JUDGMENT OF THE COURT
OF 2 DECEMBER 1980 [1]

Commission of the European Communities v Italian Republic

"Failure of a State to fulfil its obligations — Implementation of a directive"

Case 43/80

Member States — Obligations — Implementation of directives — Failure to fulfil — Justification — Not permissible

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 obligations and time-limits resulting from Community directives.

In Case 43/80

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by Gian Piero Alessi, a member of the Legal Department of the Commission, acting as Agent, with an address for service in Luxembourg at the office of Mario Cervino, Jean Monnet Building, Kirchberg,

applicant,

v

ITALIAN REPUBLIC, represented by Ivo M. Braguglia, Avvocato dello Stato, acting as Agent, with an address for service in Luxembourg at the Italian Embassy,

defendant,

1 — Language of the Case: Italian.

APPLICATION for a declaration that the Italian Republic has failed to fulfil its obligations under the Treaty by not implementing in good time Commission Directive No 76/696/EEC of 27 July 1976 adapting to technical progress Council Directive No 73/360/EEC of 19 November 1973 on the approximation of the laws of the Member States relating to non-automatic weighing machines (Official Journal 1976, L 236, p. 26),

THE COURT

composed of: J. Mertens de Wilmars, President, P. Pescatore (President of Chamber), Lord Mackenzie Stuart, A. O'Keeffe, G. Bosco, A. Touffait and O. Due, Judges,

Advocate General: J.-P. Warner
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and Issues

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

I — Facts and written procedure

Council Directive No 71/316 of 26 July 1971 on the approximation of the laws of the Member States relating to common provisions for both measuring instruments and methods of metrological control (Official Journal, English Special Edition 1971 (II), p. 707, amended by Directive No 72/427 of 19 December 1972, Official Journal, English Special Edition 1972 (28-30 December), p. 71, and by Annex I to the Act of Accession) is one of the harmonization directives adopted by the Council in order to eliminate progessively the technical barriers to trade within the Community which result from the disparities between national rules.

For the purpose of such harmonization and in order to achieve freedom of movement of measuring instruments within the common market that directive introduces the principle of mutual recognition of controls and establishes

for that purpose a procedure for EEC pattern approval and an EEC verification procedure. The presence on a measuring instrument of the EEC mark showing the controls it has undergone indicates that it meets the relevant technical requirements and therefore when the instrument is imported and put into operation it is unnecessary to repeat the controls which have already been carried out.

That directive forms a general framework within which implementing directives specific to each category of instruments are to be adopted. One of those directives is Council Directive No 73/360 of 19 November 1973 on the approximation of the laws of Member States relating to non-automatic weighing machines (Official Journal 1973, L 335, p. 1). Instruments which meet the technical requirements laid down by that directive, which have been checked in accordance with its provisions, and which furthermore bear the prescribed EEC signs or marks may not be either barred from free circulation within the Community or undergo new controls at the frontiers.

Articles 17 to 19 of the basic Directive No 71/316 make provision for the adaptation to technical progress of the annexes to the directive in question as well as of the annexes to the special implementing directives by means of a procedure to establish close cooperation between the Commission and the Member States through a "committee on adaptation to technical progress".

In accordance with that procedure on 27 July 1976 the Commission adopted Directive No 76/696 (Official Journal 1976, L 236, p. 26) amending various points of the Annex to Directive No 73/360.

Article 2 of that directive provides that:

"(1) Member States shall adopt the laws, regulations and administrative provisions needed in order to comply with this directive in such a manner that these provisions shall take effect one year after the date of notification of this directive.

(2) However, in the event of Ireland and the United Kingdom implementing the provisions of the Council Directive of 19 November 1973 at any time later than the date fixed in the preceding paragraph, the provisions of this directive shall take effect simultaneously therewith.

(3) Member States shall communicate the texts of the provisions of national law which they adopt in the field covered by this directive to the Commission."

Notification of the directive was effected on 30 July 1976. Consequently Member States had to comply with the directive before 30 July 1977.

As the Italian Republic had not adopted or put into effect the necessary implementing measures in the period allotted to it the Commission decided to commence the procedure laid down by Article 169 of the Treaty to establish a failure of a State to fulfil obligations.

By a letter of 4 April 1978 the Italian Republic was given the opportunity to submit its observations in accordance with the first paragraph of Article 169.

As there was no reply to that letter and as the Commission noted a continuing failure to adopt national provisions to put the directives into effect the

Commission produced a reasoned opinion on 18 May 1979 to the effect that:

"By failing to adopt the laws, regulations and administrative provisions needed in order to comply with Commission Directive No 76/696/EEC of 27 July 1976 on non-automatic weighing machines, the Italian Republic has failed to fulfil its obligations under the Treaty."

That reasoned opinion was sent to the Italian Government by a letter of 28 May 1979.

By a memorandum dated 21 September 1979 the Italian Government replied through the intermediary of the Permanent Representation of Italy that during the course of the previous Parliament it had begun the procedure to adopt the necessary legislative measures; it gave the further assurance that it would submit for the approval of the new Parliament as soon as possible the measures needed to put the directive in question into effect in its legal system.

Not having received any subsequent communication from the Italian Government on this matter and as the national provisions needed to implement the directive had still not been adopted, the Commission brought the matter before the Court of Justice by the present application, received at the Court Registry on 1 February 1980.

The defendant has not submitted a rejoinder.

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

II — Conclusions of the parties

The *applicant* claims that the Court should:

1. Declare that the Italian Republic, by failing to adopt within the prescribed period the provisions needed in order to comply with Commission Directive No 76/696/EEC of 27 July 1976 adapting to technical progress the Council Directive of 19 November 1973 on the approximation of the laws of the Member States relating to non-automatic weighing machines, has failed to fulfil one of its obligations under the Treaty;

2. Order the defendant to pay the costs.

The *defendant* did not submit any formal conclusions.

III — Submissions and arguments of the parties

The *applicant* contends that the mandatory nature of the directives means that Member States are obliged to observe the periods which they prescribe for the adoption of national adaptation measures. It refers in this respect to the judgments of the Court in Cases 52/75 [1976] ECR 277, 10/76 [1976] ECR 1359 and 163/78 [1979] ECR 771.

The *defendant* emphasizes that a draft law requesting statutory authorization for the adoption into the Italian legal system of a number of directives has once more been laid before Parliament in the present legislative period. It hopes

that the parliamentary procedure relating to that draft law will be completed in the very near future so that the dispute may be seen to have lost its purpose.

In its reply the *applicant* maintains its conclusions.

IV — Oral procedure

Oral argument was presented by the parties at the sitting on 21 October 1980.

The Advocate General delivered his opinion during the same sitting.

Decision

1 By application lodged at the Court Registry on 1 February 1980 the Commission of the European Communities brought an action under Article 169 of the EEC Treaty for a declaration that by failing to adopt within the prescribed period the provisions needed to comply with Commission Directive No 76/696 of 27 July 1976 adapting to technical progress the Council Directive of 19 November 1973 on the approximation of the laws of the Member States relating to non-automatic weighing machines (Official Journal L 236, p. 26), the Italian Republic has failed to fulfil one of its obligations under the third paragraph of Article 189 of the EEC Treaty.

2 By Article 2 of that directive Member States were required to put into effect the measures needed to comply therewith within a period of one year from the date of notification thereof; that period expired on 30 July 1977.

3 The Italian Republic does not deny that it has not met that obligation. It states that the delay in implementing the directive was at first due to the fact that a draft law submitted for that purpose had lapsed owing to the dissolution of Parliament and that it was later due to the fact that a draft law requesting statutory authorization for the adoption into the Italian legal system of a number of directives, though approved by the Senate on 16 July 1980, was still under scrutiny by the Chamber of Deputies.

4 Those circumstances do not expunge the failure to fulfil its obligations with which the Italian Republic is charged. According to well-established case-law, 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 obligations and time-limits resulting from Community directives.

5 It must therefore be declared that by failing to adopt, within the prescribed period, the provisions needed in order to comply with Commission Directive No 76/696 of 27 July 1976 the Italian Republic has failed to fulfil one of its obligations under the Treaty.

Costs

6 Under Article 69 (2) of the Rules of Procedure the unsuccessful party shall be ordered to pay the costs. Since the defendant has been unsuccessful it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

1. **Declares that, by failing to adopt, within the prescribed period, the provisions needed in order to comply with Commission Directive No 76/696 of 27 July 1976 adapting to technical progress Council Directive No 73/360/EEC of 19 November 1973 on the approximation of the laws of the Member States relating to non-automatic weighing machines (Official Journal L 236, p. 26), the Italian Republic has failed to fulfil one of its obligations under the Treaty;**

2. Orders the defendant to pay the costs.

Mertens de Wilmars Pescatore Mackenzie Stuart

O'Keeffe Bosco Touffait Due

Delivered in open court in Luxembourg on 2 December 1980.

A. Van Houtte
Registrar

J. Mertens de Wilmars
President

OPINION OF MR ADVOCATE GENERAL WARNER

(see Case 42/80, p. 3642)