JUDGMENT OF THE COURT (Fifth Chamber)
30 November 1995 *

In Case C-118/95,

Commission of the European Communities, represented by Eugenio de March, Legal Adviser, 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 Department for Legal Affairs of the Ministry of Foreign Affairs, acting as Agent, assisted by Maurizio Fiorilli, 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 within the prescribed period the laws, regulations and administrative provisions necessary to comply with Council Directive 92/33/EEC of 28 April 1992 on the marketing of vegetable propagating and planting material, other than seed (OJ 1992 L 157, p. 1) and

* Language of the case: Italian.

Council Directive 92/34/EEC of 28 April 1992 on the marketing of fruit plant propagating material and fruit plants intended for fruit production (OJ 1992 L 157, p. 10), the Italian Republic has failed to fulfil its obligations under the EC Treaty,

THE COURT (Fifth Chamber),

composed of: D. A. O. Edward, President of the Chamber, J.-P. Puissochet, C. Gulmann, P. Jann and L. Sevón (Rapporteur), Judges,

Advocate General: G. Cosmas,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 17 October 1995,

gives the following

Judgment

1 By application lodged at the Court Registry on 4 April 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 within the prescribed period the laws, regulations and administrative provisions necessary to comply with Council Directive 92/33/EEC of 28 April 1992 on the marketing of vegetable propagating and

planting material, other than seed (OJ 1992 L 157, p. 1) and Council Directive 92/34/EEC of 28 April 1992 on the marketing of fruit plant propagating material and fruit plants intended for fruit production (OJ 1992 L 157, p. 10), the Italian Republic has failed to fulfil its obligations under the EC Treaty.

2 Article 25 of Directive 92/33 and Article 26 of Directive 92/34 require Member States to bring into force the laws, regulations and administrative provisions necessary to comply with the directives no later than 31 December 1992 and to inform the Commission thereof.

3 Since it had received no communication of measures adopted by the Italian Republic to comply with those directives and had no other indication that the Italian Republic had fulfilled its obligation to put the necessary measures into force, the Commission, by letter of 12 March 1993, gave the Italian Government notice to submit its observations within two months in accordance with Article 169 of the Treaty.

4 That letter remaining unanswered, the Commission, on 1 June 1994, delivered a reasoned opinion requesting the Italian Republic to take the measures necessary to comply with the opinion within two months of its notification.

5 By letter of 20 September 1994 sent by the Italian Permanent Representation, the Italian authorities stated that the procedures for implementing Directives 92/33 and 92/34 were in progress in accordance with Article 4 of Law No 146/94 (Community Law 1993). Since it received no subsequent notification, the Commission brought this action.

6 In its application, the Commission refers to Article 25 of Directive 92/33 and Article 26 of Directive 92/34 and the obligations on Member States under the first paragraph of Article 5 and Article 189 of the EC Treaty. It states that the Italian Republic has not taken the measures necessary to comply with the requirements of Directives 92/33 and 92/34 and has accordingly failed to fulfil its obligations.

7 The Italian Republic explains that the regulation for the implementation of the directives in question has, in accordance with Article 4 of Law No 146/94, been prepared by the Ministry of Agriculture, Food and Forestry and been submitted to the Consiglio di Stato for an opinion as to competence. Incorporation of the Community legislation into Italian law is therefore about to take place.

8 Since Directives 92/33 and 92/34 have not been transposed within the periods prescribed by those directives, the failure to fulfil obligations complained of by the Commission must be considered to be established.

9 It must therefore be held that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 92/33 and Directive 92/34, the Italian Republic has failed to comply with its obligations under Article 25 of Directive 92/33 and Article 26 of Directive 92/34.

Costs

10 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 Italian Republic 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 the laws, regulations and administrative provisions necessary to comply with Council Directive 92/33/EEC of 28 April 1992 on the marketing of vegetable propagating and planting material, other than seed and Council Directive 92/34/EEC of 28 April 1992 on the marketing of fruit plant propagating material and fruit plants intended for fruit production, the Italian Republic has failed to fulfil its obligations under Article 25 of Directive 92/33 and Article 26 of Directive 92/34;**

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

Edward Puissochet Gulmann

Jann Sevón

Delivered in open court in Luxembourg on 30 November 1995.

R. Grass D. A. O. Edward

Registrar President of the Fifth Chamber