1997, the Commission of the European Communities brought an action under Article 169 of the EC Treaty in which it sought a declaration that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Commission Directive 94/2/EC of 21 January 1994 implementing Council Directive 92/75/EEC with regard to energy labelling of household electric refrigerators, freezers and their combinations (OJ 1994 L 45, p. 1), or at least by failing to notify those measures to the Commission, the Italian Republic has failed to fulfil its obligations under that directive.

2 Member States were required under Article 4 of Directive 94/2 to adopt and publish the provisions necessary to comply with it by 31 December 1994 and forthwith to inform the Commission thereof.

3 Having received no notification of the measures taken to transpose Directive 94/2 into the Italian legal system, and in the absence of any other information from which it could conclude that the Italian Republic had met that obligation, the Commission decided to initiate against that State the procedure under Article 169 of the Treaty for a declaration that it had failed to fulfil its obligations.

4 By letter of 16 May 1995 the Commission called upon the Italian Government to submit its observations within a period of two months.

5 By letter of 13 July 1995 the Italian authorities replied that implementing legislation was being prepared with a view to rapidly transposing Directive 94/2.

6 However, not having received any notification of those transposition measures, the Commission, by letter of 8 May 1996, sent the Italian Government a reasoned opinion calling on it to take the necessary compliance measures within two months of notification.

7 By letter of 21 June 1996 the Italian Government informed the Commission that the draft legislation for implementing Directive 94/2 was being examined by the Italian Council of Ministers.

8 Having received no notification concerning the definitive approval of that draft legislation, the Commission brought the present action.

9 The Italian Government does not deny that Directive 94/2 was not transposed within the period prescribed. It merely states that the measures to transpose that directive will be taken in the near future. It also notes that, in so far as Directive 94/2 implements Council Directive 92/75/EEC of 22 September 1992 on the indication by labelling and standard product information of the consumption of energy and other resources by household appliances (OJ 1992 L 297, p. 16), which has not yet been formally transposed, Directive 94/2 cannot be implemented until the procedure for transposing Directive 92/75 has been completed, the draft legislation being at present under examination by the Italian Council of State.

10 In that connection, it should be noted that Directive 92/75 was to be transposed by 30 June 1993 at the latest, that is to say, before the end of the period prescribed for transposing Directive 94/2. The Italian Republic cannot, therefore, justify the failure to transpose Directive 94/2 by the delay in implementing Directive 92/75 (see Case C-268/93 *Commission* v *Spain* [1994] ECR I-947, paragraph 5).

11 Since Directive 94/2 was thus not transposed within the prescribed period, the Commission's action must be regarded as well founded.

12 It must therefore be held that, by failing to adopt within the prescribed period the laws, regulations and administrative provisions necessary to comply with Directive 94/2, the Italian Republic has failed to fulfil its obligations under Article 4 of that directive.

Costs

13 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 failed in its submissions, it must be ordered to pay the costs.

On those grounds,

THE COURT (Fifth Chamber)

hereby:

1. Declares that, by failing to adopt within the prescribed period the laws, regulations and administrative provisions necessary to comply with Commission Directive 94/2/EC of 21 January 1994 implementing Council Directive 92/75/EEC with regard to energy labelling of household electric refrigerators, freezers and their combinations, the Italian Republic has failed to fulfil its obligations under Article 4 of that directive;

2. Orders the Italian Republic to pay the costs.

Gulmann Edward Puissochet

Jann Sevón

Delivered in open court in Luxembourg on 12 February 1998.

R. Grass C. Gulmann

Registrar President of the Fifth Chamber