Case 309/86

Commission of the European Communities
v
Italian Republic

(Methods of testing the biodegradability of surfactants — Transposition of certain directives into national law)

Report for the Hearing 1237
Opinion of Mr Advocate General Darmon delivered on 15 December 1987 1240
Judgment of the Court, 2 March 1988 1241

Summary of the Judgment

Measures adopted by the institutions — Directives — Implementation by the Member States — Need for full transposition into national law
(EEC Treaty, Art. 189 (3))

REPORT FOR THE HEARING
delivered in Case 309/86 *

I — Facts and procedure

1. *Relevant legal provisions*

The aim of Council Directive 73/404/EEC of 22 November 1973 on the approximation of the laws of the Member States relating to detergents (Official Journal 1973, L 347, p. 51) is the approximation of the laws of the Member States concerning the marketing and use of certain detergents. In order to reduce pollution of the natural

* Language of the Case: Italian.

environment it prohibits detergents containing surfactants whose biodegradability is below a level fixed by the directive. Such approximation is intended to prevent Member States from prohibiting, in reliance on Article 36 of the EEC Treaty, the marketing and use of detergents whose biodegradability is of a sufficient standard. By Council Directive 73/405/EEC of the same date on the approximation of the laws of the Member States relating to methods of testing the biodegradability of anionic surfactants (Official Journal 1973, L 347, p. 53) the Council laid down the methods by which biodegradability is to be measured.

In 1982 the Council made a number of amendments to the two directives including, in particular, those made by the directives at issue in this case, namely Directives 82/242 and 82/243 of 31 March 1982. Those two directives provide, in Articles 6 and 2 respectively, that the Member States are to bring into force the provisions necessary to comply with the directives by 8 October 1983 at the latest and to inform the Commission thereof forthwith.

2. *Background to the dispute*

The two directives at issue were notified to the Italian Republic on 8 April 1982. The Italian Government has not communicated to the Commission the measures transposing the two directives into national law. Since, in addition, the Commission received no other information leading it to conclude that the Italian Government had fulfilled its obligation to bring the necessary provisions into force, it sent a letter to the Italian Government on 12 November 1984 requesting it, in accordance with Article 169 of the EEC Treaty, to submit its observations within two months.

By a telex message dated 6 March 1986 the Permanent Representation of Italy at the European Communities replied that, in order to eliminate the differences between the more restrictive provisions of national law and those of the directives at issue, the Italian Minister for Health was considering a suitable method of analysing detergents which might make it possible to begin implementing the Community rules. On 14 May 1986, following that telex message, the Commission delivered a reasoned opinion in accordance with Article 169 of the EEC Treaty and requested the Italian Government to comply with it within two months. Since the Italian Government failed to act upon that request, the Commission brought this action.

3. *Procedure*

The Commission's application was lodged at the Court Registry on 12 December 1986.

The written procedure followed the normal course.

Upon hearing the Report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry.

II — Conclusions of the parties

The *Commission* claims that the Court should:

(1) Declare that, by failing to adopt within the period prescribed the provisions needed to comply with Council Directive 82/242/EEC of 31 March 1982 on the biodegradability of non-ionic surfactants and Council

Directive 82/243/EEC of 31 March 1982 on the biodegradability of anionic surfactants, the Italian Republic has failed to fulfil its obligations under the EEC Treaty;

(2) Order the Italian Republic to pay the costs.

The *Italian Government* has not submitted any conclusions.

III — Submissions and arguments of the parties

In its defence the *Italian Government* observes that the directives at issue have already been largely transposed into national law by Law No 136 of 13 April 1983 on the biodegradability of synthetic detergents and by a Ministerial Decree of 19 July 1984 on the method of determining the percentage level of biodegradability of anionic synthetic detergents. However, it accepts that the directives in question have not yet been fully transposed; consequently, within those limits, it does not dispute that the action is well founded. Furthermore, it expresses the hope that the remaining necessary measures will be adopted as soon as possible. The Italian Government waived the right to submit a rejoinder.

In its reply the *Commission* states that in this case there has been a total rather than a partial failure to transpose the directives at issue.

T. Koopmans
Judge-Rapporteur