JUDGMENT OF THE COURT
3 OCTOBER 1984 [1]

Commission of the European Communities v Italian Republic

(Failure to adopt and notify implementing measures provided for by a regulation — Water content of frozen poultry)

Case 254/83

Member States — Obligations — Failure to fulfil obligations — Justification — Impermissibility
(EEC Treaty, Art. 169)

A Member State may not plead provisions, practices or circumstances existing in its internal legal system in order to justify a failure to comply with obligations and time-limits resulting from Community law.

In Case 254/83

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by Alberto Prozzillo, a member of its Legal Department, acting as Agent, with an address for service in Luxembourg at the office of Manfred Beschel, Jean Monnet Building, Kirchberg,

applicant,

v

ITALIAN REPUBLIC, represented by the Avvocato dello Stato, Ivo M. Braguglia, acting as Agent, with an address for service in Luxembourg at the Italian Embassy,

defendant,

1 — Language of the Case: Italian.

APPLICATION for a declaration that, by neither adopting nor notifying the measures provided for by Council Regulation (EEC) No 2967/76 of 23 November 1976 laying down common standards for the water content of frozen and deep-frozen chickens, hens and cocks (Official Journal 1976, L 339, p. 1) and Commission Regulation (EEC) No 2785/80 of 30 October 1980 introducing detailed rules for implementing Regulation No 2967/76 laying down common standards for the water content of frozen and deep-frozen chickens, hens and cocks (Official Journal 1980, L 288, p. 13), the Italian Republic has failed to fulfil its obligations under the Treaty,

THE COURT

composed of: Lord Mackenzie Stuart, President, T. Koopmans and K. Bahlmann (Presidents of Chambers), A. O'Keeffe, G. Bosco, O. Due and A. Joliet, Judges,

Advocate General: Sir Gordon Slynn
Registrar: H. A. Rühl, Principal Administrator

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the conclusions, submissions and arguments of the parties may be summarized as follows:

I — Facts and written procedure

Council Regulation No 2967/76 lays down common standards for the water content of frozen and deep-frozen chickens, hens and cocks. Article 3 (1) of the regulation provides that checks may be conducted at every marketing stage on the absorption of water by frozen chickens, hens and cocks during their preparation. Article 3 (2) provides that the Member States are to adopt practical measures for those checks.

Article 7 of the regulation provides that the implementing provisions are to be adopted in accordance with the procedure laid down in Article 17 of Regulation No 2777/75 of the Council of 29 October 1975 on the common organization of the market in poultrymeat (Official Journal 1975, L 282, p. 77).

Commission Regulation No 2785/80 lays down detailed rules for implementing Regulation No 2967/76. Article 6 provides that the Member States are to take all appropriate measures to impose penalties for any infringement of Regulation No 2967/76.

Under Article 7 of Regulation No 2785/80, each Member State was to inform the other Member States and the Commission before 1 March 1981 of:

The practical control methods adopted pursuant to Article 3 (2) of Regulation No 2967/76; and

The measures adopted pursuant to Article 6 of Regulation No 2785/80.

The Commission received no notification from Italy either on or after that date. It therefore initiated the procedure under Article 169 of the Treaty by inviting the Italian Republic to submit its observations within a period of two months.

Since there was no response to its letter, on 3 June 1983 the Commission issued the reasoned opinion provided for in the first paragraph of Article 169 of the Treaty.

Subsequently, having received no communication from the Italian Government, the Commission, pursuant to the second paragraph of Article 169 of the Treaty, brought an action before the Court for a declaration that the Italian Republic had failed to fulfil its Community obligations.

The Commission's application was lodged at the Court Registry on 14 November 1983.

By letter of 31 January 1984, the Commission gave notice that it waived its right to submit a reply.

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 neither adopting nor notifying the measures provided for by Regulations Nos 2967/76 and 2785/80, the Italian Republic has failed to fulfil its obligations under the Treaty;

2. Order the Italian Government to pay the costs.

The *Italian Government* puts forward no conclusions.

III — Submissions and arguments of the parties

The *Commission* considers that, by neither adopting nor notifying the measures provided for by Regulations Nos 2967/76 and 2785/80, the Italian Republic has failed to fulfil its obligations under the Treaty.

In its defence, the *Italian Government* states that a draft bill has been prepared determining:

The bodies with powers to carry out the checks referred to in Article 3 of Regulation No 2967/76;

The practical measures for carrying out those checks, including provisions regarding labelling;

Penalties for infringements of the two regulations and procedures for the imposition thereof.

Consideration of the draft bill has already commenced.

IV — Oral procedure

The Italian Government, represented by O. Fiumara, Avvocato dello Stato, and the Commission of the European Communities, represented by A. Prozzillo, acting as Agent, presented oral argument at the sitting on 8 May 1984.

The Advocate General delivered his opinion at the sitting on 12 July 1984.

Decision

1 By application lodged at the Court Registry on 14 November 1983, the Commission of the European Communities brought an action before the Court under Article 169 of the EEC Treaty for a declaration that, by neither adopting nor notifying the measures provided for by Council Regulation (EEC) No 2967/76 of 23 November 1976 laying down common standards for the water content of frozen and deep-frozen chickens, hens and cocks (Official Journal 1976, L 339, p. 1) and Commission Regulation (EEC) No 2785/80 of 30 October 1980 introducing detailed rules for implementing the above-mentioned Council regulation (Official Journal 1980, L 288, p. 13), the Italian Republic had failed to fulfil its obligations under the Treaty.

2 Since, during the course of the procedure, the Italian Government, by a decree of 12 March 1984 issued by the Ministry of Agriculture and Forests (Gazzetta Ufficiale of 27 March 1984), adopted the practical control measures required by Council Regulation No 2967/76, the Commission, by registered letter of 12 June 1984, withdrew its action in so far as it sought a declaration that the Italian Republic had failed to fulfil its obligations under Regulation No 2967/76, continuing its action with respect only to Commission Regulation No 2785/80.

3 As its title indicates, Commission Regulation No 2785/80 lays down the detailed rules for implementing Council Regulation No 2967/76. Article 6 obliges Member States to take all appropriate measures to impose penalties for any infringement of the Council regulation, and Article 7 requires them to inform the other Member States and the Commission, before 1 March 1981, of the practical control methods adopted pursuant to Article 3 (2) of the Council regulation and the provisions adopted in accordance with Article 6 of the Commission regulation.

4 The Italian Government does not deny that it has not fulfilled those obligations. In its defence, it claims that a draft bill has been prepared for the purpose, in particular, of determining the bodies with powers to conduct the checks referred to in Article 3 of the Council regulation and of laying down the penalties for infringement of that regulation and the procedures for the imposition thereof. Since the measures to be adopted involve penalties, they cannot, under Italian law, be adopted by ministerial decree but only in the form of a Law, for which the preparatory procedure is more complex.

5 Those circumstances do not however expunge the failure with which the Italian Republic is charged. According to well-established case-law, a Member State may not plead provisions, practices or circumstances existing in its internal legal system in order to justify a failure to comply with obligations and time-limits resulting from Community law.

6 It must therefore be held that, by neither adopting nor notifying within the prescribed period the measures provided for in Commission Regulation No 2785/80 of 30 October 1980, the Italian Republic has failed to fulfil its obligations under the EEC Treaty.

Costs

7 Under Article 69 (2) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs. Since the defendant has failed in its submissions, it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

1. **Declares that, by neither adopting nor notifying within the prescribed period the measures provided for by Commission Regulation No 2785/80 of 30 October 1980, the Italian Republic has failed to fulfil its obligations under the EEC Treaty;**

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

Mackenzie Stuart Koopmans Bahlmann

O'Keeffe Bosco Due Joliet

Delivered in open court in Luxembourg on 3 October 1984.

P. Heim
Registrar

A. J. Mackenzie Stuart
President

OPINION OF ADVOCATE GENERAL SIR GORDON SLYNN DELIVERED ON 12 JULY 1984

My Lords,

Council Regulation (EEC) No 2967/76 of 23 November 1976 laid down common standards for the water content of frozen chickens with a view to improving the quality and promoting the sale of such products. Member States were required by Article 3 (2) to adopt practical measures for specified checks to