JUDGMENT OF THE COURT (Sixth Chamber)
26 September 1996 *

In Case C-117/95,

Commission of the European Communities, represented by Eugenio de March, Legal Adviser, acting as Agent, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

applicant,

v

Italian Republic, represented by Umberto Leanza, Head of the Department for Legal Affairs of the Ministry of Foreign Affairs, acting as Agent, assisted by Pier Giorgio Ferri, Avvocato dello Stato, with an address for service in Luxembourg at the Italian Embassy, 5 Rue Marie-Adélaïde,

defendant,

APPLICATION for a declaration that, by failing to adopt within the period prescribed the laws, regulations and administrative provisions necessary to comply with Council Directive 92/35/EEC of 29 April 1992 laying down control rules and measures to combat African horse sickness (OJ 1992 L 157, p. 19) and Council Directive 92/40/EEC of 19 May 1992 introducing Community measures for the control of avian influenza (OJ 1992 L 167, p. 1), the Italian Republic has failed to fulfil its obligations under the EC Treaty,

* Language of the case: Italian.

THE COURT (Sixth Chamber),

composed of: C. N. Kakouris, President of the Chamber, P. J. G. Kapteyn and H. Ragnemalm (Rapporteur), Judges,

Advocate General: N. Fennelly,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 6 June 1996,

gives the following

Judgment

1 By application received at the Court Registry on 4 April 1995, the Commission of the European Communities brought an action under Article 169 of the EC Treaty for a declaration that, by failing to adopt within the period prescribed the laws, regulations and administrative provisions necessary to comply with Council Directive 92/35/EEC of 29 April 1992 laying down control rules and measures to combat African horse sickness (OJ 1992 L 157, p. 19) and Council Directive 92/40/EEC of 19 May 1992 introducing Community measures for the control of avian influenza (OJ 1992 L 167, p. 1), the Italian Republic has failed to fulfil its obligations under those Directives and under the EC Treaty.

2 Article 20 of Directive 92/35 provided that the Member States were to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive no later than 31 December 1992 and immediately inform the Commission thereof.

3 Similarly, Article 22 of Directive 92/40 required the Member States to bring into force the laws, regulations and administrative provisions necessary to comply with that Directive before 1 January 1993 and immediately inform the Commission thereof.

4 On 12 March 1993 the Commission — since it had received no notification of measures adopted by Italy for the transposition of the Directives and had no other evidence to suggest that Italy had complied with its obligations — sent a letter of formal notice to the Italian Government asking it to forward a complete and detailed list of those provisions of national law which, in its view, implemented the Directives.

5 In the absence of any reply to that letter, the Commission delivered a reasoned opinion to the Italian Government on 2 May 1994, calling for it to adopt the necessary implementing measures within two months.

6 By letter of 29 July 1994, the Italian authorities informed the Commission that the procedures for transposing the Directives were under way.

7 On receiving no further communication concerning implementation of the two Directives, the Commission decided to initiate these proceedings.

8 In its application, the Commission points out that it has as yet received no information showing that the Italian Republic has in fact adopted the necessary measures.

9 The Italian Government does not deny that Directives 92/35 and 92/40 have not been correctly transposed into Italian law. In its defence, however, it refers — for the first time — to a veterinary inspection measure, approved by Presidential

Decree No 320 of 8 February 1954 (*Gazzetta Ufficiale della Repubblica Italiana* No 142 of 24 June 1954, Ordinary Supplement), which contains a number of provisions partially transposing the Directives. According to the Italian Government, that measure was not notified to the Commission as an instrument giving effect to the Directives because steps had already been taken to adopt specific measures on avian influenza and African horse sickness.

10 In its reply, the Commission seeks the same form of order as in its application, since it is common ground that the necessary measures have not yet been adopted by the Italian authorities.

11 Brief consideration of the provisions cited by the Italian Government confirms, as the latter itself recognized, that they cannot be regarded as constituting full implementation of Directives 92/35 and 92/40.

12 Consequently, it must be held that, by failing to adopt within the period prescribed the laws, regulations and administrative provisions necessary to comply with Directives 92/35 and 92/40, the Italian Republic has failed to fulfil its obligations under Articles 20 and 22, respectively, of those Directives.

Costs

13 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. The Commission asked that the Italian Republic be ordered to pay the costs. Since the Italian Republic has been unsuccessful in its defence, it must be ordered to pay the costs.

On those grounds,

THE COURT (Sixth Chamber)

hereby:

1. **Declares that, by failing to adopt within the period prescribed the laws, regulations and administrative provisions necessary to comply with Council Directive 92/35/EEC of 29 April 1992 laying down control rules and measures to combat African horse sickness and Council Directive 92/40/EEC of 19 May 1992 introducing Community measures for the control of avian influenza, the Italian Republic has failed to fulfil its obligations under Articles 20 and 22, respectively, of those Directives;**

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

Kakouris Kapteyn Ragnemalm

Delivered in open court in Luxembourg on 26 September 1996.

R. Grass C. N. Kakouris

Registrar President of the Sixth Chamber