JUDGMENT OF THE COURT
OF 11 APRIL 1978 [1]

Commission of the European Communities v Italian Republic

"Metrology"

Case 100/77

Member States — Failure to fulfil an obligation under the Treaty — Justification — Not permissible
(EEC Treaty, Art. 169)

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 Case 100/77

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Armando Toledano-Laredo, acting as Agent, with an address for service in Luxembourg at the offices of Mario Cervino, Jean Monnet Building, Kirchberg,

applicant,

v

ITALIAN REPUBLIC, represented by its Ambassador, Adolfo Maresca, acting as Agent, assisted by the Avvocato dello Stato, Arturo Marzano, with an address for service in Luxembourg at the Italian Embassy,

defendant,

APPLICATION for a declaration that the Italian Republic has failed to fulfil its obligations under Council Directives Nos 71/316/EEC, 71/317/EEC, 71/318/EEC, 71/347/EEC, 71/349/EEC, 71/354/ EEC, 73/360/EEC, 73/362/EEC and 74/148/EEC and Commission Directive No 74/

1 — Language of the Case: Italian.

331/EEC, on the approximation of the laws of the Member States in the field of measuring instruments,

THE COURT,

composed of: H. Kutscher, President, M. Sørensen and G. Bosco (Presidents of Chambers), A. M. Donner, J. Mertens de Wilmars, P. Pescatore, Lord Mackenzie Stuart, A. O'Keeffe and A. Touffait, Judges,

Advocate General: G. Reischl
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and Issues

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

I — Facts and procedure

Between 1971 and 1974, the Council and the Commission adopted ten directives on the approximation of the laws of the Member States in the field of measuring instruments. The Italian authorities did not adopt within the prescribed period the measures provided for by those directives, the prescribed periods expiring between 29 January 1973 and 6 September 1975.

On 14 February 1975 the Commission, in view of the inactivity of the Italian authorities, requested the Italian Government to submit within one month its observations in accordance with Article 169 of the EEC Treaty (this first letter referred only to the first eight directives, in respect of which the last of the periods within which they were to be implemented expired on 21 April 1973). The period for submitting a reply was extended to no effect.

On 15 October 1975 the Commission requested the Italian Government to submit within one month its observations on its inactivity following the entry into force of four other directives, one of which was adopted by the Commission (the periods during which those directives were to be implemented had expired between 21 May 1975 and 21 June 1975).

On 1 December 1975, the Italian Minister for Industry announced that two draft laws corresponding to the contents of those four directives had been put before the parliament and that he hoped that its "passage through parliament" could be accomplished shortly.

A reasoned opinion was sent in respect of the first eight directives on 22 December 1975; the Italian authorities acknowledged receipt of that opinion on 5 January 1976.

On 4 June 1976, the Commission delivered a fresh reasoned opinion relating to the other four directives.

On 28 July 1977, the Commission instituted proceedings for a declaration that the Italian Government had failed to fulfil its obligations under ten directives of the 12 in question, leaving aside the two Council directives relating to measuring instruments for liquids concerned in the first reasoned opinion.

By letter lodged on 16 September 1977, the Italian Ministry for Foreign Affairs sent the Court of Justice the following document:

"The Italian Government, represented by the Agent of the Government, Adolfo Maresca, Ambassador, having taken note of the proceedings instituted by the European Community under Article 169 of the EEC Treaty on the ground of failure to apply Council Directives Nos 71/316/EEC, 71/317/EEC, 71/318/EEC, 71/347/EEC, 71/349/EEC, 71/354/EEC, 73/360/EEC, 73/362/EEC and 74/148/EEC and Commission Directive No 74/331/EEC, on the approximation of the laws of the Member States in the field of measuring instruments, recalls its intention to expedite as much as possible the procedures already initiated some time ago for the purpose of incorporating Community provisions in the national legal system and hopes that the Commission's request can be made purposeless as soon as possible by the removal of the subject-matter of the dispute."

By letter of 11 November 1977 the Commission took note of the letter from the Italian Government but stated that:

"So far as the procedure is concerned, the Commission states that it will not lodge a reply.

It therefore concludes that the procedure should enter the oral stage."

The Court, after hearing the report of the Judge-Rapporteur and the views of the Advocate General, decided to open the oral procedure without any preparatory inquiry.

II — Submissions and arguments of the parties put forward during the written procedure

The causes of any failure to fulfil its obligations under the Treaty of which the Italian Government is accused have been put forward by the latter in various documents and in particular in a telegram sent to the Commission on 22 July 1976:

"Above-mentioned directives may only be incorporated into Italian legislation by specific law. For this purpose, as communicated by Memorandum No 484 of 22 January 1976, two draft laws have been put before the sixth legislature of the parliament for examination. Early dissolution of the chambers has resulted in delay in the passage of two draft laws which may only be continued after resumption of the legislative activities of the chambers elected on 20 June. It is therefore essential to have an appropriate extension of the period laid down etc. . . ."

The *Commission* recalls the need to ensure that the duty to implement the directives is complied with which has been recognized on several occasions by the Court, in particular in the judgment in Case 52/75 *(Commission of the European Communities* v *Italian Republic,* judgment of 26 February 1976 [1976] ECR 277). The Commission emphasizes, in reply to the argument

relating to the parliamentary procedures and the delay therein, that the case-law of the Court "makes it clear, moreover, that the Member States cannot rely upon provisions or practices in their own domestic legal system or on physical circumstances of a national nature in order to justify failure to comply with the duties and periods prescribed by the Community directives".

With regard to the substance of the case, the Commission recalls the purpose of the directives in question. Following the decision of the Council of 26 July 1966 (Journal Officiel No 165 of 21 September 1966, p. 2971) which eliminated customs duties and quantitative restrictions between Member States in respect of products other than those listed in Annex II to the EEC Treaty, the Council approved on 28 May 1969 a General Programme for the elimination of technical barriers to trade in industrial products, foodstuffs and with a view to the mutual recognition of inspections (Official Journal, English Special Edition, Second Series, IX, p. 1). Within the context of that programme the following directives, whose contents the Commission sets out, were adopted in turn:

— Council Directive No 71/316/EEC of 26 July 1971, amended by Articles 29 and 30 and the corresponding annexes to the Act concerning the Conditions of Accession (Official Journal, English Special Edition 1971 (II), p. 707); this first directive relates to the approximation of the laws of the Member States relating to common provisions for both measuring instruments and conditions for metrological control.

— Council Directive No 71/317/EEC of 26 July 1971 on the approximation of the laws of the Member States relating to 5 to 50 kilogramme medium accuracy rectangular bar weights and 1 to 10 kilogramme medium accuracy cylindrical weights (Official Journal, English Special Edition 1971 (II), p. 721).

— Council Directive No 71/318/EEC of 26 July 1971 on the approximation of the laws of the Member States relating to gas volume meters (Official Journal, English Special Edition 1971 (III), p. 729).

— Council Directive No 71/347/EEC of 12 October 1971, amended by Article 29 and Annex I to the Act concerning the Conditions of Accession, on the approximation of the laws of the Member States relating to the measuring of the standard mass per storage volume of grain (Official Journal, English Special Edition 1971 (III), p. 852).

— Council Directive No 71/349/EEC of 12 October 1971 on the approximation of the laws of the Member States relating to the calibration of the tanks of vessels (Official Journal, English Special Edition 1971 (III), p. 865).

— Council Directive No 71/354/EEC of 18 October 1971, amended by Article 29 and Annex I to the Act concerning the Conditions of Accession, on the approximation of the laws of the Member States relating to units of measurement (Official Journal, English Special Edition 1971 (III), p. 878); the prohibitions and duties contained in this directive and in the annexes thereto concern measuring instruments used, measurements made and indications of quantity expressed in units, whether for economic, public health, public safety or administrative purposes.

— Council Directive No 73/360/EEC of 19 November 1973 on the approximation of the laws of the Member States relating to non-automatic weighing machines

(Official Journal L 335 of 5 December 1973, p. 1).

— Council Directive No 73/362/EEC of 19 November 1973 on the approximation of the laws of the Member States relating to material measures of length (Official Journal L 335 of 5 December 1973, p. 56).

— Council Directive No 74/148/EEC of 4 March 1974 on the approximation of the laws of the Member States relating to weights of from 1 mg to 50 kg of above-medium accuracy (Official Journal L 84 of 28 March 1974, p. 3).

— Commission Directive No 74/331/EEC of 12 June 1974 adapting to technical progress the Council Directive of 26 July 1971 on the approximation of the laws of the Member States relating to gas volume meters (Official Journal L 189 of 12 July 1974, p. 9).

The penultimate article of each of the above-mentioned nine Council directives fixes a period of 18 months from notification thereof during which the Member States must comply with their obligations. This period is 12 months in the case of the Commission directive.

The periods laid down with regard to the Italian Republic for complying with the directives expired between 29 January 1973 and 6 September 1975.

The Commission then recalls the stages of the procedure summarized above.

III — Oral procedure

At the hearing on 14 March 1978 the *Commission* referred to the arguments which it had put forward in writing.

The *Italian Government* stressed the effect which the political situation had on the prolongation of the failure to fulfil its obligations of which it is accused in this case.

Moreover, it mentioned the possibility that the directives might be illegal, although it did not put forward that submission formally.

It stated that a decree law will be passed immediately the new Italian Government is appointed so as to put Italy in line with its obligations and, for the last time, it requested that the case should be adjourned to permit that decree law to be adopted and to avoid a declaration that it has failed to fulfil its obligations under those directives.

The Advocate General delivered his opinion on the same date.

Decision

1 By an application lodged at the Registry on 2 August 1977, the Commission brought before the Court under Article 169 of the EEC Treaty an application for a declaration that, by not adopting within the prescribed periods, the laws, regulations or administrative provisions needed in order to comply with Council Directives Nos 71/316, 71/317, 71/318, 71/347, 71/349, 71/354, 73/360, 73/362, 74/148 and Commission Directive No 74/331, on the approximation of the laws of the Member States in the field of measuring instruments, the Italian Republic has failed to fulfil an obligation under the Treaty.

2 These directives form part of a series of provisions relating to measuring instruments expressly provided for in 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 which was adopted by the Council on 28 May 1969 (Official Journal, English Special Edition, Second Series, IX, p. 25).

3 This general programme was implemented by an outline directive of the Council, Directive No 71/316/EEC of 26 July 1971 on the approximation of the laws of the Member States relating to common provisions for both measuring instruments and methods of metrological control (Official Journal, English Special Edition 1971 (II), p. 707), amended by Articles 29 and 30 and the corresponding annexes to the Act concerning the Conditions of Accession, whose aim was essentially to harmonize the national provisions relating to the control of those instruments and which was based on the fundamental principle of mutual recognition of controls.

4 With this general objective in mind, Council Directive No 71/317/EEC of 26 July 1971 on the approximation of the laws of the Member States relating to 5 to 50 kg medium accuracy rectangular bar weights and 1 to 10 kg medium accuracy cylindrical weights (Official Journal, English Special Edition 1971 (II), p. 721) and Council Directive No 71/318/EEC of 26 July 1971 on the approximation of the laws of the Member States relating to gas volume meters (Official Journal, English Special Edition 1971 (III), p. 729) fix the technical requirements for the design and functioning, in the first case of medium accuracy rectangular bar weights and cylindrical weights, and in the second, of gas volume meters.

5 Council Directive No 71/347/EEC of 12 October 1971 on the approximation of the laws of the Member States relating to the measuring of the standard mass per storage volume of grain (Official Journal, English Special Edition 1971 (III), p. 852), amended by Article 29 and Annex I to the Act concerning the Conditions of Accession, defines a specific characteristic designated the "EEC standard mass per storage volume" and lays down the technical requirements which must be satisfied by the standard instruments used to determine this reference value within the context of the controls provided for in Directive No 71/316/EEC.

6 Council Directive No 71/349/EEC of 12 October 1971 on the approximation of the laws of the Member States relating to the calibration of the tanks of vessels (Official Journal, English Special Edition 1971 (III), p. 865)

describes the Community requirements relating to the calibration method intended to ensure that the quantity of liquid in tanks, including the liquid fuel bunkers, of inland waterway vessels and of national and international coasters, calibrated by this method can be measured at all times and with sufficient accuracy.

7 Council Directive No 71/354/EEC of 18 October 1971 on the approximation of the laws of the Member States relating to units of measurement (Official Journal, English Special Edition 1971 (III), p. 878), amended by Article 29 and Annex I to the Act concerning the Conditions of Accession, emphasizes the interdependence of the rules concerning units of measurement and those concerning measuring instruments and harmonizes the national provisions so as to ensure harmonious application of existing and future Community directives relating to measuring instruments and methods of metrological control.

8 Council Directive No 73/360/EEC of 19 November 1973 on the approximation of the laws of the Member States relating to non-automatic weighing machines (Official Journal L 335) fixes the technical requirements for the design and functioning of this type of instrument.

9 Council Directive No 73/362/EEC of 19 November 1973 on the approximation of the laws of the Member States relating to material measures of length (Official Journal L 335) lays down the technical requirements which must be fulfilled by material measures of length in order that they may be imported, marketed and freely used after they have been subject to controls and the marks and symbols laid down have been affixed to them.

10 Council Directive No 74/148/EEC of 4 March 1974 on the approximation of the laws of the Member States relating to weights of from 1 mg to 50 kg of above-medium accuracy (Official Journal L 84) lays down the technical specifications which weights of above-medium accuracy must satisfy in order to be put freely on the market and into service, after verifications and affixing of the EEC initial verification mark.

11 Finally, Commission Directive No 74/331/EEC of 12 June 1974 adapting to technical progress the Council Directive of 26 July 1971 on the approximation of the laws of the Member States relating to gas volume meters (Official Journal L 189) amends Directive No 71/318/EEC in consideration of the technical evolution in this field and of the fact that the test element of

a gas volume meter may permit photo-electric reading of the number of revolutions effected by that element.

12 The penultimate article of each of the above-mentioned nine Council directives fixes a period of 18 months from the notification thereof within which the Member States must comply with their obligations thereunder.

13 This period was fixed at 12 months by the Commission directive.

14 The directives were notified to the Italian Republic on the following dates:

— 29 July 1971 in the case of Directives Nos 71/316/EEC, 71/317/EEC and 71/318/EEC,

— 15 October 1971 in the case of Directives Nos 71/347/EEC and 71/349/ EEC,

— 21 October 1971 in the case of Directive No 71/354/EEC,

— 21 November 1973 in the case of Directives Nos 73/360/EEC and 73/362/EEC,

— 6 March 1974 in the case of Directive No 74/148/EEC

and

— 21 June 1974 in the case of Directive No 74/331/EEC.

15 It follows that the periods laid down for the Italian Republic to comply with the directives expired between 29 January 1973 and 6 September 1975.

16 The Commission drew the attention of the Italian authorities to the need to adopt in good time the measures laid down by the directives on 22 November 1972, 1 February 1973 and 26 February 1974 with regard to the Council directives adopted in 1971 (Nos 71/316, 71/317, 71/318, 71/347, 71/349 and 71/354) and on 19 and 20 March and 3 June 1975 with regard to the directives adopted in 1973 and 1974 (Nos 73/360, 73/362 and 74/148).

17 On 22 December 1975 and 4 June 1976 the Commission delivered a reasoned opinion requesting the Italian Republic to adopt within one month the measures necessary for the implementation of the directives in question.

18 On 22 January 1976, the Italian Government informed the Commission that draft laws relating to the incorporation of the above-mentioned directives into Italian legislation had been laid before the parliament.

19 On 22 July 1976 it announced that because of the premature end of the sixth legislative period the draft laws laid before the parliament had lapsed and requested an extension of the period laid down in the reasoned opinion, giving an assurance that the problem in question would be rapidly settled.

20 As the Commission had received no other information since that date it lodged on 28 July 1977 an application for a declaration that the Italian Government had failed to fulfil an obligation under the Treaty.

21 The defendant, who does not deny the failure to failure to fulfil obligations under the Treaty of which it is accused, 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.

22 It follows that since it did not put into force within the prescribed periods the provisions needed to comply with Council Directives Nos 71/316, 71/317, 71/318, 71/347, 71/349, 71/354, 73/360, 73/362 and 74/148 and Commission Directive No 74/331, on the approximation of the laws of the Member States in the field of measuring instruments, the Italian Republic has failed to fulfil an obligation under the Treaty.

Costs

23/25 Under Article 69 (2) of the Rules of Procedure the unsuccessful party shall be ordered to pay the costs, if they have been asked for. The defendant has failed in its submissions. It is therefore necessary to order it to pay the costs.

On those grounds

THE COURT

hereby:

1. **Declares that, by not putting into force within the prescribed period the laws, regulations or administrative provisions needed to comply with the provisions of Council Directives Nos 71/316, 71/317, 71/318, 71/347, 71/349, 71/354, 73/360, 73/362 and 74/148 and those of Commission Directive No 74/331, on the approximation of the laws of the Member States in the field of measuring instruments, the Italian Republic has failed to fulfil an obligation under the Treaty.**

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

Kutscher Sørensen Bosco Donner Mertens de Wilmars

Pescatore Mackenzie Stuart O'Keeffe Touffait

Delivered in open court in Luxembourg on 11 April 1978.

A. Van Houtte
Registrar

H. Kutscher
President

OPINION OF MR ADVOCATE GENERAL REISCHL DELIVERED ON 14 MARCH 1978 [1]

Mr President,
Members of the Court,

The case on which I am now giving my opinion concerns the implementation of measures of Community law in the field of measurement. These measures provide for the approximation of national provisions so as to free trade in the above-mentioned field from obstacles.

1 — Translated from the German.