REPORT OF THE JUDGE-RAPPORTEUR
in Case C-262/91 *

I — Facts and procedure

On 24 November 1987 the Court delivered two judgments in Case 124/86 *Commission* v *Italy* [1987] ECR 4661 and in Case 125/86 *Commission* v *Italy* [1987] ECR 4669, in which it held respectively that

'by failing to adopt within the prescribed period the provisions necessary to comply with Council Directive 83/183/EEC of 28 March 1983 on tax exemptions applicable to permanent imports from a Member State of the personal property of individuals, the Italian Republic has failed to fulfil its obligations under the EEC Treaty'

and

'by failing to adopt within the prescribed period the provisions necessary to comply with Council Directive 83/181/EEC of 28 March 1983 determining the scope of Article 14(1)(d) of Directive 77/388/EEC as regards exemption from value-added tax on the final importation of certain goods, the Italian Republic has failed to fulfil its obligations under the EEC Treaty'.

As the Italian Government had failed to inform the Commission of the measures adopted by the Italian Republic to bring its national legislation into line with Council Directives 83/181 and 83/183 of 28 March 1983, cited above, the Commission, by letters sent on 15 January 1988 to the Office of the Permanent Representative of the Italian Republic to the European Communities, drew the Italian Government's attention to its obligation to adopt without delay the measures necessary to comply with the Court's judgments of 24 November 1987.

On 21 November 1988, in the absence of a reply to those letters addressed to the Italian Government and having no information enabling it to ascertain whether at that date the legal provisions necessary to comply with the Court's judgments of 24 November 1987 had been introduced, the Commission put the Italian Republic on notice, pursuant to Article 169 of the EEC Treaty, to submit within two months its observations concerning the alleged infringement of Article 171 of the EEC Treaty.

By letter of 27 January 1989 addressed to the Italian Minister for Community policy, the EEC Commissioner responsible for tax matters referred to the Italian Government's obligation to comply with the Court's judgments of 24 November 1987. The provisions necessary to comply with those two judgments had been included in a draft law adopted by the Italian Senate on 10 May

* Language of the case: Italian.

1989, which had not been approved by the Chamber of Deputies of the Italian Republic.

On 29 January 1990, the Commission, in accordance with Article 169 of the EEC Treaty, issued to the Italian Republic two reasoned opinions concerning the tax exemptions applicable to permanent imports from a Member State of the personal property of individuals (Case 124/86) and exemption from VAT on the final importation of certain goods (Case 125/86). The Italian Republic was requested to adopt the measures necessary to comply with those reasoned opinions within two months of the date of their notification.

As no reply was received to those opinions, the Commission brought the present action.

II — Written procedure and forms of order sought by the parties

The Commission's application was lodged at the Court Registry on 11 October 1991.

The written procedure followed the normal course. The Italian Republic, however, declined to submit a rejoinder.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court, with the consent of the parties, decided on the basis of Article 44(a) of the Rules of Procedure that the procedure should not include an oral part.

The *Commission* claims that the Court should:

— declare that, by failing to adopt the measures necessary to comply with the judgments of the Court of Justice of 24 November 1987 in Cases 124/86 and 125/86, the Italian Republic has failed to fulfil its obligations under Article 171 of the EEC Treaty;

— order the Italian Republic to pay the costs.

III — Pleas in law and arguments of the parties

The *Commission* takes the view that the Italian Republic ought to have adopted the measures necessary to comply with the Court's judgments of 24 November 1987 in accordance with Article 171 of the EEC Treaty. It points out that, according to the established case-law of the Court, the process of complying with a judgment must be initiated at once and must be completed as soon as possible (see, *inter alia*, the judgment in Case 169/87 *Commission* v *France* [1988] ECR 4093, paragraph 14).

Furthermore, with regard to the argument put forward by the Italian Republic in its defence, to the effect that draft legislation designed to implement the directives in question in domestic law is at present before the Italian Parliament, the Commission points out in its reply that the Court has consistently held that a Member State may not plead provisions, practices or circumstances

existing in its internal legal system in order to justify a failure to comply with its obligations under Community law (see the judgment in Joined Cases 227 to 230/85 *Commission* v *Belgium* [1988] ECR 1, paragraph 10).

The *Italian Republic* relies on the fact that a draft law for the implementation of Council Directives 83/181 and 83/183 of 28 March 1983 had been submitted to Parliament on 12 September 1986 during its previous term but had not completed its passage owing to the early dissolution of Parliament.

The draft law had once again been submitted to the Senate of the Republic on 4 February 1989 (Act of the Senate No 1571) and was passed on 10 May 1989. The draft was then submitted to the Chamber of Deputies for approval (Act of the Chamber No 3949). In view of the fact that such approval is imminent, the Italian Government hopes that the proceedings will become devoid of purpose.

J. C. Moitinho de Almeida
Judge-Rapporteur