THE COURT

hereby:

1. **Declares that the Italian Republic, by failing to adopt the provisions necessary to comply with Council Directive 66/404 on the marketing of forest reproductive material within the prescribed time limit, as amended by Directive 69/64, has failed to fulfil its obligations under the Treaty;**

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

Lecourt Monaco Pescatore Donner Mertens de Wilmars
Kutscher Ó Dálaigh Sørensen Mackenzie Stuart

Delivered in open court in Luxembourg on 21 June 1973.

A. Van Houtte
Registrar

R. Lecourt
President

OPINION OF MR ADVOCATE-GENERAL ROEMER DELIVERED ON 30 MAY 1973 [1]

Mr President,
Member of the Court,

Having regard to the increasing need for forest reproductive material for the purpose of restocking of forests and for new afforestation, having regard to the necessity in this connection of using genetically superior reproductive material, as well as realizing that it is in the interest of all Community States by means of common rules in this field to ensure the free movement of goods, the Council of Ministers on 14 June 1966 issued a Directive 'on the marketing of forest reproductive material (OJ 125, 11. 7. 1966, p. 2326).

As a consequence, a number of obligations are imposed upon Member States.

Thus Member States have to make Regulations pursuant to which 'reproductive material may not be placed on the market unless it is derived from officially approved basic material' (Article 4). Pursuant to Article 5 they

1 — Translated from the German.

shall provide 'that only basic material whose qualities are such as to make it suitable for reproductive purposes and which has no characters undesirable for the production of wood may be officially approved.' Pursuant to Article 6 they are under a duty to establish a list of the basic material officially approved in their territory and forthwith to send this to the Commission. Furthermore — under the provisions of Article 7 — they are to delimit regions of provenance in the case of reproductive material produced by sexual means. They prescribe — pursuant to Article 8 — that reproductive material must be kept separate and identified and they provide under Article 9 that reproductive material may be marketed only in conformity to the requirements of Article 8 and accompanied by certain documents. Under Article 10 they also have to require that seed be marketed only in a certain manner. Pursuant to Article 11, they have to ensure that reproductive material remains source-identified by an official control system. They also have to ensure — as is stated in Article 13 — that 'reproductive material is subject to no marketing restrictions other than those laid down in this Directive.'

For the purpose of complying with these tasks there are enumerated in Article 19 of the Directive time limits within which Member States shall comply with the Directive and its Annexes by bringing into force the requisite provisions. Of these there is of main interest for the present purpose the time limit mentioned in Article 18 (1) i. e. 1 July 1967. This time limit was later changed to 1 July 1969 by a Directive dated 18 February 1969 (OJ L 48, 26. 2. 1969, p. 12). By this date therefore certain measures, as they has already been enumerated in detail in the Official Journal of 11 July 1966, were to be taken by the Member States.

The Italian Republic did not comply with this, as was admitted in a letter from its Permanent Delegation dated 23 December 1969. The Commission of the European Communities — which pursuant to Article 155 of the EEC Treaty is under an obligation to ensure that the provisions of the Treaty and the measures taken by the institutions pursuant thereto are applied — accordingly felt obliged to institute proceedings in accordance with Article 169 of the EEC Treaty. This was done by letter dated 24 March 1971 addressed to the Italian Minister for Foreign Affairs, which placed on record that contrary to the obligations of Article 18 (1) (a) of the said Directive, national measures had not yet come into force in Italy and in which they were asked for their comments in this respect. Since no reply was received, the Commission on 14 September 1971 delivered a reasoned opinion within the meaning of Article 169 of the EEC Treaty. This placed on record that the Italian Republic had failed to fulfil its contractual obligations and requested the taking of the necessary measures within a period of 30 days. Subsequent to the expiration of this time limit, the Commission received a telex from the Permanent Delegation of Italy dated 20 January 1972, by which the Commission was informed that a draft law for the purpose of implementing the Council's Directive had already been approved by VIIIth Senate Commission. In view of this and of the assurance that the Italian Government would do everything necessary to ensure a speedy finalization of the draft legislation, the Commission adjourned the proceedings that had been instituted and informed the Italian Government by letter of 20 April 1972 that they would grant a further extension of three months within which the necessary measures were to be taken.

When this time limit likewise had expired without compliance on the part of the Italian Government with the Directive, the Commission implemented its warning contained in the letter of 20 April 1972 and on 8 December 1972 instituted proceedings under Article 169 of the EEC Treaty. Pursuant to its submission the Court was asked to find

that the Italian Republic has failed to comply with the obligations incumbent upon it pursuant to Article 18 (1) (a) of the Council's Directive of 14 June 1966.

I would only add, that in the course of the proceedings we learnt that it had not been possible to pass the Italian draft law to which reference has been made, due to the premature dissolution of Parliament that had occurred on 24 February 1972, but that shortly after the election of a new Parliament it had on 12 August 1972 again been approved by the Council of Ministers and had been submitted to the Senate on 19 September 1972. We furthermore learnt that the Senate had given its approval in February 1973, that the draft law had been passed by the Parliamentary Committee in April 1973 and that the plenum of the Italian Parliament had commenced its deliberations on the day preceding the oral proceedings before the Court (15 May 1973) and that they had already been concluded in part. Finally, we were informed by telex of 19 May 1973 that the law had been passed on 17 May 1973.

If I am now to express an opinion in relation to these facts, I must first of all recall the arguments with which the Italian Government, attempts to counter the claim by the Commission.

Firstly it pointed to the fact that already at the time of drafting the proposed law problems and difficulties had emerged which had entailed delay (in particular having regard to the Law on the Regions of 1971 with its rules of competence. — They furthermore relied on the principle of Article 2 of the EEC Treaty ('harmonious development of economic activities throughout the Community') and maintained that this justified the avoidance of excessively hasty steps in realising the attainment of the Common Market and the integration within it of national spheres. They are also of the opinion that a finding under Article 169 is only appropriate in the event of intentional failure to comply with Treaty obligations but that this element was lacking in the present case since the bringing into force of the Italian draft legislation for the purpose of implementing the Council's Directive had been held up by the political crisis in Italy at the end of 1971 and the beginning of 1972. — Finally, the Italian Government pointed to the fact that the law for implementing the Council's Directive had meanwhile already been partially promulgated and that the final implementation was immiment, that accordingly there was no necessity to continue with the proceedings for infringement of the Treaty.

We shall therefore have to examine whether this argument is sufficient to demolish the Commission's claim.

Let us begin with the last-mentioned point (i. e. with the latest legislative measures on the part of the Italian Republic, which have been mentioned in the oral proceedings) for this problem causes the least difficulties, its appropriate consideration emerging clearly from the case law. As a matter of fact, it has already been held in the judgment in Case 7/61 (Rec. 1961, p. 633) that the subject matter of proceedings under Article 169 is the non-compliance with a Treaty obligation at the time of the institution of proceedings. On the other hand the Court 'was not obliged to examine first, whether subsequent to the institution of proceedings the particular State has taken the necessary measures to put an end to the infringement'. Applied to the present case, this meant: since the Council's Directive in its amended form mentioned 1 July 1969 as the final date for complying with the national obligations and since the proceedings were instituted by the Commission on 8 December 1972, the passing of the Italian law on 15 May 1973 and subsequent days, could Certainly not exclude a finding in favour of the Commission's claim. One might just add that it even seems questionable whether in the present case, on the lines of judgment 48/71 (Rec. 1972, p. 529) a finding would be justified in the grounds of judgment to the effect that the infringement of the Treaty had been

remedied. According to the undisputed statements by the Commission in the oral proceedings, it will, after passing of the aforementioned Italian law, still require the promulgation of implementing provisions (inter alia for creating certain bodies) and one cannot therefore consider the passing of the law itself as a complete compliance with the Council's Directive, but only on the promulgation of the necessary implementing provisions will this be the case.

Going on then to the Italian Government's reference to Article 2 of the EEC Treaty ('harmonious development of economic activities throughout the Community'), one can without more ado recognize that in the present proceedings it is of no significance. To this extent it is significant, that the Council's Directive lays down in a clear and binding manner a final date for the implementation of national measures. In this connection one can reasonably assume that due regard was had to the basic requirement of the Treaty and the principles of Article 2. If however in this connection a Member State has not attempted to achieve a extension of the time limit at Community level or in good time to attack the validity of the relevant provision, basing itself upon the Community provisions that had allegedly been infringed, then the State concerned must doubtless be precluded from arguing the Treaty principles in its justification at the stage of proceedings arising out of non-compliance with a Council Directive.

Similar remarks must apply to the further argument on the part of the Italian Government that problems had already arisen in drafting the proposed Law which had resulted in delay. If this was indeed the case then it would have been up to the Italian Government in good time to draw attention to this fact and to attempt to obtain an extension of the period laid down in the Council's Directive. Since this is not what happened, they can hardly be heard to say in proceedings for infringment of the Treaty, brought at a subsequent date, that material difficulties had already rendered difficult the preparatory work for implementing the Council's Directive and thus delayed their application. — Beyond this however one cannot help feeling, that it is extraordinarily unlikely that within the Italian sphere, problems might have existed that could have delayed until the end of 1971 preparatory work in connection with the implementation of a Directive, issued as long ago as 1966. Nothing much can therefore be achieved by means of the reasoning just dealt with, which besides lacks any substantiated foundation, against the Commission's claim in respect of failure to fulfil obligations.

There thus remains only the reference by the Italian Government to the political crisis which existed in Italy at the end of 1973/beginning of 1972 and which at the time, due to premature dissolution of Parliament, is said to have prevented the first draft law reaching the Statute book before Spring 1972.

One must say this immediately: this too does not seem a suitable justification. One feels entitled to take this view of the matter, not least because of previous decisions on similar arguments.

In this respect I would firstly recall the judgment in Case 8/70 (Rec. 1970, p. 961) in which it is said 'a Member State cannot at any rate justify itself by citing impediments which arose not only considerably later than the obligations the infringement of which is criticized, but even subsequent to the expiration of the period laid down in the reasoned opinion.' This is exactly what happened in the present case, where the period laid down in the Directive expired on 1 July 1959 whilst the Italian political crisis only took place at the end of 1971.

I further recall the frequent finding that certain obligations under Community law are the responsibility of States as such and that 'the responsibility of a Member State under Article 169 is independent of which State organ by its act or omission caused the infringement and this even if constitutionally it is an independent organ'. This statement is to

be found in the judgment in Case 77/69 (Rec. 1970, p. 237) as well as in judgment 8/70 (Rec. 1970, p. 969), and it certainly also applied to the obligations of Member States which were imposed by the Council's Directive, which is of interest in this case.

Finally I would remind the Court of a judgment handed down a short while ago (Case 30/70) in which it is said: 'A Member State cannot plead the provisions or practices of its internal order... in order to justify failure to observe obligations and time-limits arising under Community regulations. It falls to each Member State to recognise the consequences, in the internal order, of its adherence to the Community'. As the Commission has rightly stressed, this ought to be understood in the sense that Member States are obliged to ensure that even in times of crisis they are able to accomplish urgent Community tasks and that, should they omit to do so, they cannot later avoid an accusation of infringement of the Treaty.

In fact, these conclusions are sufficient to reject the Italian Government's objection in the present case, viz. that there was an absense of *intentional* infringement of the Treaty. Whether one can go beyond this and say — as the Commission thinks one can — that it even lacks substance because under Italian Constitutional Law even in the event of inability of Parliament to function there could have been other possibilities of carrying out the Council's Directive, if not therefore a matter that needs closer consideration.

All this leads me by way of conclusion to summarize my opinion as follows:

The action brought by the Commission against the Italian Republic is admissible and well-founded. The Court must therefore hold that the Italian Republic has offended against its obligations under Community Law, because before expiration of the period laid down in Article 18 (1) (a) of the Directive dated 18 February 1969, it had not taken the measures provided for in the Directive.