OPINION OF MR ADVOCATE GENERAL MAYRAS DELIVERED ON 6 DECEMBER 1979 [1]

Mr President,
Members of the Court,

This case brought against Italy for a failure to fulfil its obligations is not without close analogies with other similar cases which the Court has judged in the past. Perhaps I may be permitted therefore to give a relatively brief opinion.

I — The Commission charges the Italian Republic with not fulfilling its Community obligations by failing to adopt within the prescribed period the measures needed to implement under national law the provisions of Council Directive No 75/410/EEC of 24 June 1975 on the approximation of the laws of the Member States relating to continuous totalizing weighing-machines. These are automatic weighing instruments designed to determine the mass of a product in bulk without systematic subdivision, the movement of the belt being uninterrupted.

The text appears in a series of directives relating to weighing-machines and has been expressly envisaged by the General Programme adopted by the Council on 28 May 1969 for the elimination of technical barriers to trade which result from disparities between the provisions laid down by regulation or administrative action in Member States. The approximation of national mandatory provisions which differ from one Member State to another in the field to which the directive applies thus aims at freeing trade in this sector from all barriers.

The period laid down by the directive for compliance by the Member States and for informing the Commission of the measures they had adopted for this purpose was according to Article 4 18 months from the date of its notification. The directive was notified on 27 June 1975 and the period therefore expired on 27 December 1976. It is not denied that until this date the required amendments to Italian law had not been made.

Faced with this omission the Commission by letter of 16 June 1977 asked the Italian Government to communicate its observations within a period of two months in accordance with the first paragraph of Article 169 of the EEC Treaty. The Italian Government's response was merely to ask for an extension. This was granted up to 16 September 1977. Another request for an extension was made on 31 October by the Permanent Representation of Italy to the Commission. At the same time the Permanent Representation reported that the competent national authorities were actively pursuing the adoption of the directive into national law which apparently was a difficult task.

In May 1978 the Permanent Representation informed the Commission that the Italian Government had approved a decree-law on 14 April introducing the directive concerned into Italian law.

1 — Translated from the French

Unfortunately according to Article 77 of the Italian Constitution a decree-law loses all effect dating back to the time at which it came into force if it has not been converted into law within 60 days of publication. The Commission received no further information leading it to believe that this had been done. Nor did the Italian Government deny this.

Therefore on 13 July 1978, two years after sending the letter inviting the government to submit its observations, the Commission delivered the reasoned opinion required by the first paragraph of Article 169 of the EEC Treaty. Italy made no response during the period of two months provided by the opinion for compliance with its terms and the Commission applied to the Court on 22 May 1979. In its application it asks the Court to declare that the Italian Republic, by failing to adopt the measures necessary in order to comply with Council Directive No 75/410, has failed to fulfil its obligations thereunder.

The Italian Government has replied to this complaint not by means of a statement of defence in accordance with the rules but by a short letter only. In that letter the Italian Government says that despite all its efforts it has not been able to fulfil its obligations because of political events, in particular the premature dissolution of the legislative chambers which prevented the decree-law adopted on 23 April 1978 from being converted into law by Parliament, so that it has ceased to have effect. In view of this admission the Commission refrained from submitting a reply.

II — The Court is familiar with the legal problems posed by this kind of situation. There already exists, as Mr. Advocate General Reischl has emphasized in his opinion in Case 100/77 (judgment of 11 April 1978, *Commission* v *Italy* [1978] ECR 879 and particularly at p. (891), a clear and exhaustive body of decisions of the Court with regard to the implementation of directives within the prescribed period. May I remind the Court of the judgments delivered on this matter in Cases 79/72 (*Commission* v *Italian Republic*, judgment of 21 June 1973, [1973] ECR 667), 52/75 (*Commission* v *Italian Republic*, judgment of 26 February 1976 [1976] ECR 277), 10/76 (*Commission* v *Italian Republic*, judgment of 22 September 1976, [1976] ECR 1359). To those judgments cited by Mr Advocate General Reischl must now be added the judgment of 11 April 1978 in Case 100/77 (quoted above) and the judgment of 22 February 1979 in Case 163/78 (*Commission* v *Italian Republic* [1979] ECR 771).

In the judgment of 26 February 1976 the Court used the following words to stress the importance of a State's observing the periods imposed by the directives:

"The correct application of a directive is particularly important since the implementing measures are left to the discretion of the Member States and would be ineffective if the desired aims are not achieved within the prescribed time-limits. Although the provisions of a directive are no less binding on the Member States to which they are addressed than the provisions of any other rule of Community law, such an effect attaches *a fortiori* to the provisions relating to the periods allowed for implementing the measures prescribed,

in particular since the existence of differences in the rules applied in the Member States after these periods have expired might result in discrimination."
Futhermore it is established case-law that a Member State may not plead provisions, practices or circumstances existing in its internal legal system, even in its constitution, to justify a failure to comply with the obligations and time-limits imposed by Community directives. This has been reiterated in the judgment of 22 February 1979 (cited above) which is remarkable for its conciseness and which is only the latest of the cases cited above.

In these circumstances I can only invite the Court to adopt the declaration sought by the Commission, namely, that by failing to put into force within the prescribed period the provisions necessary in order to comply with Council Directive No 75/410/EEC of 24 June 1975 on the approximation of the laws of the Member States relating to continuous totalizing weighing machines, the Italian Republic has failed to fulfil its obligations under that directive. Furthermore, the Italian Republic should clearly be ordered to pay the costs.