JUDGMENT OF THE COURT
18 SEPTEMBER 1984 [1]

Commission of the European Communities v Italian Republic

(Failure to implement directives — Veterinary surgeons)

Case 221/83

Member States — Obligations — Implementation of directives — Failure to fulfil obligations — Justification — Not permissible
(EEC Treaty, Art. 169)

A Member State may not plead provisions, practices or circumstances in its internal system to justify a failure to comply with obligations and time-limits laid down in Community directives.

In Case 221/83

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

applicant,

v

ITALIAN REPUBLIC, represented and assisted by Pier Giorgio Ferri, Avvocato dello Stato, with an address for service in Luxembourg at the Italian Embassy,

defendant,

APPLICATION for a declaration that, by failing to adopt within the prescribed period the measures needed to comply with Council Directive

1 — Language of the Case: Italian.

No 78/1026/EEC of 18 December 1978 concerning the mutual recognition of diplomas, certificates and other evidence of formal qualifications in veterinary medicine, including measures to facilitate the effective exercise of the right of establishment and freedom to provide services (Official Journal 1978, L 362, p. 1), and by failing to implement fully Council Directive No 78/1027/EEC of 18 December 1978 concerning the coordination of provisions laid down by law, regulation or administrative action in respect of the activities of veterinary surgeons (Official Journal 1978, L 362, p. 7), the Italian Republic has failed to fulfil its obligations under the EEC Treaty,

THE COURT

composed of: Lord Mackenzie Stuart, President, T. Koopmans and Y. Galmot (Presidents of Chambers), G. Bosco, U. Everling, C. Kakouris and R. Joliet, Judges,

Advocate General: Sir Gordon Slynn
Registrar: D. Louterman, 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 procedure

1. Council Directive No 78/1026 of 18 December 1978 provides for the mutual recognition of diplomas, certificates and other evidence of formal qualifications in veterinary medicine; it also provides for measures to facilitate the effective exercise of the right of establishment and freedom to provide services.

The aim of Council Directive No 78/1027 of 18 December 1978 is to coordinate provisions laid down by law, regulation or administrative action in respect of the activities of veterinary surgeons.

Both directives provide, in Articles 18 (1) and 3 (1) respectively, that the Member States must bring into force the measures necessary to comply with them within two years of their notification (that is to say, 20 December 1980) and that they must inform the Commission thereof forthwith.

2. Having received no information from the Italian Republic, the Commission, by letter of 14 December 1981, commenced the procedure provided for in Article 169 of the EEC Treaty.

In reply to that letter the Permanent Representation of the Italian Republic to the European Communities informed the Commission, by letter of 29 March 1982, that the Council of Ministers had approved a bill covering the relevant matters.

On 21 June 1982 the Commission, considering the Italian Government's reply unsatisfactory because no legislative measure had been formally adopted, delivered a reasoned opinion under Article 169 of the Treaty with which the Italian Government was requested to comply within a period of one month.

By letter of 30 September 1982 the Permanent Representation of the Italian Republic forwarded the aforementioned bill, stating that it had been laid before parliament on 13 March 1982 after the Committee on Constitutional Matters had signified its approval.

The Commission, considering that the Italian Republic had not adopted any measure to comply with the aforementioned directives, brought the present action before the Court by an application which was lodged at the Court Registry on 3 October 1983.

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. However, it invited the Commission to produce before the hearing the texts of all the implementing measures adopted by the Member States under Article 3 (2) of Directive No 78/1027.

II — Conclusions of the parties

1. After amending its conclusions, the Commission claims that the Court should:

1. Declare that, by failing to adopt within the prescribed period the measures needed to comply with Council Directive No 78/1026 of 18 December 1978 and by failing to implement fully Council Directive No 78/1027 of 18 December 1978, the Italian Republic has failed to fulfil its obligations under the EEC Treaty;

2. Order the Italian Republic to pay the costs.

2. The Government of the Italian Republic contends that the Court should dismiss the application as unfounded in so far as it concerns the implementation of Council Directive No 78/1027.

III — Submissions and arguments of the parties

1. *With regard to the implementation of Council Directive No 78/1026* of 18 December 1978 concerning the mutual recognition of diploms, certificates and

other evidence of formal qualifications in veterinary medicine, including measures to facilitate the effective exercise of the right of establishment and freedom to provide services.

(a) The Commission points out that, according to the third paragraph of Article 189 of the EEC Treaty, a directive is binding, as to the result to be achieved, upon each Member State to which it is addressed. The first paragraph of Article 5 of the Treaty provides that the Member States are to take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of the Treaty or resulting from action taken by the institutions of the Community. A Member State may not plead provisions, practices or circumstances in its internal legal system to justify a failure to comply with obligations and time-limits laid down in Community directives.

(b) The Government of the Italian Republic points out that it has laid down a bill before parliament containing appropriate measures for the implementation of the directive. However, the parliamentary procedure in relation to that bill could not be completed because of the premature dissolution of the Chamber of Deputies. The procedure for passing the bill must therefore be repeated since the subject-matter in question must be regulated by a law.

2. *With regard to the implementation of Council Directive No 78/1027* of 18 December 1978 concerning the coordination of provisions laid down by law, regulation or administrative action in respect of the activities of veterinary surgeons.

(a) In its application the Commission advances the same submissions as those relied upon in support of its allegation of a breach of obligations arising from the failure to implement Council Directive No 78/1026.

(b) The Government of the Italian Republic states for the first time in its defence that it considered that the directive was already fully implemented by the present system of studies and diplomas for the veterinary profession laid down in the Decreto del Presidente della Repubblica [Order of the President of the Republic] No 987 of 23 October 1969 (Gazzetta Ufficiale [Official Gazette] No 1 of 2. 1. 1971). That order, which provides for a five-year course of study at a university and which lists in its annex the various subjects covered in the course of training leading to a doctor's degree in veterinary medicine, fulfils the requirements laid down in Article 1 of Council Directive No 78/1027 and in the annex thereto.

(c) In its reply the Commission felt compelled to "criticize severely" the conduct of the Italian Government because it did not mention the existence of that order until during the proceedings before the Court whereas in the procedure prior to the application to the Court it had merely undertaken to implement the directive in question.

However, since the subject-matter of the Treaty infringement proceedings does not relate specifically to the duty of notification imposed on the Member States by Article 3 of Council Directive No 78/1027, the Commission took note of the existence of Order No 987, although it considered that its provisions were not such as to implement the directive in full for two reasons.

One subject, which, according to the directive, must be compulsory, namely

preventive medicine, does not appear among the subjects listed in Order No 987.

Two other subjects, food hygiene and technology and animal ethology and protection, are referred to only imprecisely in Order No 987 whereas in the directive they are treated as separate, well-defined subjects. According to the Commission, the list of subjects contained in the annex to the directive gives specific expression to the qualitative criteria set out in Article 1 of the directive.

However, for the purpose of taking up the profession of veterinary surgeon, Article 1 (c) requires adequate knowledge of the *behaviour* and *protection of animals* and the subject entitled "animal ethology and protection" listed in the annex corresponds to that area of knowledge.

Similarly, Article 1 (f) requires adequate knowledge of the *hygiene* and *technology* involved in the production, manufacture and marketing of *foodstuffs* of animal origin intended for human consumption.

The Commission notes that Order No 987 does not refer expressly to those subjects and that certain subjects, directly related to them, are listed amongst the supplementary subjects, which are optional for students of veterinary medicine. Consequently, it is perfectly possible for such students to obtain a doctor's degree in veterinary medicine without receiving any training in the aforementioned subjects, which is wholly incompatible with the minimum requirements laid down in Article 1 of the directive.

The Commission therefore concludes that the Italian Republic has not fully incorporated Council Directive No 78/1027 into national law.

(d) In its rejoinder the Government of the Italian Republic expresses its disagreement with the Commission's analysis of Order No 987.

First, acquisition of adequate knowledge of preventive medicine is ensured by the very subject-matter of group 12 and 13 listed in the annex to the Order. In Group 12, for example, the prevention of infectious diseases is expressly mentioned. This field is not regarded as a separate subject in the directive; it concerns the same subject-matter as "preventive medicine".

Secondly, the acquisition of adequate knowledge of animal ethology and protection for the purposes of the directive is ensured by the compulsory instruction in zootechny provided for in Group 5. That group reads as follows: "Zootechny: hygiene, appearance of animals, ethnology, genetics and breeding".

Thirdly, as regards food hygiene and technology, the aim of Article 1 (f) of the directive is attained by instruction in the subjects listed in Group 18, namely: "Inspection and control of foodstuffs of animal origin", (meat, milk, fish, eggs and so forth).

In that regard the Commission's argument is limited to general observations and is unfounded.

IV — Oral procedure

At the sitting on 7 June 1984 the Commission of the European Communities, represented by Guido Berardis, acting as Agent, and the Italian Republic, represented by Carlo Sica, Avvocato dello Stato, presented oral argument.

The Commission accepted that the Order of 27 October 1969 implemented the directive satisfactorily as far as preventive medicine was concerned. However, it maintained its submissions regarding the two other subjects dealt with in its reply (food hygiene and technology and animal ethology and protection).

The Advocate General delivered his opinion at the same sitting.

Decision

1 By application lodged at the Court Registry on 3 October 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 not adopting within the prescribed period the measures needed to comply with Council Directive No 78/1026/EEC of 18 December 1978 and by not fully implementing Council Directive No 78/1027/EEC of 18 December 1978, the Italian Republic has failed to fulfil its obligations under the EEC Treaty.

2 The aim of Council Directive No 78/1026 of 18 December 1978 (Official Journal 1978, L 362, p. 1) is to ensure the mutual recognition of diplomas, certificates and other evidence of formal qualifications in veterinary medicine. It also provides for measures to facilitate the effective exercise of the right of establishment and freedom to provide services.

3 The aim of Council Directive No 78/1027 of 18 December 1978 (Official Journal 1978, L 362, p. 7) is to coordinate provisions laid down by law, regulation or administrative action in respect of the activities of veterinary surgeons and in particular to ensure that the training of veterinary surgeons is comparable in the Member States so as to enable diplomas, certificates and other qualifications to be mutually recognized.

4 The two directives provide, in Articles 18 (1) and 3 (1) respectively, that the Member States must adopt the measures necessary to comply with them

within two years of their notification, that is to say by 20 December 1980, and that they must immediately inform the Commission thereof.

5 Having received no information from the Italian Republic, the Commission, by letter of 14 December 1981, initiated the procedure provided for in Article 169 of the Treaty. In reply to that letter the Permanent Representation of the Italian Republic to the European Communities informed the Commission on 29 March 1982 that the Council of Ministers had approved a bill covering the relevant matters.

6 On 21 June 1982 the Commission, considering the Italian Government's reply unsatisfactory because no legislative measure had been adopted, delivered a reasoned opinion with which the Italian Republic was requested to comply within a period of one month. By letter of 30 September 1982 the Italian Republic forwarded the aforementioned bill, stating that it had been laid before parliament on 13 March 1982 after the Committee on Constitutional Matters had signified its approval.

7 The Commission, considering that the Italian Republic had not adopted any measure to comply with the aforementioned directives, brought this action for a declaration that it had failled to fulfil its obligations.

The applicant's conclusions relating to the question of failure to implement Council Directive No 78/1026 of 18 December 1978

8 The Italian Government does not dispute that it has not fulfilled its obligation to implement this directive. It points out, however, that it has laid a bill before parliament containing appropriate provisions for the implementation of the directive. Nevertheless, the parliamentary procedure in relation to that bill could not be completed owing to the premature dissolution of the Chamber of Deputies. The procedure for passing the bill must therefore be repeated.

9 Those circumstances cannot expunge the infringement of the Treaty with which the Italian Republic is charged. The Court has consistently held that a

Member State may not plead provisions, practices or circumstances in its internal legal system to justify a failure to comply with obligations and time-limits laid down in Community directives.

10 It must therefore be declared that, by not adopting within the prescribed period the provisions needed to comply with Council Directive No 78/1026 of 18 December 1978, the Italian Republic has failed to fulfil its obligations under the EEC Treaty.

The applicant's conclusions relating to the failure to implement fully Council Directive No 78/1027 of 18 December 1978

11 Whereas throughout the procedure prior to the application to the Court the Government of the Italian Republic confined itself to stating that, in order to incorporate the directive into national law, a Law empowering it to adopt the necessary measures was in preparation, it has asserted, for the first time in its defence, that the directive was already fully implemented by the present system of studies and diplomas for the veterinary profession laid down in Order No 987 of the President of the Republic of 23 October 1969 (Gazzetta Ufficiale [Official Gazette] No 1 of 2. 1. 1970). According to the Italian Government, that order, which provides for a five-year course of studies at University and which defines in its annex the various subjects covered by the course leading to a doctor's degree in veterinary medicine, fulfils the requirements laid down in Article 1 of Council Directive No 78/1027 and in the annex thereto.

12 In its reply the Commission noted the existence of Order No 987 of 23 October 1969 but made it clear that it considered that the provisions it contained did not fully implement the directive because the annex to the order which set out the curriculum for a doctor's degree in veterinary medicine in Italy, did not include three of the subjects listed in the Annex to Directive No 78/1027 laying down a harmonized curriculum for veterinary surgeons. Those three subjects were preventive medicine, food hygiene and technology and animal ethology and protection.

13 It must be noted that at the hearing the Commission accepted that the Order of 27 October 1969 implemented the directive satisfactorily as far as training

in preventive medicine was concerned. The Commission's conclusions are therefore limited to the failure to include the subjects of "food hygiene and technology" and "animal ethology and protection" in the curriculum adopted in Italy for veterinary surgeons.

14 The introductory words of the annex to Directive No 78/1027 state that: "The programme of studies leading to the diploma, certificate or other evidence of formal qualifications in veterinary medicine shall include at least the subjects listed below. Instruction in one or more of these subjects may be given as part of, or in association with, other courses". The actual titles of the subjects and disciplines forming the curriculum for veterinary surgeons are not therefore required to be transposed word for word into the legal systems of the Member States; the annex merely requires a transposition which is sufficiently faithful to ensure that training courses in the Member States are comparable so as to enable diplomas to be mutually recognized.

15 The Government of the Italian Republic points out that the acquisition of adequate knowledge, within the meaning of the directive, of the subject of "food hygiene and technology" is ensured by compulsory instruction in the subject entitled "inspection and control of foodstuffs of animal origin" mentioned in Group 18 of the annex to the order; the performance of such inspection and control duties necessarily presupposes a knowledge of methods of producing and marketing foodstuffs intended for consumption.

16 As the Commission submitted and as is clear from the oral argument before the Court, the discipline mentioned in Group 18 of the annex to Order No 987 covers only part of the subject "food hygiene and technology" referred to by the directive. The Commission also rightly submitted that certain subjects directly related to food hygiene and technology are mentioned in Order No 987 amongst the supplementary subjects, which are optional for students of veterinary medicine. Consequently, it would be quite possible for such students to obtain a doctor's degree in veterinary medicine without receiving full training in that subject, which is incompatible with the requirements laid down in Article 1 of the directive.

17 The Commission is therefore right in considering that the Italian Republic has not fully transposed Directive No 78/1027 in this regard.

18 As regards the subject entitled "animal ethology and protection", which is mentioned in Group 3 of the annex to Directive No 78/1027, the Government of the Italian Republic maintains that the acquisition of adequate knowledge of that subject is ensured by compulsory instruction in the subjects listed in Group 5 of the annex to Order No 987, which are as follows:

"Zootechny:

(1) hygiene, appearance of animals, ethnology;

(2) genetics and breeding".

19 It is clear from the oral arguments advanced before the Court that the subjects listed in Group 5 of the annex to Order No 987 do not correspond to the subject entitled "animal ethology and protection" mentioned in the annex to Council Directive No 78/1027. The subjects specified by the directive essentially concern the teaching of the science of animal behaviour whereas the subjects listed in Group 5 of the Italian curriculum are related to the study of animal populations and techniques of reproduction and breeding.

20 In those circumstances the Commission is also right in considering that the Italian Republic has not fully transposed Council Directive No 78/1027 in this regard either.

21 Accordingly, it must be held that:

By not adopting within the prescribed period the provisions needed to comply with Council Directive No 78/1026 of 18 December 1978, the Italian Republic has failed to fulfil its obligations under the EEC Treaty; and that:

By not fully implementing Council Directive No 78/1027 of 18 December 1978 and by failing to provide for compulsory instruction in the subjects

referred to as "animal ethology and protection" and "food hygiene and technology" as part of its curriculum for veterinary surgeons, the Italian Republic has failed to fulfil its obligations under the EEC Treaty.

Costs

22 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 not adopting within the prescribed period the provisions needed to comply with Council Directive No 78/1026 of 18 December 1978, the Italian Republic has failed to fulfil its obligations under the EEC Treaty;**

2. **Declares that, by not fully implementing Council Directive No 78/1027 of 18 December 1978 and by failing to provide for compulsory instruction in the subjects referred to as "animal ethology and protection" and "food hygiene and technology" as part of its curriculum for veterinary surgeons, the Italian Republic has failed to fulfil its obligations under the EEC Treaty.**

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

Mackenzie Stuart Koopmans Galmot

Bosco Everling Kakouris Joliet

Delivered in open court in Luxembourg on 18 September 1984.

P. Heim
Registrar

A. J. Mackenzie Stuart
President