JUDGMENT OF THE COURT
OF 14 DECEMBER 1979 [1]

Commission of the European Communities v Italian Republic

"Failure of a State to fulfil its obligations — Approximation of laws — Weighing machines"

Case 93/79

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

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

In Case 93/79

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by Alberto Prozzillo and Auke Haagsma, acting as Agents, with an address for service in Luxembourg at the office of Mario Cervino, Legal Adviser to the Commission, Jean Monnet Building, Kirchberg,

applicant,

v

ITALIAN REPUBLIC, represented by its ambassador, Adolfo Maresca, acting as Agent, assisted by Ivo Maria Braguglia, Avvocato dello Stato [State Advocate] with an address for service in Luxembourg at the Italian Embassy,

defendant,

1 — Language of the Case: Italian

APPLICATION for a declaration that the Italian Republic, by failing to put into force within the prescribed period the laws, regulations and administrative 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 (Official Journal L 183, p. 25), has failed to fulfil its obligations under the EEC Treaty,

THE COURT

composed of: H. Kutscher, President, A. O'Keeffe and A. Touffait (Presidents of Chambers), J. Mertens de Wilmars, P. Pescatore, Lord Mackenzie Stuart, G. Bosco, T. Koopmans and O. Due, Judges,

Advocate General: H. Mayras
Registrar: J. Pompe, Deputy Registrar

gives the following

JUDGMENT

Facts and Issues

The facts, the procedure and the arguments of the parties may be summarized as follows:

I — Facts and written procedure

Directive No 75/410/EEC is one of a number of directives relating to weighing-machines and was expressly envisaged by the General Programme for the elimination of technical barriers to trade which result from disparities between the provisions laid down by law, regulation or administrative action in Member States, adopted by the Council on 28 May 1969 (Official Journal, English Special Edition, Second Series, IX, p. 25). Its aim is to approximate the laws of the Member States relating to continuous totalizing weighing-machines attached to conveyor belts. 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 directive in question lays down the conditions which the instruments concerned must satisfy and in particular metrological and technical specifications as well as provisions on the testing of these instruments so that they may receive the EEC marks and symbols described in the annex to the directive. Under the system set up by a framework directive of 26 July 1971, these instruments are subject to "EEC pattern approval" which as the name suggests covers a particular pattern and they are subjected to "EEC initial verification". An EEC symbol or mark is applied to the instruments to prove that they have undergone the tests and satisfy the conditions of the directive, and must therefore be able to circulate freely in the Community without being subjected to new tests at frontiers.

As for the action which the Member States must take on the directive, Article 4 provides for a period of 18 months from its notification for compliance with it and for notifying the Commission of such compliance. The directive was notified on 27 June 1975 so that the prescribed period expired on 27 December 1976.

Since Italy did not comply with the provisions of the directive within the period laid down, the Commission, by letter of 16 June 1977, gave her an opportunity to submit her observations as provided under Article 169 of the Treaty.

It appears from the reply given to the Commission in a telex message of 31 October 1977 by the Permanent Representation for Italy, that the Italian authorities had prepared two draft laws for the purpose of implementing the directive referred to; these were before the Senate and could be adopted by emergency procedure.

After an extension of the period prescribed by Article 169 of the Treaty, the Permanent Representation for Italy informed the Commission by telex message of 3 May 1978 that the Italian Government had approved on 14 April a decree-law by which Directive No 75/410/EEC had been adopted into Italian law. Under Article 77 of the Italian Constitution, the decree-law would lose its effect if not adopted as a law within 60 days following its publication. The Commission did not receive any information leading it to believe that the said decree-law had been converted into a law.

In these circumstances the Commission sent to the Italian Government a reasoned opinion dated 13 July 1978. No official reply to this opinion has been received by the Commission.

The present proceedings were begun on 22 May 1979 and the application was registered at the Court on 14 June 1979.

By letter of 24 August 1979 the Commission decided not to submit a reply.

On 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.

II — Submissions of the parties

The *Commission* claims that the Court should:

— Declare that the Italian Republic by failing to adopt within the prescribed periods the laws, regulations and administrative 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, had failed to fulfil an obligation under the Treaty;

— Order the Italian Republic to pay the costs.

The *Italian Republic* has not put forward any conclusions.

III — Submissions and arguments of the parties

In its application the *Commission* maintains that the mandatory nature of the directive as regards the result to be achieved means that the Member States are required to observe the periods laid down. This also emerges from the case-law of the Court (cf. judgment in Case 10/76, *Commission* v *Italian Republic* [1977] ECR 1359).

Case-law (judgment in Case 100/77, *Commission* v *Italian Republic* [1978] ECR 879) shows just as clearly that a Member State cannot rely upon domestic difficulties or provisions of its national legal system, even its constitutional system, for the purpose of justifying a failure to comply with obligations and periods resulting from Community directives.

In its defence the *Italian Government* stresses that the two draft laws submitted to the Senate in October 1977 were not adopted as a result of the premature dissolution of the legislature. It feels that the fact that it had adopted a decree-law on 14 April 1978 proves that it has not spared any efforts to carry out its obligations and the fact that these efforts were not successful was due to political and parliamentary events. It hopes that the approval of Parliament will be obtained shortly so that the present dispute may be considered to have lost its point.

In its letter of 24 August 1979 the *Commission* states that neither the intention nor the hope of the Italian Government, nor the reasons given to explain the failure to implement the directive in question, can alter the fact that the said failure to implement the directive amounts to an infringement of the Treaty.

The Commission, represented by A. Prozzillo, acting as Agent, and the Italian Government, represented by I. M. Braguglia, Avvocato dello Stato, presented oral argument at the sitting on 22 November 1979.

The Advocate General delivered his opinion on 6 December 1979.

Decision

1 By an application received at the Court Registry on 14 June 1979, the Commission applied to the Court under Article 169 of the EEC Treaty for a declaration that the Italian Republic had failed to fulfil an obligation under the Treaty by failing to adopt, within the prescribed period, the provisions needed to comply with Council Directive No 75/410 of 24 June 1975 on the approximation of the laws of the Member States relating to continuous totalizing weighing-machines (Official Journal L 183, p. 25).

2 According to Article 4 of the directive, Member States were required to put into force the measures needed to comply with it within 18 months of its notification; the period expired in this case on 27 December 1976.

3 The Italian Government does not deny the alleged omission. It confines itself to stating that the delay in applying the directive in question arose from the fact that its efforts to fulfil its obligations under the said directive were unsuccessful owing to political and parliamentary events. The decree-law made for the purpose of implementing the directive, which entered into force on 23 April 1978, had not been adopted into law by the Chambers within the periods provided by the Constitution and ceased in fact to have effect; the two draft laws contained in the decree-law, which had been submitted to the Senate, were not adopted because of the premature dissolution of the Chambers.

4 It should be recalled that a Member State may not plead provisions, practices or circumstances existing in its internal system in order to justify a failure to comply with obligations and time-limits under Community directives.

5 It is therefore necessary to declare that by failing to adopt, within the prescribed period the provisions necessary to comply with Council Directive No 75/410 of 24 June 1975, the Italian Republic has failed to fulfil an obligation under the Treaty.

Costs

6 Under Article 6 (2) of the Rules of Procedure the unsuccessful party shall be ordered to pay the costs.

7 Since the defendant has been unsuccessful it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

1. **Declares that the Italian Republic, by failing to adopt within the prescribed period the provisions necessary in order to comply with Council Directive No 75/410 of 24 June 1975 on the approximation of the laws of the Member States relating to continuous totalizing weighing-machines (Official Journal L 183, p. 25), has failed to fulfil an obligation under the Treaty;**

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

Kutscher O'Keeffe Touffait Mertens de Wilmars Pescatore

Mackenzie Stuart Bosco Koopmans Due

Delivered in open court in Luxembourg on 14 December 1979

For the Registrar
J. A. Pompe
Deputy Registrar

H. Kutscher
President