In Case 52/75

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Cesare Maestripieri, acting as Agent, with an address for service in Luxembourg at the offices of its Legal Adviser, Mario Cervino, Bâtiment CFL, place de la Gare,

applicant,

v

ITALIAN REPUBLIC, represented by its Ambassador, Adolfo Maresca, acting as Agent, assisted by Ivo Maria Braguglia, Deputy State Advocate, with an address for service in Luxembourg at the Italian Embassy,

defendant,

Application for a declaration that the Italian Republic has failed in its obligation under Article 43 of Council Directive No 70/458/EEC of 29 September 1970 on the marketing of vegetable seed,

THE COURT

composed of: R. Lecourt, President, H. Kutscher, President of Chamber, A. M. Donner, J. Mertens de Wilmars, M. Sørensen, Lord Mackenzie Stuart and A. O'Keeffe, Judges,

Advocate-General: H. Mayras
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts

The facts, the procedure and the conclusions, submissions and arguments of the parties may be summarized as follows:

I — Facts

Although, as the common market and the common agricultural policy

developed, trade in agricultural products within the Community was progressively freed from traditional barriers, it appeared to the Community institutions that the disparities in the rules in force in the various Member States adversely affected the competitive capacity of producers, particularly as regards seed, which is the primary production factor in modern agriculture.

For this reason, on 14 June 1966 the Council adopted the first directives in this field which concerned the marketing of the most important seeds and agricultural plants: beet seed, forage plant seed, cereal seed and seed potatoes. These directives were chiefly intended to facilitate within the Community the marketing of the best seed from the point of view both of the size and the quality of the crops. They are based on the principle that only seed which is the result of systematic plant selection and which, as such, possess clearly defined characters, can meet the requirements of modern agriculture. Because of the diversity of the national schemes of certification and for guaranteeing varietal identity and purity, as well as the state of health of varieties, it was particularly necessary to organize the sector in seeds and plants and to bring about the free movement of these products harmonizing the various certification schemes and making them apply generally.

The same principles have been applied in the field of vegetable production, which occupies an important place in the agriculture of the Community. As satisfactory results in vegetable cultivation depend to a large extent on the use of appropriate seed it appeared that greater productivity could only be achieved in Community vegetable cultivation if, in the choice of varieties accepted for certification, checking and marketing, the Member States applied uniform rules which are as strict as possible.

Therefore, on the basis of Articles 43 and 100 of the EEC Treaty, the Council adopted on 29 September 1970 Directive No 70/458/EEC on the marketing of vegetable seed (OJ) English Special Edition 1970 (III) p.674; codified text, including subsequent amendments, OJ C 66, 1974, p. 62).

This Directive states in particular that it is necessary to establish a common catalogue of varieties of vegetable species on the basis of national catalogues. All the Member States were therefore obliged to compile one or more national catalogues of the varieties accepted for certification, checking and marketing in their territory. These catalogues were to be drawn up in accordance with uniform rules, so that the varieties accepted were distinct, stable and sufficiently uniform. A variety may only be accepted after official examinations carried out in each Member State on the basis of uniform criteria and minimum requirements.

The uniform rules for the certification by the Member States of the different types of vegetable seed lay down the conditions which the seed must satisfy in order to be certified either as 'basic' seed produced under the responsibility of the breeder according to strict rules of selection, or as 'certified' seed which is generally of direct descent from basic seed. The marketing of 'standard' seed which is subject to official inspection was also authorized during a transitional period. This seed also possesses a minimum varietal identity and purity although these characters are only subject to official post-control by check inspection, carried out by growing trials and by check sampling.

Directive No 70/458 also provides that, without prejudice to the application of Article 36 of the Treaty, the seed which fulfils the conditions laid down, in particular as regards certification, packaging and marking, shall not be subject to any restrictions on marketing other than those laid down by Community rules.

Article 43 of the directive obliged the Member States to bring into force, not

later than 1 July 1972, the laws, regulations or administrative provisions necessary to comply with the directive and to inform the Commission thereof forthwith.

On 21 December 1973 the Commission drew the attention of the Government of the Italian Republic to the fact that the amendments to be made to the national legislation in order to bring it into line with the directive appeared neither to have been adopted nor applied. As it considered, therefore, that the Italian Republic had failed to fulfil one of its obligations, the Commission, in accordance with Article 169 of the EEC Treaty, requested the Italian Government to submit its observations on this finding within one month.

On 12 March 1974 the permanent representation of the Italian Republic informed the Commission that the general provisions of Directive No 70/458, which deal in particular with the packaging of the products, the minimum commercial characteristics accepted for marketing and the phytosanitary provisions, had been introduced into the Italian legislation, that the register of the varieties of vegetable species had been established and that a draft law, intended to incorporate the provisions of the directive concerning vegetable seed, had been submitted to the Council of Ministers for approval.

On 13 November 1974 the Commission delivered a reasoned opinion on the failure to implement Directive No 70/458, which was notified to the Government of the Italian Republic on 16 November.

The reasoned opinion found that the period prescribed by Article 43 of the directive had expired without the Commission's being informed of the entry into force of all the provisions necessary to bring internal Italian law into line with the directive. In particular, the essential measures had not been taken concerning:

(a) the establishment of national catalogues of the varieties of vegetable species and the laying down of conditions for the acceptance of the varieties in question into these catalogues (Articles 3 to 15 of the directive);
(b) The classification of seed (Articles 2 and 20 of the directive);
(c) the conditions of marketing of 'standard' seed (Articles 24 to 26 of the directive);
(d) the elimination of restrictions on the marketing of seed in accordance with the provisions of the directive (Article 16 (1) and Article 30).

The reasoned opinion requested the Italian Republic to take the necessary measures within sixty days.

By an application pursuant to the second paragraph of Article 169 of the EEC Treaty, lodged on 10 June 1975, the Commission referred to the Court of Justice the alleged failure of the Italian Republic to implement Directive No 70/458.

II — Written procedure

The written procedure followed the normal course.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate-General, the Court decided to open the oral procedure without holding any preparatory inquiry.

However, the Commission replied in writing to a question which had been put to it by the Court.

III — Conclusions of the parties

The *Commission* claims that the Court should:

— declare that the Italian Republic has failed in its obligations under Article 43 of the Council Directive of 29

September 1970 on the marketing of vegetable seed;
— order the Italian Republic to pay the costs.

The *Government of the Italian Republic* presents no formal conclusions.

IV — Submissions and arguments of the parties

The *Commission* maintains that according to the case-law of the Court of Justice the correct implementation of directives is all the more important, since the adoption of implementing measures is left to the discretion of the Member States and since such measures are rendered ineffective if their objectives are not achieved within the time-limits laid down. As regards the Member States to which a directive is addressed, it is most important to recognize that the effect of its provisions relating to the time-limits for the implementation of the measures provided for is no less binding than the effect of any other rule of Community law.

In the present case, even though the general provisions of Directive No 70/458 have indeed been incorporated into the Italian legal system, the Italian Republic has not yet, on the other hand, adopted the measures necessary to conform with those of its provisions which deal with the establishment of national catalogues of varieties of vegetable species and the detailed rules for the acceptance of the varieties into these catalogues, the classification of seed, the marketing criteria for 'standard' seed and the abolition of restrictions on the marketing of seed in accordance with the provisions of the directive.

The arguments put forward on this point by the Government of the Italian Republic conflict with the case-law of the Court of Justice. This case-law shows *inter alia* that the liability of a Member State is incurred under Article 169, irrespective of the organ of the State whose action or inaction is responsible for the failure, that a Member State cannot plead provisions or practices of its internal legal system for the purposes of justifying a failure to comply with duties and time-limits laid down in Community regulations and that, in accordance with the general obligations imposed on the States by Article 5 of the Treaty, it is for every Member State to adopt on a national level those measures which are the consequences of its membership of the Community.

Directive No 70/458, which was adopted on 29 September 1970, provided in Article 43 that the Member States should adopt the measures necessary to conform with the directive by 1 July 1972 at the latest. It is clear that this time-limit was not observed by the Italian Republic although, after being requested to do so by the Commission the other Member States all implemented the directive, albeit after a certain delay. The failure of the Italian Republic to fulfil its obligations has lasted for more than three years. It cannot be tolerated any longer, since it maintains disparities within the Community which constitute a hindrance to intra-Community trade. The assurances given as regards the adoption of a draft law only emphasize the failure on the part of the Italian Republic the existence of which it is for the Court to declare.

The *Government of the Italian Republic* emphasizes that the general rules contained in Directive No 70/458 were introduced into the Italian legal system by Law No 1096 of 25 November 1971 concerning regulations for the production and marketing of seed (Gazzetta Ufficiale No 322 of 22 December 1971) and its implementing regulation, which was approved by Decree of the President of the Republic No 1065 of 8 October 1973 (Gazzetta Ufficiale No 95 of 10 April 1974). Moreover, the register of the varieties of certain horticultural species was

introduced by Decree of the President of the Republic of 26 April 1973 (Gazzetta Ufficiale No 179 of 14 July 1973). The introduction of these provisions of the directive into internal law did not present particular difficulties, although this is not the case as regards its more specific and detailed provisions. The matters with which they deal have turned out to be much more complex than at first sight appeared. The harmonization of national rules with the provisions of the directive in question required extensive research, repeated consultations with the relevant agricultural sectors and a large number of inter-departmental meetings. In order to resolve the problems of adaptation and coordination a much longer period than that provided for by Article 43 of the directive proved to be necessary. Furthermore, this period has not been respected by any Member State. Its inadequacy is undeniable. When compared with the delay in implementing the directive on the part of the other Member States the Italian Republic's delay in fulfilling its obligations appears appreciably less grave and may be regarded as justified. In the circumstances it cannot validly be maintained that the Italian Republic has failed to fulfil its obligations.

It must also be pointed out that as the problems encountered have been resolved and that the draft law amending and supplementing Law No 1096, approved by the Council of Ministers on 28 May 1975 and submitted to the Chamber of Deputies for enactment, deprives the Commission's application of its substance.

V — Oral procedure

The parties presented oral argument at the hearing on 20 January 1976.

The *Commission* stated that although in Law No 1096 and its implementing regulation, which was approved by Decree of the President of the Republic No 1065, the Italian Republic has adopted certain provisions for the implementation of Articles 3 to 15 of Directive No 70/458 which deal with the national catalogues of varieties of vegetable species, these provisions can only come into operation after the adoption of the draft law laid before the legislative bodies.

The *Government of the Italian Republic* pointed out that the draft law which is intended to bring the entire directive into force in the Italian legal system was approved by the Chamber of Deputies on 3 December 1975, that it was examined on 12 January 1976 by the Senate Agricultural Committee and that its approval appeared on the agenda of the meeting of the Senate held on 15 January 1976. Its adoption at that date was only prevented by the Government crisis.

The Advocate-General delivered his opinion at the hearing on 4 February 1976.

Law

1 By an application lodged at the Court Registry on 10 June 1975, the Commission brought before the Court, under Article 169 of the EEC Treaty, an action for a declaration that by failing to bring into force within the time-limit laid down by Article 43 of Council Directive No 70/458 of 29 September 1970 on the marketing of vegetable seed (OJ English Special Edition, 1970 (III) p. 674; codified text, taking account of subsequent

amendments, OJ C 66, 1974, p. 62), all the laws, regulations and administrative provisions necessary to comply with the provisions of the said directive, the Italian Republic has failed in its obligations under the Treaty.

2/3 As the Council was aware that the difference existing between national rules on the use made of vegetable seed constituted a barrier to trade between the Member States it sought, by means of the directive of 29 September 1970, to introduce common rules comprising common requirements as regards the marketing of such seed, both between the Member States and on the national markets. This directive fixed a period expiring on 1 July 1972 for the implementation of the national measures.

4 The Commission maintains that the Italian Republic has not yet adopted the measures necessary to comply with the provisions of the directive concerning:

(a) the establishment of a national catalogue of varieties of vegetable species and the fixing of conditions of acceptance of the varieties for inclusion in these catalogues (Articles 3 to 15 of the directive);

(b) the classification of seed (Articles 2 and 20 of the directive);

(c) the conditions of marketing of 'standard' seed (Articles 24 to 26 of the directive);

(d) the abolition of marketing restrictions on seed in accordance with the provisions of the directive (Article 16 (1) and Article 30);

5/6 The Italian Republic observes that the general principles contained in Directive No 70/458 were introduced into the Italian legal system by Law No 1096 of 25 November 1971, laying down rules for the production and marketing of seed, and by its implementing regulation, which was approved by Decree of the President of the Republic No 1065 of 8 October 1973, and that, in addition, the register of varieties of certain horticultural species has been set up by Decree of the President of the Republic of 26 April 1973. Although it accepts that it failed to observe the time-limit for implementing the provisions of the directive referred to by the Commission in the application, the Italian Republic maintains that this delay is justified.

7/9 In this respect the Italian Republic maintains in particular that the period prescribed by Article 43 of the directive was too short. The implementation of the specific and precise provisions of the directive proved to be a very complex matter, with the result that the harmonization of the national rules with these provisions of the directive required extensive research, numerous

consultations with the relevant agricultural sectors and a large number of interdepartmental meetings. The inadequacy of the time-limit was demonstrated by the fact that no Member State was successful in implementing the directive by 1 July 1972, the date fixed for this purpose, and that in certain States it was only implemented in June and October 1974. In any event, a draft law which was intended to introduce the directive as a whole into the Italian legal system was approved on 3 December 1975 by the Chamber of Deputies, its approval appeared on the agenda of the sitting of the Senate of 15 January 1976 and only the governmental crisis had prevented its adoption at that date.

10 The correct application of a directive is particularly important since the implementing measures are left to the discretion of the Member States and would be ineffective if the desired aims are not achieved within the prescribed time-limits. Although the provisions of a directive are no less binding on the Member States to which they are addressed than the provisions of any other rule of Community law, such an effect attaches *a fortiori* to the provisions relating to the periods allowed for implementing the measures prescribed, in particular since the existence of differences in the rules applied in the Member States after these periods have expired might result in discrimination.

11 Furthermore, any delays there may have been on the part of other Member States in performing obligations imposed by a directive may not be invoked by a Member State in order to justify its own, even temporary, failure to perform its obligations. The Treaty did not merely create reciprocal obligations between the various subjects to whom it applies, but established a new legal order which governs the powers, rights and duties of the said subjects, as well as the procedures necessary for the purposes of having any infringement declared and punished.

12/13 If the period allowed for the implementation of a directives proves to be too short the only means of action compatible with Community law available to the Member State concerned consists in taking the appropriate initiatives within the Community in order to obtain the necessary extension of the period by the competent Community institution. In this respect it may be noted that, in the present case, the Council actually decided to extend the period allowed for the implementation of certain provisions of the directive, in particular by means of Directive No 72/418 of 6 December 1972 (OJ L 287, 1972, p. 22) and Directive No 73/438 of 11 December 1973 (OJ L 356, 1973, p. 79).

14 Finally, it must be remembered that under Article 169 of the Treaty the Member States are liable no matter which organ of the State is responsible for the failure, and that a Member State may not plead provisions, practices or circumstances existing in its internal legal system in order to justify a failure to comply with the obligations and time-limits under Community directives.

15 It follows that by not adopting within the time prescribed all the provisions necessary to comply with Council Directive No 70/458 on the marketing of vegetable seed the Italian Republic has failed in one of its obligations under the Treaty.

Costs

16 Under Article 69 (2) of the Rules of Procedure the unsuccessful party shall be ordered to pay the costs. The defendant has failed in its submissions.

On those grounds,

THE COURT

hereby:

1. **Rules that by not adopting within the time prescribed all the laws, regulations and administrative provisions necessary to comply with Council Directive No 70/458 of 29 September 1970 on the marketing of vegetable seed, the Italian Republic has failed in one of its obligations under the Treaty;**
2. **Orders the defendant to bear the costs.**

Lecourt Kutscher O'Keeffe

Donner Mertens de Wilmars Sørensen Mackenzie Stuart

Delivered in open court in Luxembourg on 26 February 1976.

A. Van Houtte
Registrar

R. Lecourt
President