JUDGMENT OF THE COURT (Fifth Chamber)
14 March 1996 *

In Case C-238/95,

Commission of the European Communities, represented by Laura Pignataro and Maria Condou Durande, of its Legal Service, acting as Agents, 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 of 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-Adélaïde,

defendant,

APPLICATION for a declaration that, by failing to adopt and communicate the laws, regulations and administrative provisions necessary to comply with Commission Directive 93/67/EEC of 20 July 1993 laying down the principles for assessment of risks to man and the environment of substances notified in accordance with Council Directive 67/548/EEC (OJ 1993 L 227, p. 9), the Italian Republic has failed to fulfil its obligations under that directive and the EC Treaty,

* Language of the case: Italian.

THE COURT (Fifth Chamber),

composed of: D. A. O. Edward, President of the Chamber, J.-P. Puissochet (Rapporteur), J. C. Moitinho de Almeida, L. Sevón and M. Wathelet, 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 1 February 1996,

gives the following

Judgment

1 By application lodged at the Court Registry on 6 July 1995, the Commission of the European Communities brought an action under Article 169 of the EC Treaty for a declaration that, by failing to adopt and communicate the laws, regulations and administrative provisions necessary to comply with Commission Directive 93/67/EEC of 20 July 1993 laying down the principles for assessment of risks to man and the environment of substances notified in accordance with Council Directive 67/548/EEC (OJ 1993 L 227, p. 9, hereinafter 'the Directive'), the Italian Republic has failed to fulfil its obligations under the directive and the EC Treaty.

2 The Directive, which was adopted pursuant to Council Directive 67/548/EEC of 27 June 1967 on the approximation of the laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous

substances (OJ, English Special Edition 1967, p. 234), as most recently amended by Commission Directive 93/21/EEC of 27 April 1993 (OJ 1993 L 110, p. 20), lays down the general principles to be applied by the competent national authorities in assessing the risks to man and the environment posed by substances placed on the market.

3 In accordance with Article 8(1) of the Directive, the Member States were to adopt the provisions necessary to comply with the Directive by 31 October 1993 at the latest and were forthwith to inform the Commission.

4 Since the Italian Republic did not inform it of the measures taken to ensure that the Directive had been transposed into its domestic legal system, the Commission sent a letter before action on 3 December 1993. Since that letter remained unanswered, on 29 September 1994 the Commission sent a reasoned opinion requesting the Italian Republic to comply with the provisions of the Directive within two months. The Italian Government did not respond to the reasoned opinion either.

5 The Commission has therefore brought this action. It explains that, in accordance with Articles 5 and 189 of the Treaty and Article 8 of the Directive, the Italian Republic was required to transpose the Directive in full within the period prescribed and to inform the Commission thereof.

6 The Italian Government does not deny that the Directive has not been transposed within the period prescribed. It explains that the delay is due to the difficulties in transposing the Directive and states that it should, however, be transposed into Italian law in the shortest possible time.

7 The Court has consistently held (see, in particular, the judgment in Case C-259/95 *Commission* v *Greece* [1995] ECR I-1947, paragraph 5), 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 laid down by a directive.

8 It must therefore 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 Article 8 thereof.

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. The Commission has asked for the Italian Republic to be ordered to pay the costs. Since the defendant has been unsuccessful, it must be ordered to pay the costs.

On those grounds,

THE COURT (Fifth Chamber)

hereby:

1. **Declares that, by failing to adopt within the prescribed period the laws, regulations and administrative provisions necessary to comply with Commis-**

sion Directive 93/67/EEC of 20 July 1993 laying down the principles for assessment of risks to man and the environment of substances notified in accordance with Council Directive 67/548/EEC, the Italian Republic has failed to fulfil its obligations under Article 8 of Directive 93/67.

2. Orders the Italian Republic to pay the costs.

Edward Puissochet Moitinho de Almeida

Sevón Wathelet

Delivered in open court in Luxembourg on 14 March 1996.

R. Grass

Registrar

D. A. O. Edward

President of the Fifth Chamber