# Case 419/85

# Commission of the European Communities
v
# Italian Republic

(Implementation of a directive — Community driving licence)

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## Summary of the Judgment

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

A Member State may not rely on provisions, practices or situations in its national legal system in order to justify failure to comply with the obligations and time-limits laid down by directives.

## REPORT FOR THE HEARING
delivered in Case 419/85 *

### I — Facts and procedure

1. Council Directive 80/1263 of 4 December 1980 on the introduction of a Community driving licence (Official Journal 1980, L 375, p. 1), which was adopted on the basis of Article 75 (1) (c) of the EEC Treaty, introduces a Community model national driving licence, regulates the mutual recognition and exchange of national driving licences and lays down minimum conditions for the issue of driving

* Language of the Case: Italian.

licences, and thus constitutes the first stage in the harmonization of the standards on the issue and validity of driving licences.

Article 6 of the directive provides that:

'1. A driving licence shall, moreover, be issued only to those applicants:

(a) who have passed a practical and theoretical test and who meet medical standards, the minimum requirements of which may not be substantially less stringent than those set out in Annexes II and III;

(b) ...

2. Member States may apply to the issue of driving licences the provisions of their national legislation relating thereto which are concerned with conditions other than those referred to in paragraph 1.'

Article 9 provides that:

'After consulting the Commission, Member States may, pending introduction of the final system and providing that the fact is recorded on the licence, derogate from:

(i) the categories defined in Article 3 (1);

(ii) the speeds indicated in the first indent of Article 3 (3), provided that the speeds which they prescribe are lower;

(iii) the conditions of validity provided for in Article 4.

Furthermore, Member States shall, pursuant to the procedure laid down in Article 12, establish equivalent definitions in so far as their national categories differ.'

Finally, Article 12 reads as follows:

'1. After consulting the Commission, Member States shall, in good time and at the latest by 30 June 1982, adopt the laws, regulations or administrative provisions necessary for the implementation of this directive from 1 January 1983.

2. However, a Member State may, without prejudice to the application of the other provisions in this directive, decide not to issue Community model driving licences until a later date, which may not be later than 1 January 1986.

3. Member States shall assist one another in the implementation of this directive.'

2. The Commission took the view that the Italian Republic had not adopted the measures needed to transpose the directive into national law, and on 9 November 1983 it therefore initiated the procedure provided for in Article 169 of the Treaty, requesting the Italian Government to submit its observations within a period of two months.

3. By letter dated 9 February 1984 the Italian Government informed the Commission that pending subsequent adoption of legislation the Italian authorities had prepared a circular for the purposes of preliminary application of the directive. That circular was adopted on 18 June 1984 and the Commission was notified of its contents by letter dated 18 July 1984.

4. By letter dated 27 August 1984 the Commission observed to the Italian Government that the circular in question governed only the exchange of foreign driving licences for Italian driving licences and vice versa whereas other provisions of the directive, and in particular Article 6, which stipulates that a licence may be issued only to those who have passed a practical

and theoretical test, had not been implemented.

5. Consequently, on 11 February 1985 the Commission delivered a reasoned opinion addressed to the Italian Government in which it stated that to the best of its knowledge Italian law did not provide for a practical test for the issue of a driving licence for motor cycles. The Commission added that the directive stipulates that the practical test should last at least 20 minutes, whereas Italian law leaves the duration to the discretion of the examiner. Moreover, Italian law does not stipulate that a licence may not be issued or renewed for persons suffering from cardiovascular diseases, severe endocrine disorders, certain diseases of the nervous system, mental disorders or diseases of the blood unless the application is supported by a medical certificate, as provided in Annex III to the directive.

6. By a telex message of 7 May 1985 the Italian Government replied that the draft law to implement the directive had been approved by the Council of Ministers on 22 March 1985. However, on 23 October 1985 the Government informed the Commission that issue of the Community driving licence was subject to approval of the draft law, which was unlikely to be given before 1 January 1986.

7. By application received at the Court Registry on 13 December 1985 the Commission brought the present action.

8. Upon 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 inquiries.

## II — Conclusions of the parties

1. The *Commission* claims that the Court should:

Declare that, by failing to adopt within the period prescribed all the provisions needed to comply with Council Directive 80/1263 of 4 December 1980 on the introduction of a Community driving licence, the Italian Republic has failed to fulfil its obligations under the EEC Treaty;

Order the Italian Republic to pay the costs.

2. The *Italian Republic* contends that the Court should:

Dismiss the action as inadmissible or in any event unfounded.

## III — Submissions and arguments of the parties

1. The *Commission* states that under Article 12 (1) of Directive 80/1263 Member States were obliged to adopt the measures needed to implement the directive within the requisite periods. The administrative provisions adopted by the Italian Republic cover only the exchange of foreign driving licences for Italian licences and vice versa and the part of the directive which provides for harmonization of the rules on the issue and validity of licences has not been implemented.

2. The *Italian Government* observes that the Commission has admitted that the Italian Republic has implemented part of the directive. By submitting the draft law to parliament in June 1985 and by adopting administrative provisions the Italian Government acted in good time. The main objectives of the directive may be

considered to have been achieved by the administrative measures which have been adopted and are to be adopted.

In assessing the relevance and importance of the implementing measures so far adopted by the Italian Government it must be borne in mind that the directive as a whole does not require the Member States to implement the Community rules on driving licences immediately and in their entirety. In that respect the Italian Government draws attention to the provisions of Articles 6 (2), 9 and 12 (2).

In view of the discretion retained by the Member States the Italian Government takes the view that there is no justification for initiating proceedings before 1 January 1986 (Article 12 (2)) on the general and unspecified ground that the directive has not been implemented as a whole.

Since part of the directive is already in force and the other part need not be in force before 1 January 1986 the Commission's general claim that the directive has not been implemented is neither right nor well founded.

3. The *Commission* denies that the wording of Article 6 (2) can give the impression that Member States have unrestricted discretion to derogate from the provisions of Article 6 (1). If that were so Article 6 (2) and Annexes II (in relation to tests) and III (in relation to medical standards) would contain recommendations rather thandirectives. If all the language versions are considered it is clear that Article 6 (2) concerns only conditions other than those referred to in Article 6 (1).

There is no mention of 1 January 1986 or of any other date in Article 6 (2) or in Article 9, which does not provide for any derogation from Article 6. Furthermore, the derogations envisaged in Article 9 could be made only after consulting the Commission by 30 June 1982 at the latest; no such consultations have ever taken place.

Article 12 (2) does not allow any derogation from the date fixed for the adoption of the provisions needed to implement the directive, namely 1 January 1983.

It follows that all the provisions to implement the directive were to be taken by 30 June 1982 at the latest and that Article 12 (2) may be relied on only in order to justify a delay in the issue of the Community model driving licence, which in any event should take place no later than 1 January 1986.

A. J. Mackenzie Stuart
Judge-Rapporteur