JUDGMENT OF THE COURT
OF 22 FEBRUARY 1979 [1]

Commission of the European Communities v Italian Republic

"Aerosol dispensers"

Case 163/78

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

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 the obligations and time-limits under Community directives.

In Case 163/78

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by Gian Piero Alessi, a member of the Commission's Legal Department, acting as Agent, with an address for service in Luxembourg at the office of Mario Cervino, Jean Monnet Building, Kirchberg,

applicant,

v

ITALIAN REPUBLIC, represented by Adolfo Maresca, Ambassador, acting as Agent, assisted by Arturo Marzano, Avvocato dello Stato, 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 arising under Council Directive No 75/324/EEC of 20 May

1 — Language of the case: Italian.

1975, on the approximation of the laws of the Member States relating to aerosol dispensers (Official Journal L 147, p. 40),

THE COURT

composed of: J. Mertens de Wilmars (President of the First Chamber), Acting President, Lord Mackenzie Stuart (President of the Second Chamber), A. M. Donner, P. Pescatore, M. Sørensen, A. O'Keeffe and G. Bosco, Judges,

Advocate General: J.-P. Warner
Registrar: A. Van Houtte

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

Council Directive No 75/324/EEC of 20 May 1975, notified to the Member States on 21 May 1975, has as its object the approximation of the laws of the Member States relating to aerosol dispensers, more particularly as regards manufacture, filling and nominal capacities.

Under Article 11 of the directive the Member States were to bring the necessary provisions into force within 18 months of its notification. For Italy that would have been at the latest on 21 November 1976.

By letter of 1 April 1977, the Commission invited the Italian Government to submit its observations in pursuance of Article 169 of the Treaty within a period of two months.

By a telex message of 13 September 1977, the Italian Permanent Representation assured the Commission that the domestic procedure which was in progress concerning the adoption of the directive into national legislation would be accelerated.

The reasoned opinion inviting Italy to comply within a period of two months was sent to the Italian Government by letter dated 19 December 1977.

By telex message of 30 January 1978, the Commission allowed an extension of two months.

On 28 July 1978, the Commission brought this action.

The defendant has not lodged a rejoinder.

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 — Conclusions of the parties

The Commission claims that the Court should:

— Declare that, by failing to adopt, within the prescribed period, the provisions necessary to comply with Council Directive No 75/324 of 20 May 1975 on the approximation of the laws of the Member States relating to aerosol dispensers, the Italian Republic has failed to fulfil an obligation under the Treaty;

— Order the Italian Republic to pay the costs.

III — Submissions and arguments of the parties

The *Commission* points out that the mandatory nature of directives entails the obligation for Member States to comply with the time-limits contained therein for the adoption of the domestic provisions for adaptation. In this respect it refers to Cases 52/75 ([1976] ECR 277) and 10/76 ([1976] ECR 1359).

The *Italian Government* observes that the competent Italian authorities had already shown, before the matter was brought before the Court, their intention to adopt the necessary provisions for the purpose of the complete application of the directive in question. It points out that additional difficulties arose from the admitted necessity to proceed with this adaptation by a legislative measure and not by the simple ministerial decree which had originally been prepared. Various administrative authorities had to be consulted beforehand.

In its reply the *Commission* maintains its conclusions.

IV — Oral procedure

The parties presented oral argument at the hearing on 1 February 1979.

The Advocate General delivered his opinion at the same hearing.

Decision

1 By an application received at the Court Registry on 28 July 1978, the Commission, in pursuance of Article 169 of the EEC Treaty, applied to the Court for a declaration that, by failing to adopt, within the prescribed period, the provisions necessary to comply with Council Directive No 75/324 of 20 May 1975 on the approximation of the laws of the Member States relating to aerosol dispensers (Official Journal L 147, p. 40) the Italian Republic had failed to fulfil an obligation under the Treaty.

2 Under Article 11 of the directive the Member States were to bring into force the provisions necessary to comply with the directive within 18 months of its notification, a period which in this case expired on 21 November 1976.

3 The defendant does not contest the alleged failure.

4 The defendant has merely stated that the delay in bringing the directive in question into force was due, on the one hand, to the necessity of adopting a legislative measure and, on the other hand, to the fact that the actual subject-matter of the directive required prior consultation with various competent administrative authorities.

5 It must be remembered 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 the obligations and time-limits imposed by Community directives.

6 It must accordingly be declared that by not adopting within the prescribed period the provisions necessary to comply with Council Directive No 75/324 of 20 May 1975, the Italian Republic has failed to fulfil an obligation under the Treaty.

Costs

7 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 in the successful party's pleading.

8 The defendant has failed in its submissions and must therefore be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

1. **Rules that, by failing to adopt, within the prescribed period, the measures necessary to comply with Council Directive No 75/324 of 20 May 1975, the Italian Republic has failed to fulfil an obligation under the Treaty;**

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

Mertens de Wilmars Mackenzie Stuart Donner

Pescatore Sørensen O'Keeffe Bosco

Delivered in open court in Luxembourg on 22 February 1979.

A. Van Houtte
Registrar

J. Mertens de Wilmars
President of the First Chamber,
Acting President