JUDGMENT OF THE COURT (Fifth Chamber)
11 July 1996 *

In Case C-303/95,

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

defendant,

APPLICATION for a declaration by the Court that, by not adopting the laws, regulations and administrative provisions necessary to comply with Council Directive 91/157/EEC of 18 March 1991 on batteries and accumulators containing certain dangerous substances (OJ 1991 L 78, p. 38), or at least by failing to inform the Commission of those provisions, the Italian Republic has failed to fulfil its obligations under that directive,

* Language of the case: Italian.

THE COURT (Fifth Chamber),

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

Advocate General: C. O. Lenz,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 11 June 1996,

gives the following

Judgment

1 By application lodged at the Registry of the Court of Justice on 25 September 1995, the Commission of the European Communities brought an action under Article 169 of the EC Treaty for a declaration that, by not adopting the laws, regulations and administrative provisions necessary to comply with Council Directive 91/157/EEC of 18 March 1991 on batteries and accumulators containing certain dangerous substances (OJ 1991 L 78, p. 38) (hereinafter 'the directive'), or at least by failing to inform the Commission of those provisions, the Italian Republic has failed to fulfil its obligations under that directive.

2 Under Article 11 of the directive, Member States were required to take the measures necessary to comply with the directive before 18 September 1992 and forthwith to inform the Commission thereof.

3 Not having been notified of the measures adopted by the Italian Republic to comply with the directive, the Commission, on 21 December 1992, sent a letter of formal notice to the Italian Government requesting it to submit its observations within a period of two months.

4 Since no reply to that letter of formal notice was forthcoming, the Commission, on 9 December 1994, sent a reasoned opinion to the Italian Government requesting it to adopt the measures necessary to comply with the directive within a period of two months.

5 On 7 April 1995, the Italian Government stated that, with a view to transposing the directive, the Ministry of Industry, Commerce and Crafts had prepared draft rules, which had been officially notified to the other authorities concerned. Approval by the other ministries responsible was, it submitted, imminent. The Italian Government also annexed a copy of the draft rules.

6 It was in those circumstances that the Commission brought the present action.

7 The Italian Government does not deny that it failed, within the period specified, to adopt the measures necessary to comply with the directive. It points out, however, that the interministerial decree is in the process of being drafted.

8 Since the directive was not transposed within the prescribed period, the action brought by the Commission must be regarded as being well founded.

9 It must for that reason be held that, by not adopting 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 that directive.

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. Since the Commission has applied for costs to be awarded against the Italian Republic, and since the latter has failed in its submissions, the Italian Republic must be ordered to pay the costs.

On those grounds,

THE COURT (Fifth Chamber)

hereby:

1. **Declares that, by not adopting within the prescribed period the laws, regulations and administrative provisions necessary to comply with Council Directive 91/157/EEC of 18 March 1991 on batteries and accumulators containing certain dangerous substances, the Italian Republic has failed to fulfil its obligations under that directive;**

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

Edward Puissochet Gulmann

Jann Wathelet

Delivered in open court in Luxembourg on 11 July 1996.

R. Grass D. A. O. Edward

Registrar President of the Fifth Chamber