JUDGMENT OF THE COURT
10 December 1991 *

In Case C-306/89,

Commission of the European Communities, represented by Maria Kontou Durande, a member of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of Roberto Hayder, a representative of its Legal Service, Wagner Centre, Kirchberg,

applicant,

v

Hellenic Republic, represented by Evi Skandalou, a member of the Department for Contentious Community Affairs of the Ministry of Foreign Affairs, acting as Agent, with an address for service in Luxembourg at the Greek Embassy, 117 Val-Sainte-Croix,

defendant,

APPLICATION for a declaration that the Hellenic Republic has failed to fulfil its obligations under the EEC Treaty by not adopting within the prescribed period the laws, regulations and administrative provisions necessary to comply with Council Directive 82/470/EEC of 29 June 1982 on measures to facilitate the effective exercise of freedom of establishment and freedom to provide services in respect of activities of self-employed persons in certain services incidental to transport and travel agencies (ISIC Group 718) and in storage and warehousing (ISIC Group 720) (Official Journal 1982 L 213, p. 1),

* Language of the case: Greek.

THE COURT,

composed of: O. Due, President, R. Joliet and F. Grévisse (Presidents of Chambers), C. N. Kakouris, J. C. Moitinho de Almeida, M. Díez de Velasco and M. Zuleeg, Judges,

Advocate General: C. O. Lenz,
Registrar: D. Louterman, Principal Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 2 July 1991,

after hearing the Opinion of the Advocate General at the sitting on 19 September 1991,

gives the following

Judgment

1 By application lodged at the Court Registry on 6 October 1989, the Commission of the European Communities brought an action under Article 169 of the EEC Treaty for a declaration that the Hellenic Republic has failed to fulfil its obligations under the EEC Treaty by not adopting within the prescribed period the laws, regulations and administrative provisions necessary to comply with Council Directive 82/470/EEC of 29 June 1982 on measures to facilitate the effective exercise of freedom of establishment and freedom to provide services in respect of activities of self-employed persons in certain services incidental to transport and travel agencies (ISIC Group 718) and in storage and warehousing (ISIC Group 720) (Official Journal 1982 L 213, p. 1, hereinafter referred to as 'the directive').

2 Article 4 of the directive concerns the type and origin of the proof that the nationals of the other Member States must be able to provide where, for access to one of the activities coming within the directive, the host Member State imposes on the person concerned certain requirements regarding good repute, the fact that he has not previously been declared bankrupt or his financial standing. Article 5 lays down the obligation for the Member States to inform the person concerned of the rules applicable, where appropriate, to the activity in question. Articles 6 and 7 contain rules on equivalence and the proof of the knowledge and ability required by the rules of the host Member State.

3 A large number of activities covered by the directive are the subject in Greece of rules laying down conditions for access to those activities and for their exercise. Such activities include those of shipping agents, travel agents and general warehousekeepers and also that of a motor vehicle expert called upon to act as an expert witness in court ('traffic accident experts'); according to the Commission, no measures to transpose the directive have been taken in respect of those activities.

4 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the procedure and the submissions and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

5 The arguments whereby Greece contends that its domestic law contains no discriminatory measure in the area to which the directive applies, and that it is not required to transpose the directive with regard to activities which are not regulated, must be dismissed at the outset. The Commission has not formulated

any such complaints and the directive, which, moreover, merely provides for the abolition of non-discriminatory restrictions on the freedom of establishment and the freedom to provide services, expressly refers only to those activities where access is subject to certain conditions in the host Member State (Articles 4 and 6).

The question whether the activity of traffic accident expert is covered by Article 55 of the EEC Treaty

6 Greece claims that the activity of traffic accident expert forms part of the exercise of official authority within the meaning of Article 55 of the EEC Treaty. Accordingly, that State is not required to adopt the measures laid down by the directive with regard to that activity, as is confirmed by a declaration of the Belgian, Greek, Italian and Luxembourg delegations entered in the minutes of the meeting of the Council at which the directive was adopted.

7 In that respect, it should be pointed out that experts' reports regarding traffic accidents are not binding on the courts. They leave the discretion of the judicial authority and the free exercise of judicial power intact. The activity in question cannot therefore be regarded as participating in the exercise of official authority within the meaning of Article 55 of the EEC Treaty (see, with regard to the activities typical of the profession of *avocat*, the judgment in Case 2/74 *Reyners* v *Belgian State* [1974] ECR 631, paragraphs 52 and 53).

8 It should further be pointed out that, as the Court has consistently held (see, *inter alia*, judgment in Case 237/84 *Commission* v *Belgium* [1986] ECR 1247, paragraph 17), the objective scope of rules of Community law can be derived only from those

rules themselves, having regard to their context. It cannot therefore be affected by a statement such as that referred to by Greece.

The obligation to designate authorities or bodies, pursuant to Articles 4(6) and 7(4) of the directive

9 Article 4(6) of the directive requires the Member States to designate, within the time-limit laid down for the transposition of the directive, the authorities and bodies competent to issue the documents referred to in Article 4(1) to (4). They are forthwith to inform the other Member States and the Commission thereof.

10 Article 6 of the directive provides that where, in a Member State, the taking up or pursuit of the activities in question is dependent on the possession of general, commercial or professional knowledge and ability, that Member State is to accept as sufficient evidence of such knowledge and ability the fact that the activity in question has been pursued in another Member State, provided it has been pursued in the conditions laid down in that article.

11 Proof that that activity has actually been carried out is to be established by a certificate issued by the competent authority or body in the Member State of origin or Member State whence the person concerned comes (Article 7(3)). The Member States are required to designate those authorities and bodies within the time-limit laid down for the transposition of the directive and they are forthwith to inform the other Member States and the Commission thereof (Article 7(4)).

12 The Commission accuses Greece of not having designated the abovementioned authorities and bodies.

13 In that respect, Greece, in its answer to a question put by the Court, has indicated that, in the accession negotiations, it had designated as the authority competent to issue certificates to persons wishing to pursue a specific occupation in a Member State the Directorate-General for Relations between Greece and the European Communities in the Ministry of Coordination. It is, accordingly, that authority which issues the certificates under Article 7(4) of the directive.

14 Both in a letter subsequently sent to the Commission and at the hearing, Greece stated that the abovementioned directorate-general is also competent to issue the documents referred to in Article 4(6).

15 It must be pointed out in that respect that that directorate-general was designated by Greece in the accession negotiations in response to a request from the Commission which referred to its communication of 13 July 1974 concerning the proofs, declarations and certificates relating to good repute, the absence of previous bankruptcy, the nature and duration of professional activities in the country of provenance provided for in the Council Directives adopted before 1 June 1973 in the field of freedom of establishment and freedom to provide services (Official Journal 1974 C 81, p. 1).

16 It follows that that designation was not made for the purposes of implementing Directive 82/470 and, accordingly, it did not release Greece from its obligation under the directive to designate expressly the said authority. Furthermore, the designation on which Greece relies was not communicated to the other Member States, nor did it receive the publicity which is indispensable for it to be known by the persons concerned.

17 It follows from the foregoing that the Commission's complaint based on the failure to adopt the measures necessary to transpose Articles 4(6) and 7(4) of the directive is well founded.

The failure to transpose the other provisions of the directive

18 With regard to the transposition of the other provisions of the directive, Greece merely relies on a circular applicable to the activity of shipping agent.

19 It should be pointed out in that respect that the directive is aimed at creating rights for individuals and that, as the Court has consistently held, implementing measures must in that case not only be binding on the public authorities in question, but also enable the beneficiaries to ascertain the full extent of their rights and to rely on them, where necessary, before the national courts (see, in particular, judgment in Case C-58/89 *Commission* v *Germany* [1991] ECR I-4983, paragraph 23).

20 Since the abovementioned circular does not comply with the requirements referred to above, and since no other rules have been adopted in order to transpose the provisions in question, that complaint is well founded and, accordingly, the application as a whole is also well founded.

Costs

21 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the Hellenic Republic has been unsuccessful, it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

1. **Declares that, by not adopting within the prescribed period the laws, regulations and administrative provisions necessary to comply with Council Directive 82/470/EEC of 29 June 1982 on measures to facilitate the effective exercise of freedom of establishment and freedom to provide services in respect of activities of self-employed persons in certain services incidental to transport and travel agencies (ISIC Group 718) and in storage and warehousing (ISIC Group 720), the Hellenic Republic has failed to fulfil its obligations under the EEC Treaty;**

2. **Orders the Hellenic Republic to pay the costs.**

Due Joliet Grévisse

Kakouris Moitinho de Almeida Díez de Velasco Zuleeg

Delivered in open court in Luxembourg on 10 December 1991.

J.-G. Giraud
Registrar

O. Due
President