JUDGMENT OF THE COURT
7 July 1987 *

In Case 420/85

Commission of the European Communities, represented by its Legal Adviser, G. Marenco, acting as Agent, with an address for service in Luxembourg at the office of G. Kremlis, a member of the Commission's Legal Department, Jean Monnet Building, Kirchberg,

applicant,

v

Italian Republic, represented by its Government in the person of L. Ferrari Bravo, Head of the Department for Contentious Diplomatic Affairs, Treaties and Legislation at the Ministry of Foreign Affairs, assisted by O. Fiumara, Avvocato dello Stato, acting as Agent, with an address for service in Luxembourg at the Italian Embassy, 5 rue Marie-Adelaïde,

defendant,

APPLICATION for a declaration that the Italian Republic has failed to fulfil its obligations under the EEC Treaty, primarily by failing to implement Council Directive 82/603/EEC of 28 July 1982 amending Directive 75/130/EEC on the establishment of common rules for certain types of combined road/rail carriage of goods between Member States (Official Journal 1982, L 247, p. 6) and, alternatively, by failing to inform the Commission of the measures adopted in order to comply with the said directive,

THE COURT,

composed of: Lord Mackenzie Stuart, President, F. Schockweiler (President of Chamber), G. Bosco, O. Due, K. Bahlmann, R. Joliet and G. C. Rodríguez Iglesias, Judges,

* Language of the Case: Italian.

Advocate General: M. Darmon
Registrar: P. Heim

having regard to the Report for the Hearing and further to the hearing on 25 February 1987,

after hearing the Opinion of the Advocate General delivered at the sitting on 31 March 1987,

gives the following

Judgment

1 By application lodged at the Court Registry on 13 December 1985, the Commission of the European Communities brought an action under Article 169 of the EEC Treaty primarily for a declaration that the Italian Republic has failed to fulfil its obligations under the EEC Treaty by failing to adopt within the period prescribed the provisions needed to comply with Council Directive 82/603/EEC of 28 July 1982 amending Directive 75/130/EEC on the establishment of common rules for certain types of combined road/rail carriage of goods between Member States. In the alternative, the Commission asked the Court to declare that, by failing to inform the Commission of the measures adopted in order to comply with the aforesaid directive, the Italian Republic has failed to fulfil its obligations under the Treaty.

2 The purpose of Directive 82/603/EEC is, in the first place, to extend the system provided for by Directive 75/130/EEC to combined road and rail transport by inland waterway between Member States and, secondly, to reduce or reimburse taxes applicable to road vehicles used in all combined transport. According to Article 2 of Directive 82/603/EEC, the Member States are to take the measures necessary for those purposes before 1 April 1983 and are to inform the Commission thereof.

3 Since it had not received from the Italian Government any information relating to those measures, on 30 January 1984 the Commission sent that government a letter

formally requesting it to submit its observations. As that letter evoked no response, on 20 February 1985 the Commission delivered a reasoned opinion under the first paragraph of Article 169 of the Treaty. Since the reasoned opinion also failed to evoke any response, the Commission brought this action.

4 Reference is made to the Report for the Hearing for the submissions and arguments of the parties, which are referred to hereinafter only in so far as is necessary for the reasoning of the Court.

5 In the proceedings before the Court, the Italian Government stated, without being contradicted by the Commission, that, in view of the absence of a network of inland waterways linking Italy and the other Member States, Directive 82/603/EEC does not require Italy to implement any provisions extending the system in question to combined road and rail transport by inland waterway.

6 With regard to the reduction or reimbursement of taxes applicable to road vehicles, the Italian Government contended that the relevant Italian legislation already contained the necessary provisions, except for cases in which the tractor itself, and not just the trailer, is loaded on to the train. Although that mode of combined transport is practised on certain railway lines in northern Italy, it is used only to a very limited extent by Italian transporters.

7 In that regard, it must be stated that the factual circumstance relied upon by the Italian Government is not such as to expunge the infringement with which it is charged. As the Commission has emphasized, the aim of the contested directive is to promote certain types combined transport, including those comprising both the tractor and the trailer. The reduction or reimbursement of taxes applicable to road vehicles must therefore also apply to tractors actually used in that manner, even if that mode of transport is employed only on a very small number of lines.

8 It must therefore be found that, by failing to provide, within the period prescribed by Council Directive 82/603/EEC of 28 July 1982 amending Directive

75/130/EEC on the establishment of common rules for certain types of combined road/rail carriage of goods between Member States, for thereduction or reimbursement of taxes applicable to road vehicles and charged in respect of tractors used in combined transport of the type in which not just the trailer but also the tractor itself is loaded on to the train, the Italian Republic has failed to fulfil its obligations under the EEC Treaty.

9 Since an infringement of the directive has thus been held to exist, it is unnecessary to consider the alternative claim.

Costs

10 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. As the defendant has been largely unsuccessful in its submissions, it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

(1) Declares that by failing to provide, within the period prescribed by Council Directive 82/603/EEC of 28 July 1982 amending Directive 75/130/EEC on the establishment of common rules for certain types of combined road/rail carriage of goods between Member States, for the reduction or reimbursement of taxes applicable to road vehicles and charged in respect of tractors used in combined transport of the type in which not only the trailer but also the tractor

itself is loaded on to the train, the Italian Republic has failed to fulfil its obligations under the EEC Treaty;

(2) Orders the Italian Republic to pay the costs.

Mackenzie Stuart Schockweiler Bosco

Due Bahlmann Joliet Rodríguez Iglesias

Delivered in open court in Luxembourg on 7 July 1987.

P. Heim
Registrar

A. J. Mackenzie Stuart
President