JUDGMENT OF THE COURT (Third Chamber)

16 March 2000 *

In Case C-439/98,

Commission of the European Communities, represented initially by A. Aresu, of its Legal Service, then by K. Oldfelt Hjertonsson, Principal Legal Adviser, acting as Agents, with an address for service in Luxembourg at the office of C. Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

applicant,

v

Italian Republic, represented by Professor U. Leanza, Head of the Legal Department in the Ministry of Foreign Affairs, acting as Agent, and D. Del Gaizo, Avvocato dello Stato, with an address for service in Luxembourg at the Italian Embassy, 5 Rue Marie-Adélaïde,

defendant,

APPLICATION for a declaration that, by not adopting or by not communicating the laws, regulations and administrative provisions necessary to comply with

* Language of the case: Italian.

Commission Directive 95/30/EC of 30 June 1995 adapting to technical progress Council Directive 90/679/EEC on the protection of workers from risks related to exposure to biological agents at work (seventh individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) (OJ 1995 L 155, p. 41), the Italian Republic has failed to fulfil its obligations under that directive,

THE COURT (Third Chamber),

composed of: J.C. Moitinho de Almeida (Rapporteur), President of the Chamber, C. Gulmann and J.-P. Puissochet, Judges,

Advocate General: S. Alber,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 16 December 1999,

gives the following

Judgment

1 By application lodged at the Court Registry on 3 December 1998, the Commission of the European Communities brought an action under Article 169 of the EC Treaty (now Article 226 EC) for a declaration that, by not adopting or by not communicating to the Commission the laws, regulations and administrative provisions necessary to comply with Commission Directive 95/30/EC of 30 June 1995 adapting to technical progress Council Directive 90/679/EEC on the protection of workers from risks related to exposure to biological agents at work (seventh individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) (OJ 1995 L 155, p. 41), the Italian Republic had failed to fulfil its obligations under that directive.

2 As its title indicates, Directive 95/30 is intended to adapt to technical progress Council Directive 90/679/EEC of 26 November 1990 on the protection of workers from risks related to exposure to biological agents at work (seventh individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) (OJ 1990 L 374, p. 1). It provides in the first subparagraph of Article 2(1) that Member States are to bring into force the laws, regulations and administrative provisions necessary to comply with that directive by 30 November 1996 and that they are immediately to inform the Commission thereof.

3 By letter of 30 May 1997, the Commission, in accordance with Article 169 of the Treaty, gave the Italian Government formal notice to present within two months its observations on the complaint in respect of non-transposition of Directive 95/30.

4 By notes of 11 July and 28 October 1997, the Italian authorities informed the Commission that the measures necessary to transpose the Directive were being prepared.

5 Since no further information was forthcoming, the Commission, by letter of 12 January 1998, sent the Italian Government a reasoned opinion calling on it to take the necessary measures to comply with the opinion within two months from notification thereof.

6 Having received no response to that opinion, the Commission brought the present action.

7 The Commission claims that the Italian Republic has not communicated to it any measure relating to provisions intended to transpose Directive 95/30, so that it is entitled to conclude that the Italian Republic has not adopted the necessary provisions and/or has failed to inform it thereof.

8 It contends that pursuant to Article 2(1), first subparagraph, of that directive, the Italian Republic should have transposed the provisions of the directive into its internal legal order by 30 November 1996 and immediately informed the Commission thereof. That obligation is also based on the third paragraph of Article 189 of the EC Treaty (now the third paragraph of Article 249 EC), which

provides that a directive is to be binding, as to the result to be achieved, upon each Member State to which it is addressed, and also on Article 5 of the EC Treaty (now Article 10 EC).

9 Consequently, according to the Commission, the Italian Republic has failed to fulfil its obligations under Community law.

10 The Italian Republic contends that Directive 95/30 is intended to adapt to technical progress Directive 90/679, which was transposed into the Italian legal order by Legislative Decree No 626 of 19 September 1994, as subsequently amended and supplemented. Article 28(1)(b) of that legislative decree provides that a decree adopted by the Minister for Labour and Social Security, in conjunction with the Minister for Health and the Minister for Industry, Trade and Craft Industries, the Standing Advisory Committee having given its opinion, is to implement directives on the safety and health of workers at the workplace, in so far as they amend the implementing rules and technical features of other directives which have already been transposed into the national legal order.

11 According to the Italian Republic, the Minister for Labour and Social Security had, pursuant to Article 28(1)(b) of that legislative decree, prepared a draft decree transposing Directive 95/30. However, the legislative process for that measure was not concluded, so that account could be taken of the adoption by the Commission of Directives 97/59/EC adapting to technical progress Directive 90/679 (OJ 1997 L 282, p. 33) and 97/65/EC of 26 November 1997 adapting, for the third time, to technical progress Directive 90/679 (OJ 1997 L 335, p. 17). The Minister for Labour and Social Security considered it appropriate, in the interests of procedural economy, to transpose Directives 95/30, 97/59 and 97/65 by means of a single decree, in view of the similarity of the requirements to be satisfied.

12 The Ministry of Labour and Social Security thus forwarded the draft decree to the other ministries concerned for their opinion.

13 The Italian Government states that it is confident that the procedure for the approval of that decree will be complete in the near future and that the Commission will then be able to withdraw its action.

14 It should be pointed out that the Italian Republic accepts that it did not transpose the directive within the prescribed period, while observing that, in the interests of procedural economy, it deemed it appropriate to transpose Directives 95/30, 97/59 and 97/65 by means of a single decree.

15 Therefore, since Directive 95/30 was not transposed into national law within the period prescribed in the first subparagraph of Article 2(1), the action brought by the Commission must be regarded as well founded.

16 It must therefore be held that, by not adopting within the prescribed period the laws, regulations and administrative provisions necessary to comply with Directive 95/30, the Italian Republic has failed to fulfil its obligations under that directive.

Costs

17 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for costs and the Italian Republic has been unsuccessful, it must be ordered to pay the costs.

On those grounds,

THE COURT (Third Chamber)

hereby:

1. **Declares that, by not adopting within the prescribed period the laws, regulations and administrative provisions necessary to comply with Commission Directive 95/30/EC of 30 June 1995 adapting to technical progress Council Directive 90/679/EEC on the protection of workers from risks related to exposure to biological agents at work (seventh individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC), the Italian Republic has failed to fulfil its obligations under that directive;**

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

Moitinho de Almeida Gulmann Puissochet

Delivered in open court in Luxembourg on 16 March 2000.

R. Grass

Registrar

J.C. Moitinho de Almeida

President of the Third Chamber