On those grounds

THE COURT

hereby:

1. **Declares that, by not putting into force within the prescribed period the laws, regulations or administrative provisions needed to comply with the provisions of Council Directives Nos 71/316, 71/317, 71/318, 71/347, 71/349, 71/354, 73/360, 73/362 and 74/148 and those of Commission Directive No 74/331, on the approximation of the laws of the Member States in the field of measuring instruments, the Italian Republic has failed to fulfil an obligation under the Treaty.**

2. **Orders the defendant to pay the costs.**

Kutscher Sørensen Bosco Donner Mertens de Wilmars

Pescatore Mackenzie Stuart O'Keeffe Touffait

Delivered in open court in Luxembourg on 11 April 1978.

A. Van Houtte
Registrar

H. Kutscher
President

OPINION OF MR ADVOCATE GENERAL REISCHL DELIVERED ON 14 MARCH 1978 [1]

Mr President,
Members of the Court,

The case on which I am now giving my opinion concerns the implementation of measures of Community law in the field of measurement. These measures provide for the approximation of national provisions so as to free trade in the above-mentioned field from obstacles.

1 — Translated from the German.

The following directives, the details of which I shall ignore for the moment, are in particular involved:

— Council Directive No 71/316/EEC of 26 July 1971 on the approximation of the laws of the Member States relating to common provisions for both measuring instruments and methods of metrological control (Official Journal, English Special Edition 1971 (II), p. 707 — this is an outline directive which has also already been important in Case 95/77, with which this Court dealt recently);

— Council Directive No 71/317/EEC of 26 July 1971 on the approximation of the laws of the Member States relating to 5 to 50 kilogramme medium accuracy rectangular bar weights and 1 to 10 kg medium accuracy cylindrical weights (Official Journal, English Special Edition 1971 (II), p. 721);

— Council Directive No 71/318/EEC of 26 July 1971 on the approximation of the laws of the Member States relating to gas volume meters (Official Journal, English Special Edition 1971 (III), p. 729);

— Commission Directive No 74/331/EEC of 12 June 1974 adapting to technical progress the Council Directive of 26 July 1971 on the approximation of the laws of the Member States relating to gas volume meters (Official Journal 1974, L 189, p. 9);

— Council Directive No 71/347/EEC of 12 October 1971 on the approximation of the laws of the Member States relating to the measuring of the standard mass per storage volume of grain (Official Journal, English Special Edition 1971 (III), p. 852 — this was likewise of importance in the above-mentioned Case 95/77);

— Council Directive No 71/349/EEC of 12 October 1971 on the approximation of the laws of the Member States relating to the calibration of the tanks of vessels (Official Journal, English Special Edition 1971 (III), p. 865);

— Council Directive No 71/354/EEC of 18 October 1971 on the approximation of the laws of the Member States relating to units of measurement (Official Journal, English Special Edition 1971 (III), p. 878);

— Council Directive No 73/360/EEC of 19 November 1973 on the approximation of the laws of the Member States relating to non-automatic weighing machines (Official Journal 1973, L 335, p. 1);

— Council Directive No 73/362/EEC of 19 November 1973 on the approximation of the laws of the Member States relating to material measures of length (Official Journal 1973, L 335, p. 56) and

— Council Directive No 74/148/EEC of 4 March 1974 on the approximation of the laws of the Member States relating to weights of from 1 mg to 50 kg of above-medium accuracy (Official Journal 1974, L 84, p. 3).

The nine Council directives quoted all provide that the Member States must put into force the laws, regulations or administrative provisions needed in order to comply with the directives within 18 months of their notification. A period of 12 months was fixed for the same purpose in the above-mentioned Commission directive.

In the case of the Italian Republic, the defendant in the present case, it is established, according to the Commission's statements, that these periods expired between 29 January 1973 and 6 September 1975. It is also certain that the Italian legal provisions

had not been adapted as necessary by those dates.

In some cases the Commission pointed out to the Italian Government very early the need to adopt the necessary measures. So far as the first group of directives is concerned, in other words Directives Nos 71/316, 71/317, 71/318, 71/347, 71/349 and 71/354 it did so by communications of 22 November 1972, 1 February 1973 and 26 February 1974. So far as the other directives relevant to this case are concerned (Directives Nos 73/360, 73/362, 74/148 and 74/331), it did the same in communications of 19 and 20 March 1975 and 3 June 1975.

Since these warnings were unsuccessful the Commission decided to initiate a procedure under Article 169 of the EEC Treaty. For this purpose — so far as the first group of directives is concerned — it requested the Italian Government, on 14 February 1975, to submit within one month its observations on the legal situation. The Italian Government's only reaction to this was a request for an extension of the period, which it was granted. The Commission then delivered on 22 December 1975 a reasoned opinion within the meaning of Article 169 of the EEC Treaty in which it fixed a period of one month for the implementation of the necessary measures. The Italian Government merely confirmed receipt of this opinion; national measures were not however adopted within the prescribed period.

So far as the second group of directives is concerned, the procedure under Article 169 of the EEC Treaty was initiated by letter of 15 October 1975 in which a period of one month was likewise fixed for the Italian Government to submit its observations. In this instance too an extension of the period was granted at the request of the Italian Government. On 22 January 1976 Italy's Permanent Representation informed the Commission that the draft laws necessary for the implementation of the directives had been submitted to the parliament. As the Commission did not consider this to be sufficient, on 4 June 1976 it delivered in respect of this group of directives too a reasoned opinion within the meaning of Article 169 of the EEC Treaty and laid down therein a period of one month for the implementation of the necessary measures. Once again, the Italian Government did not adopt the necessary national provisions. Italy's Permanent Representation merely informed the Commission in a letter of 22 July 1976 that the premature end of the sixth legislative period had caused the draft laws put before parliament to lapse. It stated that an extension of the prescribed period was therefore necessary and that the problems raised would then be settled as soon as possible.

In view of this situation the Commission then brought the matter before the Court of Justice of 2 August 1977. In its application it seeks a declaration that, by not adopting within the prescribed periods the provisions necessary for the implementation of Council Directives Nos 71/316, 71/317, 71/318, 71/347, 71/349, 71/354, 73/360, 73/362 and 74/148 and Commission Directive No 74/331, the Italian Republic has failed to fulfil its obligations under the above-mentioned directives.

No defence in due form was lodged in reply to that application. The Italian Government merely stated in a short letter received at the Court of Justice on 16 September 1977 that it was determined to expedite as much as possible the procedure already initiated for the adoption of the necessary measures.

As the oral procedure in this case took place this morning, I can now briefly give my opinion thereon.

There is no doubt that the directives quoted above imposed on the Italian

Republic, just as the other Member States, clear obligations to adopt national provisions within prescribed periods. In this connexion important principles for the free movement of measuring instruments are concerned and if those principles are not observed in due time, the result is that the common market in this field could not, as intended, be attained.

A clear and exhaustive body of decisions of the Court of Justice already exists precisely with regard to the implementation of directives within the prescribed periods. In this connexion I would refer to the judgments in Case 79/72 *(Commission of the European Communities* v *Italian Republic*, judgment of 21 June 1973 [1973] ECR 667), Case 52/75 *(Commission of the European Communities* v *Italian Republic*, judgment of 26 February 1976 [1976] ECR 277) and Case 10/76 *(Commission of the European Communities* v *Italian Republic*, judgment of 22 September 1976 [1976] ECR 1359). It has also long been established that a Member State which is alleged to have failed to comply with provisions of Community law of the kind concerned in the present proceedings cannot, in order to justify itself, plead national law and the difficulties in implementing directives which may arise therefrom. This is quite clear to the Italian Government and for that reason it has not tried to justify the delay in the implementation of the directives.

As the Court of Justice has refused to suspend the proceedings for a short period to await the early adoption of Italian implementing provisions, there is no alternative but to grant the Commission's request. The announcement of the Italian Government that a decree law *(decreto legge)* will be adopted in the next few days or weeks can make no difference since so far as the outcome of the dispute is concerned the decisive factor is the situation at the date of the oral procedure.

It is therefore necessary to declare that, by not adopting within the prescribed periods the provisions necessary for the implementation of Council Directives Nos 71/316, 71/317, 71/318, 71/347, 71/349, 71/354, 73/360, 73/362 and 74/148 and Commission Directive No 74/331, the Italian Republic has failed to fulfil its obligations under the above-mentioned directives. In addition the Italian Republic must, in accordance with the application, be ordered to pay the costs of the proceedings.