JUDGMENT OF THE COURT (Sixth Chamber)
15 October 1998 *

In Case C-324/97,

Commission of the European Communities, represented by Paolo Stancanelli, of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

applicant,

v

Italian Republic, represented by Professor Umberto Leanza, Head of the Legal Department in the Ministry of Foreign Affairs, acting as Agent, assisted by Pier Giorgio Ferri, Avvocato dello Stato, with an address for service in Luxembourg at the Italian Embassy, 5 Rue Marie-Adelaïde,

defendant,

APPLICATION for a declaration that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with European Parliament and Council Directive 95/27/EC of 29 June 1995 amending Council Directive 86/662/EEC on the limitation of noise emitted by hydraulic excavators, rope-operated excavators, dozers, loaders and excavator-loaders (OJ 1995 L 168, p. 14), or, in any event, by not communicating them to the Commission, the Italian Republic has failed to fulfil its obligations under that directive,

* Language of the case: Italian.

THE COURT (Sixth Chamber),

composed of: P. J. G. Kapteyn, President of the Chamber, G. Hirsch, G. F. Mancini, H. Ragnemalm and R. Schintgen (Rapporteur), Judges,

Advocate General: N. Fennelly,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 18 June 1998,

gives the following

Judgment

1 By application lodged at the Court Registry on 17 September 1997, the Commission of the European Communities brought an action under Article 169 of the EC Treaty for a declaration that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with European Parliament and Council Directive 95/27/EC of 29 June 1995 amending Council Directive 86/662/EEC on the limitation of noise emitted by hydraulic excavators, rope-operated excavators, dozers, loaders and excavator-loaders (OJ 1995 L 168, p. 14, hereinafter 'the Directive'), or, in any event, by not communicating them to it, the Italian Republic has failed to fulfil its obligations under the Directive.

2 Under the first subparagraph of Article 2(1) of the Directive Member States were to bring into force the laws, regulations and administrative provisions necessary to

comply with the Directive no later than 31 December 1995. Article 2(2) provides for Member States to communicate to the Commission the texts of the main provisions of domestic law which they adopt in the field governed by the Directive.

3 Since it had not received any communication relating to the transposition of the Directive into Italian law and had no information to show that the Italian Republic had fulfilled that obligation, the Commission gave formal notice to that State by letter of 27 February 1996, calling on it to submit its observations within a period of two months.

4 In the absence of any reply from the Italian authorities, the Commission, on 5 March 1997, sent a reasoned opinion to the Italian Republic, calling on it to take the measures necessary to comply with its obligations under the Directive within two months of its notification.

5 As no action was taken on that reasoned opinion, the Commission brought the present procedings.

6 The Italian Republic does not dispute that the Directive was not transposed within the prescribed period.

7 As the Directive was not transposed within the period prescribed therein, the Commission's action must be considered well founded.

8 Accordingly, it must be held that, by failing to adopt within the prescribed period the laws, regulations and administrative provisions necessary to comply with the Directive, the Italian Republic has failed to fulfil its obligations under the Directive.

Costs

9 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, the latter must be ordered to pay the costs.

On those grounds,

THE COURT (Sixth Chamber)

hereby:

1) Declares that, by failing to adopt within the prescribed period the laws, regulations and administrative provisions necessary to comply with European Parliament and Council Directive 95/27/EC of 29 June 1995 amending Council Directive 86/662/EEC on the limitation of noise emitted by hydraulic excavators, rope-operated excavators, dozers, loaders and excavator-loaders, the Italian Republic has failed to fulfil its obligations under that directive;

2) Orders the Italian Republic to pay the costs.

Kapteyn Hirsch Mancini

Ragnemalm Schintgen

Delivered in open court in Luxembourg on 15 October 1998.

R. Grass P. J. G. Kapteyn

Registrar President of the Sixth Chamber