# JUDGMENT OF THE COURT
3 June 1992 *

In Case C-287/91,

**Commission of the European Communities**, represented by A. Aresu and D. Calleja Crespo, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of R. Hayder, a representative of the Commission's Legal Service, Wagner Centre, Kirchberg,

applicant,

v

**Italian Republic**, represented by Professor Luigi Ferrari Bravo, Head of the Legal Affairs Department at the Ministry of Foreign Affairs, acting as Agent, assisted by I. Braguglia, 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 allowing the Italian Ministry of Finance systematically to disregard the time-limits for refunds of value added tax to taxable persons not established in the territory of the country, without intervening from the outset to remove the resultant prejudice to Community law, the Italian Republic has failed to fulfil its obligations under Article 7(4) of the Eighth Council Directive (79/1072/EEC) of 6 December 1979 on the harmonization of the laws of the Member States relating to turnover taxes — Arrangements for the refund of value added tax to taxable persons not established in the territory of the country (OJ 1979 L 331, p. 11),

* Language of the case: Italian.

THE COURT,

composed of: O. Due, President, F. Grévisse and P. J. G. Kapteyn (Presidents of Chambers), G. F. Mancini, C. N. Kakouris, J. C. Moitinho de Almeida, M. Díez de Velasco, M. Zuleeg and J. L. Murray, Judges,

Advocate General: C. Gulmann,
Registrar: J.-G. Giraud,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 6 May 1992,

gives the following

## Judgment

1 By application lodged at the Court Registry on 15 November 1991, the Commission of the European Communities brought an action, pursuant to Article 169 of the EEC Treaty, for a declaration that, by allowing the Italian Ministry of Finance systematically to disregard the time-limits for refunds of value added tax to taxable persons not established in the territory of the country, without intervening from the outset to remove the resultant prejudice to Community law, the Italian Republic had failed to fulfil its obligations under Article 7(4) of the Eighth Council Directive (79/1072/EEC) of 6 December 1979 on the harmonization of the laws of the Member States relating to turnover taxes — Arrangements for the refund of value added tax to taxable persons not established in the territory of the country (OJ 1979 L 331, p. 11).

2 Under Article 7(4) of Directive 79/1072/EEC:

'Decisions concerning applications for refund shall be announced within six months of the date when the applications, accompanied by all the necessary documents required under this directive for examination of the application, are submitted to the competent authority ... Refunds shall be made before the end of the abovementioned period, at the applicant's request, in either the Member State of refund or the State in which he is established. In the latter case, the bank charges for the transfer shall be payable by the applicant.'

3 Since it had received numerous complaints from traders in other Member States alleging delays in the refund by the Italian administration of value added tax, the Commission decided to initiate the infringement procedure and accordingly, by letter of 7 February 1990, requested the Italian Government to submit its observations on the matter. No reply was received and on 2 July 1990 the Commission delivered a reasoned opinion. Again no reply was received and accordingly it lodged the present application.

4 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the procedure and the submissions and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

5 The Commission points out that, under Directive 79/1072/EEC, refunds of value added tax are to be made within six months of the date when applications, supported by all the necessary documents required for their examination, are submitted. Despite the fact that the directive has been transposed into Italian law, the Commission noted that refunds to taxable persons not established

within the Italian Republic were in fact taking thirty-six months and that period was lengthening. In the Commission's view, this was a clear case of an infringement of Article 7(4) of Directive 79/1072/EEC.

6 The Italian Government does not deny the infringement and explains that the delay in refunds of value added tax to non-resident taxable persons is due to organizational problems and is not the result of a deliberate discriminatory intent. In that connection it points out that the national authorities are seeking ways of ensuring compliance with the six-month periods referred to in the directive.

7 The Court has consistently held that Member States are obliged to ensure that the provisions of a directive are applied exactly and in full (see, in particular, the judgments in Cases 91/79 and 92/79 *Commission* v *Italy* [1980] ECR 1099, at paragraph 6).

8 It must therefore be held that, by allowing the Italian Ministry of Finance systematically to disregard the time-limits for refunds of value added tax to taxable persons not established in the territory of the country, without intervening from the outset to remove the resultant prejudice to Community law, the Italian Republic has failed to fulfil its obligations under Article 7(4) of the Eighth Council Directive (79/1072/EEC) of 6 December 1979 on the harmonization of the laws of the Member States relating to turnover taxes — Arrangements for the refund of value added tax to taxable persons not established in the territory of the country.

## Costs

9 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the Italian Republic has failed in its submissions, it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

1. **Declares that, by allowing the Italian Ministry of Finance systematically to disregard the time-limits for refunds of value added tax to taxable persons not established in the territory of the country, without intervening from the outset to remove the resultant prejudice to Community law, the Italian Republic has failed to fulfil its obligations under Article 7(4) of the Eighth Council Directive (79/1072/EEC) of 6 December 1979 on the harmonization of the laws of the Member States relating to turnover taxes — Arrangements for the refund of value added tax to taxable persons not established in the territory of the country;**

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

Due Grévisse Kapteyn Mancini

Kakouris Moitinho de Almeida Diez de Velasco Zuleeg Murray

Delivered in open court in Luxembourg on 3 June 1992.

J.-G. Giraud O. Due

Registrar President