JUDGMENT OF THE COURT
OF 21 JUNE 1973 [1]

Commission of the European Communities v the Italian Republic

'Forest reproductive material'

Case 79/72

Acts of an institution — Directive — Binding force (EEC Treaty, Art. 189)

The provisions of a directive have an effect no less binding than that of any other rule of Community law.

In Case 79/72

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its legal adviser Armando Toledano-Laredo, acting as agent, and having chosen its address for service in Luxembourg at 4 boulevard Royal, the office of its legal adviser Emile Reuter,

applicant,

v

The ITALIAN REPUBLIC, represented by Adolfo Maresca, ambassador, acting as agent, assisted by Giorgio Zagari, assistant at the Avvocatura generale dello Stato. It has chosen its address for service in Luxembourg at the Italian Embassy,

defendant,

Application for a finding that the Italian Republic has failed to fulfil its obligations under Article 18 (1) (a) of Council Directive 66/404/EEC of 14 June 1966 (OJ 125, 11. 7. 1966, p. 2326) on the marketing of forest reproductive material.

1 — Language of the Case: Italian.

THE COURT

composed of: R. Lecourt, President, R. Monaco and P. Pescatore, Presidents of Chambers, A. M. Donner (Rapporteur), J. Mertens de Wilmars, H. Kutscher, C. Ó Dálaigh, M. Sørensen and A. J. Mackenzie Stuart, Judges,

Advocate-General: K. Roemer
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — Facts and procedure

The facts and procedure may be summarised as follows:

In order to eliminate the discrepancies existing between national regulations on forest reproductive material, which constituted an obstacle to intra-Community trade, the Council issued on 14 June 1966 Directive 66/404/EEC on the marketing of forest reproductive material, by virtue of which the Member States are bound:

(a) to establish, for the various genera and species of reproductive material, a list of the basic material officially approved in their territories;

(b) to delimit the regions of provenance for reproductive material;

(c) to provide that reproductive material is to be identified according to precise criteria laid down by the Directive and is to be marketed according to specific rules;

(d) to ensure that, as regards the genetic characters of the basic material and the measures taken for its source-identification, reproductive material is subject to no marketing restrictions other than those laid down in the Directive.

Article 18 (1), of the above-mentioned Directive, as amended by Council Directive 69/64/EEC of 18 February 1969 (OJ L 48, 26. 2. 1969, p. 12) provides that:

'The Member States shall bring into force the laws, regulations or administrative provisions necessary to comply with this Directive and its Annexes:

(a) not later than 1 July 1969 for seeds and part of plants (the list follows)

(b) . . .'

The Italian Republic not having taken the necessary measures within the time limit prescribed by the abovementioned Directive, the Commission commenced the procedure provided for in Article 169 by a letter dated 24 March 1971.

Having received no reply, the Commission delivered on 14 September

1971 a reasoned opinion calling upon the defendant to adopt the measures required within a time limit of 30 days. By telex on 20 January 1972, the Permanent Delegation of Italy stated that the draft law designed to carry the directive into effect had been approved by the VIIIth Committee of the Senate, but had not yet been enacted as a law. It added that the governmental authorities would intervene so that the draft law could be passed as quickly as possible.

By a letter dated 20 April 1972 the Commission gave notice that it was suspending the procedure previously commenced, and invited the Government of the Italian Republic to institute the necessary measures within a strict time-limit of three months.

The abovementioned draft law lapsed on the premature dissolution of the Vth legislature and since the necessary measures were therefore not adopted within the time limit granted, the Commission brought this action before the Court on 8 December 1972.

The Italian Government declined to submit a rejoinder.

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

The oral observations of the parties were made at the hearing on 16 May 1973.

The Advocate-General presented his opinion at the hearing on 30 May 1973.

II — Submissions

The *Commission* submits that the Court should:

(a) declare that the Italian Republic has failed to fulfil its obligations under Article 18 (1) (a) of the Council Directive of 14 June 1966 on the marketing of forest reproductive material.

(b) order the Italian Republic to pay the costs.

The *Italian Government* opposes those submissions.

III — Pleas and arguments

The pleas and arguments of the parties may be summarized as follows:

The *Commission* explains that more than three years have passed since the expiration of the time limit referred to in Article 18 (1) of the Directive of 14 June 1966 without the necesaary measures having been adopted by the Italian Republic. The time limit prescribed by the reasoned opinion of 14 September 1971 having likewise not been respected and any regularization of the situation within a brief time limit being unforeseeable, the conditions required to institute the action provided for by the second paragraph of Article 169 are amply satisfied.

The Italian Government cannot invoke the premature dissolution of the Vth legislature to justify the failure of the Italian Republic. On this point, the *Commission* refers to the case law of the Court of Justice according to which a Member State cannot plead provisions or practices of its internal order to justify failure to observe obligations and time limits arising from Community provisions. (Judgment of 8 February 1973 in Case 30/72, Commission v Italian Republic, as yet unpublished.)

The *Italian Government* first of all emphasizes that the adoption of the necessary measures did not come up against any difficulties of its own making. After the adoption of the Directive in issue, the appropriate steps were taken, with the result that a draft law was laid before Parliament.

The *Italian Republic* was not in a position to fulfil its obligations arising from the Directive of 14 June 1966 because of the premature dissolution of the legislature.

The Italian Government emphasizes that, from the formation of the new Parliament, it has taken steps to ensure

that the abovementioned draft law is formally enacted within the shortest possible time. Thus it can be expected that within a short time the Italian Republic will fulfil its obligations.

Lastly the Italian Government observes that it is necessary to take into account the circumstances (i.e. of a political nature) which have prevented the competent Italian institutions from putting into effect the measures required by Community law.

Grounds of judgment

1 By an application filed at the Registry on 8 December 1972, the Commission, by virtue of Article 169 of the EEC Treaty brought before the Court an action seeking to establish that the Italian Republic has failed to fulfil its obligations under the Treaty by not bringing into force the laws, regulations, or administrative provisions necessary to comply with the provisions of Council Directive 66/404/EEC of 14 June 1966 on the marketing of forest reproductive material (OJ 125, p. 2326) within the time limit prescribed in Article 18 of that Directive, as amended by Council Directive 69/64/EEC of 18 February 1969 (OJ 1969, L 48, 12).

2 Having found that the discrepancies existing between national regulations aiming to promote the utilisation of superior forest reproductive material constituted an obstacle to trade between Member States, the Counil, by a Directive of 14 June 1966, sought to establish common rules imposing common standards in relation to marketing both in other Member States and on domestic markets.

This Directive had prescribed a time limit for the implementing of measures applying to domestic markets and expiring respectively on 1 July 1967, 1 July 1969 and 1 July 1971 for seeds and parts of plants of different genera of trees as defined in Article 18.

By a Directive of 18 February 1969, the expiry of the first time limit was postponed to 1 July 1969.

3 The defendant admits the failure to observe these time limits.

However the defendant explains that having regard to the state of Italian legislation applying to the seed and forest plantation trade a law was necessary to adapt such legislation to the provisions of the Directive.

In pursuance of this objective, a first draft law had been laid before Parliament, but the premature dissolution of the legislature did not permit its adoption within the prescribed time.

Another draft law was introduced in September 1972, but it proved possible to enact it only during May 1973.

Thus the delay in implementing the obligations in issue is primarily due to unforeseeable political circumstances occurring at the end of 1971 and the beginning of 1972.

4 From the time Directive 66/404/EEC was passed, all the Member States knew that, for the first group of seeds and parts of plants, they were bound to bring into effect the necessary measures at the latest by 1 July 1967.

Certain Member States not having succeeded in complying by 1 July 1967 with the provisions of this Directive, Directive 69/64/EEC granted them a further time limit, thus reminding the defaulting Member States of their obligation to institute the measures provided.

Accordingly, having failed to implement the provisions required by Directive 66/404/EEC before 1 July 1969, the defendant has since that date failed in the obligations arising from that Directive.

5 The defendant cannot invoke, to justifiy its conduct, obstacles or circumstances which arose at a time largely subsequent to that of the obligation which it is accused of not having fulfilled.

The political situation invoked thus cannot, in any case, be accepted as justifiying this delay.

Moreover, if this draft law is passed in a short time, it does not follow that the failure to observe the provisions of the Directive will cease, the regulations and administrative provisions necessary for its application having still not been brought into force.

6 At the hearing, the defendant again claimed that in any event it is a question of the non-observance of a directive, and submitted that the provisions of a directive cannot be accorded the same binding force as those of a Regulation.

7 By Article 189 of the Treaty, a directive 'shall be binding' as to the result to be achieved upon each Member State to which it is addressed, but leaves to the national authorities the choice of form and methods.

The precise application of directives is all the more important as implementation is left to the discretion of Member States and such acts would lose all effectiveness if the objectives in view were not attained within the prescribed time limits.

If, in respect of Member States to which it is addressed, the provisions of a diretive have no less binding an effect than that of any other rule of Community law, such an effect applies all the more to provisions relating to the time limits for implementing the measures provided for.

8 It follows that by failing to adopt the provisions necessary to comply with Council Directive 66/404 on the marketing of forest reproductive material within the prescribed time limit, as amended by Directive 69/64, the Italian Republic has failed to fulfil its obligations under the Treaty.

Costs

9 By Article 69 (2) of the Rules of Procedure, the unsuccessful party shall be ordered to pay the costs.

The defendant has failed in its pleas.

On those grounds,
Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the oral observations of the parties;
Upon hearing the opinion of the Advocate-General;
Having regard to the Treaty establishing the European Economic Community, especially Articles 169, 171 and 189;
Having regard to Council Directives 66/404/EEC and 69/64/EEC;
Having regard to the Protocol on the Statute of the Court of Justice of the European Economic Community;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities;

THE COURT

hereby:

1. **Declares that the Italian Republic, by failing to adopt the provisions necessary to comply with Council Directive 66/404 on the marketing of forest reproductive material within the prescribed time limit, as amended by Directive 69/64, has failed to fulfil its obligations under the Treaty;**

2. **Orders the defendant to pay the costs.**

Lecourt Monaco Pescatore Donner Mertens de Wilmars
Kutscher Ó Dálaigh Sørensen Mackenzie Stuart

Delivered in open court in Luxembourg on 21 June 1973.

A. Van Houtte
Registrar

R. Lecourt
President

OPINION OF MR ADVOCATE-GENERAL ROEMER DELIVERED ON 30 MAY 1973 [1]

Mr President,
Member of the Court,

Having regard to the increasing need for forest reproductive material for the purpose of restocking of forests and for new afforestation, having regard to the necessity in this connection of using genetically superior reproductive material, as well as realizing that it is in the interest of all Community States by means of common rules in this field to ensure the free movement of goods, the Council of Ministers on 14 June 1966 issued a Directive 'on the marketing of forest reproductive material (OJ 125, 11. 7. 1966, p. 2326).

As a consequence, a number of obligations are imposed upon Member States.

Thus Member States have to make Regulations pursuant to which 'reproductive material may not be placed on the market unless it is derived from officially approved basic material' (Article 4). Pursuant to Article 5 they

1 — Translated from the German.