JUDGMENT OF THE COURT
14 JULY 1977 [1]

# Commission of the European Communities v Italian Republic

'Harmonization of laws relating to electrical equipment'

**Case 123/76**

*Harmonization of laws relating to electrical equipment — Council Directive No 73/23 (EEC) — Mandatory application*

In setting a precise period for the putting into force of national provisions, Article 13 of Directive No 73/23 (EEC) requires the adoption of provisions ensuring that Articles 5 to 8 of the directive shall apply fully and immediately in cases to which they relate. For the purposes of the directive and of Article 13 thereof, it does not suffice for Member States to postpone the implementation of that article until the time when the standards concerned have been adopted.

In Case 123/76

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

applicant,

v

ITALIAN REPUBLIC, represented by its Ambassador Adolfo Maresca, acting as Agent, assisted by Ivo Maria Braguglia, Debuty State Advocate, 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 Article 13 of Council Directive (73/23/EEC) of 19 February 1973 on the harmonization of the laws of Member States relating to electrical equipment designed for use within certain voltage limits (OJ L 77, p. 29),

1 — Language of the Case: Italian.

THE COURT

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

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

gives the following

# JUDGMENT

## Facts and issues

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

I — Facts

On 19 February 1973 the Council adopted Directive No 73/23/EEC on the harmonization of the laws of Member States relating to electrical equipment designed for use within certain voltage limits. In the preamble the directive states, in particular, that the provisions in force in the Member States designed to ensure safety in the use of the electrical equipment concerned may differ, thus impeding trade.

In certain Member States, in respect of certain electrical equipment, the safety legislation takes the form of preventive and repressive measures by means of binding provisions, whereas in other Member States the safety legislation refers to technical standards laid down by standards bodies. Within the Community the free movement of electrical equipment should follow when this equipment complies with certain safety requirements recognized in all Member States. Without prejudice to any other form of proof, the proof of compliance with these requirements may be established by reference to harmonized standards which incorporate these conditions (fifth recital).

As a transitional measure, the free movement of electrical equipment for which harmonized standards do not yet exist may be achieved by applying the safety provisions or standards already laid down by other international bodies or by one of the bodies which establish harmonized standards (seventh recital).

As regards the products concerned the scope of the directive is defined in Article 1: it covers 'any equipment designed for use with a voltage rating of between 50 and 1 000 v for alternating current and between 75 and 1 500 v for direct current, other than the equipment and phenomena listed in Annex II'.

Articles 2 to 4 lay down fundamental requirements. Electrical equipment may be placed on the market of a Member State only 'if, having been constructed

in accordance with good engineering practice in safety matters in force in the Community, it does not endanger the safety of persons, domestic animals or property when properly installed and maintained and used in applications for which it was made'. The principal elements of the safety objectives are listed in Annex I (Article 2). If electrical equipment is of such a nature as to comply with the provisions of Article 2 the free movement thereof within the Community may not be impeded by the Member States for reasons of safety (Article 3). Article 4 provides that in relation to electrical equipment the Member States shall ensure that stricter safety requirements than those laid down in Article 2 are not imposed by electricity supply bodies for connexion to the grid, or for the supply of electricity to users of electrical equipment.

As regards the standards to which reference may be made as evidence that a piece of electrical equipment complies with the requirements of Article 2, there are four possibilities:

1. The first is that harmonized standards exist. Article 5 of the directive provides that standards shall be regarded as harmonized once they are drawn up by common agreement between the bodies notified by the Member States, and published under national procedures.
2. If no harmonized standards exist, the equipment concerned may already have been the subject of standards drawn up on an international basis. Article 6 of the directive lays down the procedure whereby such standards may be published and applied.
3. For cases in which there is no harmonized standard and no international standard published in accordance with Article 6, Article 7 provides that the Member States must allow the placing on the market of 'electrical equipment manufactured in accordance with the safety provisions of the standards in force in the Member State of manufacture if it ensures a safety level equivalent to that required in their own territory.
4. The fourth possibility, covered by Article 8, embraces two possible situations:
   — that in which no harmonized standard, international or national, exists;
   — that in which a piece of equipment does not conform with the standards if they do exist.

The placing of such a piece of equipment on the market must nevertheless be admitted if it otherwise appears that it satisfies the security objectives stated in Article 2.

Article 13 of the directive provides:

'1. The Member States shall put into force the laws, regulations and administrative provisions necessary to comply with the requirements of this directive within eighteen months of its notification and shall forthwith inform the Commission thereof.
However, in the case of Denmark, the time-limit shall be extended to five years.
2. The Member States shall communicate to the Commission the text of the main provisions of national laws which they adopt in the field covered by this directive.'

The directive was notified to the Member States on 21 February 1973.

Taking the view that Italy had failed to fulfil its obligations under Article 13 of the directive, the Commission, pursuant to Article 169 of the EEC Treaty, invited the Italian Government, by letter of 15 July 1975, to submit its observations to it within a period of two months from the receipt of the letter.

On 30 April 1976 the Italian Government communicated to the Commission a draft law 'applying the directive of the Council of the European Communities (73/23/EEC) concerning the security standards with which electrical

equipment designed for use within certain voltage limits must comply.' The officers of the Commission made observations on certain provisions of the draft law.

On 17 June 1976 the Commission delivered a reasoned opinion inviting the Italian Republic to adopt the measures necessary in order to comply with the directive in question within a period of one month.

By application lodged on 21 December 1976 the Commission, pursuant to the second paragraph of Article 169 of the Treaty, brought the alleged failure on the part of the Italian Republic before the Court of Justice.

## II — Written procedure

The written procedure followed the normal course.

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 inquiry.

However, the Commission was invited to reply, in writing, to a question put by the Court.

## III — Conclusions of the parties

The *Commission* claims that the Court should:

— Declare that the Italian Republic, in not having brought into force, within the precribed period, the provisions necessary in order to comply with Council Directive No 73/23/EEC of 19 February 1973 on the harmonization of the laws of Member States relating to electrical equipment designed for use within certain voltage limits, has failed to fulfil an obligation under the Treaty;

— Order the Italian Republic to bear the costs.

The *Government of the Italian Republic* contends that the Court should:

— Reject the Commission's application and order the applicant to bear the costs.

## IV — Submissions and arguments of the parties

The *Commission* stresses that the mandatory nature of directives implies that the Member States are under a duty to comply with the time-limits which they set for bringing into force the measures for which they provide (see the judgment of 26 February 1976 in Case 52/75, Commission v Italy [1976] ECR 277, and the judgment of 22 September 1976 in Case 10/76, Commission v Italy [1976] ECR 1359). It is also established in the case-law that a Member State cannot rely on provisions, practices or circumstances existing in its own internal legal system in order to justify a failure to comply with the obligations and time-limits resulting from Community directives.

Since the Italian Republic has failed to bring into force, within the prescribed period, the provisions necessary in order to comply with Directive No 73/23/EEC, it has failed to fulfil an obligation under the Treaty.

The *Government of the Italian Republic* explains that the draft law for the implementing of the directive in question was adopted by the Senate of the Republic at its sitting on 26 February 1976 and sent to the Chamber of Deputies on 10 March 1976. The fact that the VIth legislature was prematurely dissolved meant that the draft law was lost.

When the draft law was reintroduced during the present legislature the observations of the Commission were taken into account. The new text of the draft law was approved by the Council of Ministers at its meeting on 21 January 1977.

The preparation of the said draft law was necessary in order that the directive should be applied *in its entirety.* In fact, however, the essential provisions of the directive already apply in Italian law.

*(a) As regards Article 2 of the directive*

Article 1 of the law of 1 March 1968 (Gazzetta Ufficiale No 77 of 23 March 1968) provides that 'All electrical and electronic goods, apparatus, machines, instruments and equipment must be constructed in accordance with good engineering practice'. Such goods are considered as constructed in accordance with good engineering practice where they are '... constructed in compliance with the standards of the Italian Electrotechnical Committee ...' (Article 2).

It must be stressed that the harmonized standards (Article 5 of the directive) do not yet in fact exist. Similarly, there do not yet exist any international safety provisions in respect of which the publication procedure laid down in Article 6 of the directive has been applied. The standards of the Italian Electrotechnical Committee are identical in substance to the standards set by the corresponding committees in the other Member States in that they are all derived — for the most part — from security provisions adopted by the International Eletrotechnical Commission. Since the Italian standards conform in substance with those in force in the other Member States, the provision in Article 7 of the directive is at present observed in the Italian legal system, and it continues to apply in the absence of any harmonized standards and of any international provisions referred to by Article 6.

Thus the obligation laid down by Article 2 of the directive is in practice applied in the Italian legal system.

*(b) As regards Article 3 of the directive*

Since it is established that the requirements as to conformity are in practice satisfied in the Italian legal system the fundamental requirement set out in Article 3 should also be considered as satisfied in practice. Moreover such an obligation does not require any specific national standard for its application. The same is true of Article 4 of the directive.

The *Commission* replies that the fundamental requirements of the directive in question — in so far as they are correctly interpreted — have not been implemented by any measure in the Italian legal system.

*(a) As regards Article 2 of the directive*

The definition of the principal safety objectives — which are listed in Annex I to the directive — constitute a real innovation at European level. For in the first place the concept of 'good engineering practice' is made into a practical and precise rule. Secondly, all technical security standards — harmonized or not — must be established in such a way as to ensure that the safety objectives shall be respected.

In summarizing the position the Commission points out the following points from Community rules:

1. Prohibition on the marketing of electrical equipment which does not comply with the safety objectives, both at national level and at Community level;
2. Introduction, at Community level, of the concept of 'good engineering practice' in connexion with the safety of persons, domestic animals and property;
3. Definition of the concept of 'good engineering practice' by the laying down of safety objectives;
4. Provisions for the drawing up of technical measures, that is to say, measures of a kind such as to ensure that the safety objectives shall be observed and put into practice.

The Commission points out that the Italian law to which the defendant refers does not contain any definition of good engineering practice. Under that law, good engineering practice can at the most be ascertained case by case from the standards set by the Italian Electrotechnical Committee.

It follows that the Italian law is more restrictive than the directive inasmuch as it only accepts a presumption as to compliance in respect of products constructed in accordance with the standards set by the Italian Electrotechnical Committee. Moreover it allows the placing on the market of products for which no national standards exist, and in respect of which it is not possible to check whether they comply with the safety principles set out in Annex I to the directive.

*(b) As regards Article 3 of the directive*

This article establishes a complete system of technical standards which confer on electrical equipment a presumption as to compliance with the safety objectives. The (EEC) harmonized standards mentioned in Article 5 are of prime importance. There follow the international standards mentioned in Article 6, the national standards mentioned in Article 7 and the principle approved in Article 8.

On this subject the Commission explains that the preparations for harmonization for which Article 5 makes provision have been completed as regards a good deal of equipment, and therefore in respect of the said equipment the presumption as to compliance with the safety objectives is now established — in principle — with reference to the EEC harmonized standards. Thus the defendant cannot argue that the harmonized standards 'do not yet exist'. They do not exist in Italy inasmuch as the failure to apply the directive prevents those standards from becoming part of the Italian legal system. The Commission produces — as an annex to its reply — the letter from the Italian Permanent Representation of 30 April 1976 and the list of harmonized standards forwarded by the Representation on the same date. The Italian Republic's alleged failure is all the more serious in that the Italian legislation at present in force is such that traders can judge whether electrical equipment is of the correct standard *only* by reference to the standards set by the Italian Electrotechnical Committee. They are thus deprived of the opportunities offered by the standards mentioned in Articles 5, 6 and 8 of the directive.

Finally, the Commission contests the defendant's arguments concerning the application in Italy of standards analogous to those in force in the other Member States. Those arguments are based on an unconfirmed supposition, namely the absence of EEC harmonized standards, and they pre-suppose — but do not demonstrate — that the standards of the various national committees are substantially identical.

Referring to the data furnished by the Italian authorities, the Commission enumerates products for which standards of the Italian Electrotechnical Committee are (a) non-existent; or (b) divergent.

In conclusion, the Italian Republic's alleged failure consists in not adopting measures intended not to implement Directive No 73/23/EEC 'in its entirety' but to adapt the Italian legal system to *all* the requirements laid down in the directive, particularly Articles 2 (and Annex I), 3, 5, 6, 8, 9 and 10.

The *Government of the Italian Republic* points out first that having regard to Article 189 of the EEC Treaty the Member States are not required to introduce into their legal system standards the content of which is identical to those set out in the directive. From the purely formal point of view,

therefore, the Italian Government cannot be criticized on the ground that there does not at present exist in the national legal system any position identical to Article 2 of Directive No 73/23/EEC. As regards the *results,* it is necessary to repeat that the first paragraph of Article 1 of Law No 186/68 satisfies the fundamental requirements set out in Article 2 of the directive.

Any definition of good engineering practice (whether it be at Community level or national level) is necessarily general and all-embracing. Its meaning cannot be rendered specific otherwise than by means of individual technical rules relating to each piece of electrical apparatus in particular. Good engineering practice as required by the national law presupposes and necessarily includes the whole of the Community objectives and requirements, mentioned by the Commission, of good engineering practice.

The defendant denies the Commission's assertion that the Italian law is more restrictive than the directive. In fact Article 2 of Law No 186/68 establishes a presumption that the equipment complies with good engineering practice, but does not in any way exclude the possibility that compliance may be established by other means. It often happens that electrical equipment in shown before the courts by means of an expert technical examination to comply with good engineering practice and with the safety objectives and this also applies to equipment not complying with the provisions of the Italian Electrotechnical Committee.

With regard to the interpretation of Article 3 of the directive, the Italian Government is of the opinion that the point at issue is whether any harmonized standards as mentioned in Article 5 of the directive do or do not exist at present. It maintains its assertion that no such standards yet exist. If such standards really did exist at Community level the Commission ought to have produced them or to have referred to the provisions in which they are to be found. Similarly it ought to have produced the minutes of the deliberations regarding harmonization. It would not appear that any such deliberations have resulted in any progress in the Community context or that the Italian Electrotechnical Committee (a body designated under Article 11 of the directive) has ever taken part in Community preparations for harmonization for the purposes of Article 5 of the directive.

The documents produced by the Commission do not justify an assertion to the contrary because:

(a) The letter from the Permanent Representation of Italy dated 30 April 1976 does not give a list of harmonized standards referred to in Article 5 of the directive, but refers to the 'list of harmonized standards worked out by the European standards bodies', namely as regards the present case the European Committee for Electrotechnical Standardization (hereinafter referred to as 'the European Committee').

(b) The European Committee is a private body in which the electrotechnical committees of 15 European states participate — in a private capacity — (at least as regards Italy). Decisions are adopted by a majority of the committees composing it.

(c) As regards the list produced by the Commission, the European Committee did no more than indicate the divergences existing between the different laws of the Member States of the Community. The list does not represent anything other than a working basis for the *national bodies notified under Article 11 of the directive,* which by virtue of Article 5 of the directive must by *common agreement* proceed to measures of harmonization.

This information shows that the list produced by the Commission does not

concern the harmonized standards mentioned in Article 5 of the directive.

The question whether, in the absence of such standards and international measures, the reference point for assessing whether electrical equipment complies with the provisions of Article 2 is to be found (except for the provision in Article 8) only in Article 7 of the said directive has still to be confirmed.

As regards Article 8 the failure to comply is purely formal. In practice, however, in the event of a challenge it is possible for the manufacturer or trader to demonstrate that the equipment complies with good engineering practice by means of the report mentioned in Article 8 (2), since conformity with good engineering practice, for the purposes of Law No 186/68, may be demonstrated by any means.

Finally, as to the lack of and divergences from the standards indicated by the Commission, the defendant makes the following observations: although national rules are lacking they are lacking with reference to the harmonization of standards achieved within the European Committee and not to the harmonized standards mentioned in Article 5 of the directive, which do not yet exist.

In any case, this lacuna in the Italian legal system cannot bring about any restriction on trade because the trader can prove that the equipment complies with good engineering practice by any means and regardless of the compliance of the same equipment with the standards laid down by the Italian Electrotechnical Committee.

The same considerations may apply to the 'divergences' mentioned by the Commission, which have been alleged but not proved.

Summarizing its submissions, the Italian Government states that in substance Directive No 73/23/EEC is in practice applied in Italy and that the failure complained of can only concern a marginal and formal aspect (relating to Article 8 (2) [sic] of the directive). It hopes that the reason for the dispute in this case will cease to exist, since the draft law for the application of the directive *in its entirety* (including matters of form) was submitted for approval to the Senate of the Republic on 15 February 1977.

### V — Oral procedure

The parties submitted their oral arguments at the hearing on 7 June 1977.

The Advocate General delivered his opinion at the hearing on 28 June 1977.

## Decision

1 By application dated 16 December 1976 the Commission of the European Communities has brought before the Court under Article 169 of the EEC Treaty an application for a declaration that the Italian Republic 'in not having brought into force, within the prescribed period, the provisions necessary in order to comply with Council Directive No 73/23/EEC of 19 February 1973 on the harmonization of the laws of Member States relating to electrical equipment designed for use within certain voltage limits (OJ L 77, p. 29) has failed to fulfil an obligation under the Treaty.

2 Article 13 of that directive provides: 'The Member States shall put into force the laws, regulations and administrative provisions necessary to comply with the requirements of this directive within eighteen months of its notification and shall forthwith inform the Commission thereof'.

3 In its defence, the Government of the Italian Republic has explained that for the purpose of implementing the provisions of the directive in their entirety a draft law, No 1742, was laid before the Italian Parliament in 1974 and adopted by the Senate on 26 February 1976, but that it was not possible for the Chamber of Deputies to approve it because the legislature was prematurely dissolved, which meant that the draft law was lost. Moreover, during the course of the procedure, the said government informed the Court that a new draft law had been introduced and that it was approved by the Senate on 25 May 1977.

4 However, although the adoption of a new law was necessary in order to ensure the implementation of the directive in its entirety, in the submission of the Italian Government the essential provisions thereof were already applicable in the Italian legal system by virtue of existing legislation and rules.

5 For, the defendant claims, in the absence of harmonized standards, such as those mentioned in Article 5, and of safety measures laid down at international level, such as are mentioned in Article 6 of the directive, the only article which can be applied is Article 7, which provides that in their absence 'the Member States shall take all appropriate measures to ensure that, for the purpose of placing on the market or free movement as referred to in Articles 2 and 3 respectively, their competent administrative authorities shall also regard as complying with the provisions of Article 2 electrical equipment manufactured in accordance with the safety provisions of the standards in force in the Member State of manufacture, if it ensures a safety level equivalent to that required in their own territory'.

6 Thus, since the standards applied by virtue of Italian legislation are, it is claimed, substantially the same as those in force in the other Member States, the principal objectives of the directive are, for the time being, substantially satisfied and therefore the Commission's application should be rejected.

7 That defence gave rise to an argument between the parties in particular on the questions whether harmonized standards within the meaning of Article 5 of the directive had already reached an advanced stage of elaboration and under what procedure those standards must be adopted.

8 However those questions cannot be decided in this judgment because the application originating the proceedings refers to an infringement of Article 13 of the directive. The Court's examination should therefore be limited to the question whether the Italian Republic has failed to fulfil an obligation arising under Article 13 of the directive.

9 As regards this, the arguments put forward by the defence are tantamount to saying that so long as harmonized standards or international safety provisions have not yet been adopted, the Member States are not required to put into force the laws, regulations and administrative provisions necessary to comply with them and to ensure that they shall be applied on their territory.

10 This argument fails to recognize that in setting a precise period (18 months) for the putting into force of national provisions Article 13 requires the adoption of provisions ensuring that Articles 5 to 8 of the directive shall apply fully and immediately in the cases to which they relate. For the purposes of the directive and of Article 13 thereof it does not suffice for Member States to postpone the implementation of that article until the time when the standards concerned have been adopted.

11 The defendant's alternative argument, moreover, according to which the Italian provisions and in particular Law No 186 of 1 March 1968 (Gazzetta Ufficiale No 77 of 23 March 1968) comprise substantially the same requirements as Articles 2 to 4 of the directive, fails to have regard to the mandatory effect of the latter provisions.

12 Article 2 of the directive provides that electrical equipment may be placed on the market only 'if, having been constructed in accordance with good engineering practice in safety matters in force in the Community, it does not endanger the safety of persons, domestic animals or property when properly installed and maintained and used in applications for which it was made'. Article 3 provides that the Member States shall not impede the free movement of electrical equipment within the market if it complies with the requirements of Article 2. Finally, by Article 4 the Member States shall ensure

that stricter safety requirements than those laid down in Article 2 are not imposed by electricity supply bodies for connexion to the grid, or for the supply of electricity to users of electrical equipment.

13 The purpose of those provisions is to ensure a positive effect, namely that any equipment complying with the requirements of Article 2 may be freely placed on the market, whilst ensuring, negatively, that only equipment complying with those requirements may be marketed.

14 It is in any event essential for the Italian legislation to be supplemented in order to ensure that those objectives shall be clearly and unmistakably achieved.

15 Accordingly the application is well founded and it must be declared that the Italian Republic, in not having brought into force, within the prescribed period, the provisions necessary in order to comply with Council Directive No 73/23/EEC of 19 February 1973, has failed to fulfil an obligation under the Treaty.

Costs

16 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party shall be ordered to pay the costs. The defendant has failed in its submissions and must therefore be ordered to bear the costs.

On those grounds,

THE COURT

hereby:

1. **Declares that the Italian Republic, in not having brought into force, within the prescribed period, the laws, regulations and administrative provisions necessary to comply with Council Directive No 73/23/EEC of 19 February 1973 on the harmonization of the laws of Member States relating to**

**electrical equipment designed for use within certain voltage limits, has failed to fulfil an obligation under the Treaty;**

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

Kutscher Donner Pescatore Mertens de Wilmars Sørensen

Mackenzie Stuart O'Keeffe Bosco Touffait

Delivered in open court in Luxembourg on 14 July 1977.

A. Van Houtte
Registrar

H. Kutscher
President

## OPINION OF MR ADVOCATE-GENERAL WARNER DELIVERED ON 28 JUNE 1977

*My Lords,*

It should go without saying that an essential characteristic of a common market must be that the safety standards (if any) with which goods are required to comply should be the same throughout it, so that goods manufactured anywhere in it can be marketed freely anywhere in it. Conscious of this, the Council, on 28 May 1969, adopted by resolution a General Programme 'for the elimination of technical barriers to trade in industrial products which result from disparities between the provisions laid down by law, regulation or administrative action in Member States' (OJ C 76/1 of 17. 6. 1969). Among the types of product included in the First Stage of that Programme was electrical equipment for use between certain voltage limits.

Accordingly, on 13 February 1973, the Council adopted, under Article 100 of the EEC Treaty, a Directive (73/23/EEC) 'on the harmonization of the laws of Member States relating to electrical equipment designed for use within certain voltage limits' (OJ L 77/29 of 26. 3. 1973). The Directive was addressed to the Member States and Article 13 (1) required them to 'put into force the laws, regulations and administrative provisions necessary to comply with [it] within eighteen months of its notification' and 'forthwith inform the Commission thereof'. This was subject to an exception in the case of Denmark, for which the time limit was extended to five years. The Member States were also required, by Article 13 (2), to 'communicate to the Commission the texts of the main provisions of national laws which they adopt in the field covered by this Directive'.

In 1975 the Commission came to the conclusion that two Member States,