and Official Journal 1977, L 338, p. 22), the Italian Republic has failed to fulfil its obligations under the Treaty;

2. Orders the defendant to pay the costs.

Mertens de Wilmars O'Keeffe Mackenzie Stuart

Bosco Koopmans Due Bahlmann

Delivered in open court in Luxembourg on 7 December 1982.

P. Heim
Registrar

J. Mertens de Wilmars
President

OPINION OF ADVOCATE GENERAL SIR GORDON SLYNN DELIVERED ON 17 NOVEMBER 1982

My Lords,

This is an application by the Commission, pursuant to Article 169 of the EEC Treaty, for a declaration that the Republic of Italy has failed to fulfil its obligations under the Treaty in that it has not adopted the measures which are necessary to implement Council Directive 72/464 of 19 December 1972 (OJ L 303, 31. 12. 1972, p. 1), as amended by Council Directive 77/805 of 19 December 1977 (OJ L 338, 28. 12. 1977, p. 22). These measures provide for the harmonization of the structure of the excise duty on manufactured tobacco in several stages.

The Member States, other than the United Kingdom and Ireland, were to have implemented the former by 1 July 1973, but in 1977 the Commission observed, in a letter to the Italian Government, that Article 8 of the directive was not being complied with. That article required that the amount of the specific excise duty levied on cigarettes should be established for the first time by reference to cigarettes in the most popular price category according to

data available on 1 January 1973, and it provided that the amount of that duty might not be lower than 5% or higher than 75% of the aggregate amount of the proportional excise duty and the specific excise duty levied on these cigarettes. The Commission pointed out that the excise duty levied on cigarettes in Italy did not fall within the bracket laid down by that article.

Directive 77/805 contained special provisions applicable during the second stage of harmonization, which was to run from 1 July 1978 to 31 December 1980. Under that directive it was provided that the amount of excise duty on cigarettes was to be fixed yearly, beginning on 1 January 1978. The bracket within which the specific component of the excise duty was to fall, was redefined in that the specific component should not be less than 5% or more than 55% of the amount of the total tax burden resulting from the aggregation of the proportional excise duty, the specific excise duty, and also, for the first time, the turnover tax levied on these cigarettes.

Although there was some debate about the proper interpretation of these provisions, it is not now disputed that the Italian Government has failed to adopt the measures necessary to give effect to them. The Court has been told that a Bill designed to do so was presented to the Italian Parliament on 16 May 1980 but that the legislative process has not yet been completed and that it has not yet come into force. It is well established in the case-law of the Court that a Member State is not entitled to rely on circumstances or practices existing in its own internal legal system to justify failing to comply with the obligations imposed on it by a directive.

In consequence the declaration sought by the Commission should, in my opinion, be granted and the Republic of Italy should be ordered to pay the costs of the action.