relating to certain parts and characteristics of wheeled agricultural or forestry tractors, No 74/152 of 4 March 1974 on the approximation of the laws of the Member States relating to maximum design speed of and load platforms for wheeled agricultural or forestry tractors No 74/346 of 25 June 1974 on the approximation of the laws of the Member States relating to rear-view mirrors for wheeled agricultural or forestry tractors and No 74/347 of 25 June 1974 on the approximation of the laws of the Member States relating to the field of vision and windscreen wipers for wheeled agricultural or forestry tractors, has failed to fulfil its obligations under the Treaty establishing the European Economic Community;

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

Kutscher Sørensen Bosco

Donner Pescatore Mackenzie Stuart O'Keeffe

Delivered in open court in Luxembourg on 21 September 1978.

A. Van Houtte
Registrar

H. Kutscher
President

OPINION OF MR ADVOCATE GENERAL REISCHL DELIVERED ON 5 JULY 1978 [1]

Mr President,
Members of the Court,

The Council, acting in pursuance of a General Programme of 28 May 1969 for the elimination of technical barriers to trade which result from disparities between the provisions laid down by law, regulation or administrative action in the Member States (Official Journal, English Special Edition, Second Series, IX, p. 25) adopted Directive No 74/150/EEC of 4 March 1974 on the approximation of the laws of the Member States relating to the type-approval of wheeled agricultural or forestry tractors (Official Journal L 84 of 28 March 1974, p. 10), which, for agricultural or forestry tractors with pneumatic tyres and two axles and

1 — Translated from the German

having a maximum speed between 6 and 25 km/h introduces, in addition to national type-approval an "EEC type-approval". According to Article 2 (b) of that directive, EEC type-approval is "the procedure whereby a Member State certifies that a tractor type satisfies the technical requirements of the special directives and the checks listed in the EEC type-approval certificate, the model of which is given in Annex II".

The system of EEC type-approval rests on the principle of mutual recognition of checks carried out by the competent national authorities and of the certificate of conformity accompanying vehicles, as a result of which the vehicles may circulate and be used freely within the Common Market.

To supplement the basic Directive No 74/150/EEC there were issued *inter alia* the following four directives:

(a) Directive No 74/151/EEC of 4 March 1974 relating to certain parts and characteristics of towing machines (maximum permissible weight, location and fitting of the rear registration plates, fuel tanks, ballast weights, audible warning devices, permissible sound level and exhaust system) (Official Journal L 84 of 28 March 1974, p. 25);

(b) Directive No 74/152/EEC of 4 March 1974 relating to maximum design speed and load platforms (Official Journal L 84 of 28 March 1974, p. 33);

(c) Directive No 74/346/EEC of 25 June 1974 relating to rear-view mirrors (Official Journal L 191 of 15 July 1974, p. 1);

(d) Directive No 74/347/EEC of 25 June 1974 relating to the field of vision and windscreen wipers (Official Journal L 191 of 15 July 1974, p. 5).

On the ground that the Italian Republic had not taken the necessary measures within the periods prescribed in the directives to fulfil its obligations arising out of the directives, the Commission, by letter dated 14 April 1976, initiated the procedure under Article 169 of the EEC Treaty for failure to fulfil Treaty obligations and finally on 6 June 1977 lodged the present application claiming:

1. A declaration that the Italian Republic, by not putting into force within the prescribed period the necessary provisions to comply with Council Directives Nos 74/150/EEC, 74/151/EEC, 74/152/EEC, 74/346/EEC and 74/347/EEC on the approximation of the laws of the Member States relating to wheeled agricultural or forestry tractors, has failed to fulfil its obligations under the Treaty;
2. An order that the Italian Republic should pay the costs.

The defendant refers in its defence to the fact that there were special difficulties inasmuch as the subject-matter of the directives, according to Italian national law, came within the competence of several Ministries. Further, a first draft of a law had not been passed owing to the premature end of the legislative session in 1976. Now, however, on 26 August 1977, Law No 572 of 8 August 1977 came into force providing for the incorporation of Directive No 74/150/EEC into the Italian legal system and laying down the procedure according to which the special directives already issued and those still to be issued could be implemented. According to Article 3 of that law the relevant technical provisions are to be issued by a Decree of the President of the Republic on a proposal made by the Minister for Transport in agreement with the other Ministers concerned in each case. At least as regards the basic Directive No 74/150/EEC therefore it is claimed that the principal matter is dealt with and that furthermore there are no signs of any real breach of the principle for free movement of goods.

It is not disputed that the defendant has not taken the necessary measures for the fulfilment of its obligations arising out of the Council directives at issue even within the extended period of one month laid down in the reasoned opinion of 1 October 1976. Therefore, even at the time when the application was lodged, which was only on 6 June 1977, the conditions for the relevant declaration requested in the application to the effect that the defendant had failed to fulfil Treaty obligations were present.

The references of the defendant to the difficulties arising from the fact that several Ministries were competent in this matter and from the premature dissolution of Parliament cannot alter this situation. According to the consistent case-law of the Court, which I imagine I do not need to mention in detail here, a State against which a complaint has been made in accordance with Article 169 of the EEC Treaty must be responsible for delays and difficulties arising from national law.

In so far as the defendant relies on the fact that on 26 August 1977, that is to say during the written procedure, Law No 572 of 8 August 1977 came into force, even the applicant has not contested in the oral procedure the fact that with regard to the basic Directive No 74/150/EEC — but only in respect of this — the infraction of the Treaty thus has come to an end. Even though the applicant was not willing to draw any consequence from this as regards a reformulation of its conclusions, I am nevertheless of the opinion that on this issue the main action is settled on the ground of events which have taken place before the end of the oral procedure and as a result the defendant should not be condemned for an infraction of the Treaty. This emerges also from Article 171 of the EEC Treaty, according to which a Member State which has been found not to have fulfilled an obligation under the Treaty is required to take the necessary measures to comply with the judgment of the Court of Justice; however, if the measure, as in this case, has been adopted even during the proceedings for failure to fulfil Treaty obligations, a condemnation has in my view no longer any sense since the Member State can in fact no longer take any such measures. In support of my view I refer to the judgment of the Court in Case 48/71 (*Commission of the European Communities* v *Italian Republic*, judgment of 13 July 1972 [1972] ECR 529). In that case, although the infraction of Treaty obligations complained of in the application had only come to an end after the conclusion of the written and oral procedure, the Court of Justice decided not to condemn the defendant for an infraction of the Treaty and merely noted that the failure of the Italian Republic to fulfil its Treaty obligations had ceased. It is true that the Court of Justice ordered the Italian Republic to pay the costs since the application had been well founded until after the end of the oral procedure. I take the same view in the present case. Even in so far as I regard the main action as having lost its point the defendant must bear the costs of the proceedings because it only eliminated the condition leading to an infraction of the Treaty after the application had been lodged and during the written procedure.

In so far as the defendant expresses the opinion that no substantial breach of the principle of free movement of goods has occurred through the delay in implementing the directives, this cannot be accepted, because the infraction of the Treaty consists in not having translated the directives into national law within the prescribed period. Moreover, during the oral procedure the applicant mentioned the fact that even after the adoption of Law No 572 considerable difficulties still exist for Italian manufacturers in obtaining a

certificate of conformity for their products, if they abide by the Italian technical provisions which are still in force at present. I will not go into the question whether, as the applicant states, somewhat in contradiction with views which it has expressed elsewhere, the technical directives of the Council are even at the present time directly applicable law in the sense that even the manufacturers can rely on them. I take the view that legal certainty requires that the technical directives should be transformed into domestic law in order to come to the general knowledge of those concerned and also in order to be actually applied by all the subordinate authorities. Obviously the Italian legislature and the Italian Government share this view, as can be seen from Article 3 of Law No 572 and from what was said by the defendant's representative in the oral procedure. However, it is undeniable that Italian law has not yet been adapted to the four technical directives mentioned in the application by the procedure under Article 3 of Law No 572. Thus the state of the law still does not comply with the Treaty.

I am therefore of the opinion that the Court should:

1. Declare that the Italian Republic, by not putting into force within the prescribed period the necessary provisions to comply with Council Directives Nos 74/151/EEC; 74/152/EEC, 74/346/EEC and 74/374/EEC as failed to fulfil its obligations under the Treaty;

2. Declare that in other respects the main action is settled;

3. Order the defendant to pay the costs.