# JUDGMENT OF THE COURT (Fourth Chamber)

6 December 2001 *

In Case C-148/00,

**Commission of the European Communities**, represented initially by S. Dragone and F. P. Ruggeri Laderchi, and subsequently by S. Dragone and L. Visaggio, acting as Agents, with an address for service in Luxembourg,

applicant,

v

**Italian Republic**, represented by U. Leanza, acting as Agent, assisted by G. De Bellis, avvocato dello Stato, with an address for service in Luxembourg,

defendant,

* Language of the case: Italian.

APPLICATION for a declaration that, by not adopting and, in any event, by not notifying the Commission of the laws, regulations and administrative provisions necessary to comply with:

— Council Directive 97/41/EC of 25 June 1997 amending Directives 76/895/EEC, 86/362/EEC, 86/363/EEC and 90/642/EEC relating to the fixing of maximum levels for pesticide residues in and on, respectively, fruit and vegetables, cereals, foodstuffs of animal origin, and certain products of plant origin, including fruit and vegetables (OJ 1997 L 184, p. 33),

— Council Directive 97/76/EC of 16 December 1997 amending Directive 77/99/EEC and Directive 72/462/EEC with regard to the rules applicable to minced meat, meat preparations and certain other products of animal origin (OJ 1998 L 10, p. 25), and

— Commission Directive 98/51/EC of 9 July 1998 laying down certain measures for implementing Council Directive 95/69/EC laying down the conditions and arrangements for approving and registering certain establishments and intermediaries operating in the animal feed sector (OJ 1998 L 208, p. 43),

the Italian Republic has failed to fulfil its obligations under the Treaty and those directives,

THE COURT (Fourth Chamber),

composed of: S. von Bahr, President of the Chamber, A. La Pergola and C.W.A. Timmermans (Rapporteur), Judges,

Advocate General: P. Léger,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 20 September 2001,

gives the following

## Judgment

1 By application lodged at the Registry of the Court of Justice on 18 April 2000, the Commission of the European Communities brought an action under

Article 226 EC for a declaration that, by not adopting and, in any event, by not notifying the Commission of the laws, regulations and administrative provisions necessary to comply with:

— Council Directive 97/41/EC of 25 June 1997 amending Directives 76/895/EEC, 86/362/EEC, 86/363/EEC and 90/642/EEC relating to the fixing of maximum levels for pesticide residues in and on, respectively, fruit and vegetables, cereals, foodstuffs of animal origin, and certain products of plant origin, including fruit and vegetables (OJ 1997 L 184, p. 33),

— Council Directive 97/76/EC of 16 December 1997 amending Directive 77/99/EEC and Directive 72/462/EEC with regard to the rules applicable to minced meat, meat preparations and certain other products of animal origin (OJ 1998 L 10, p. 25), and

— Commission Directive 98/51/EC of 9 July 1998 laying down certain measures for implementing Council Directive 95/69/EC laying down the conditions and arrangements for approving and registering certain establishments and intermediaries operating in the animal feed sector (OJ 1998 L 208, p. 43),

the Italian Republic has failed to fulfil its obligations under the Treaty and those directives.

## Community legislation

2 By virtue of the first subparagraph of Article 5 of Directive 97/41, the first subparagraph of Article 4(1) of Directive 97/76 and the first subparagraph of Article 10(1) of Directive 98/51, the Member States were required to adopt the laws, regulations and administrative provisions necessary to comply with each of those directives no later than 31 December 1998.

## Pre-litigation procedure

3 Since it took the view that Directives 97/41, 97/76 and 98/51 had not been incorporated into Italian law within the prescribed period, and that, in any event, it had not been informed of them, the Commission initiated the procedure for Treaty infringement. Having sent the Italian Republic formal notice to submit its observations, the Commission issued a reasoned opinion on 14 July 1999 requesting that Member State to bring into force the measures necessary to comply with it within two months of the date of its notification. Since the Italian Republic did not respond to that opinion, the Commission brought this action.

## Arguments of the parties

4 The Italian Republic acknowledged in its defence that the abovementioned directives had not been incorporated into Italian law within the period fixed by the reasoned opinion.

5 However, it stated that the incorporation of Directives 97/41 and 97/76 had taken place after the expiry of the said period and notified the Commission of the Ministerial Decree and the Decree-Law incorporating the said directives. So far as Directive 98/51 is concerned, it asserted that the procedure for adopting the Ministerial Decree to incorporate it was in the course of completion.

6 In view of those matters, the Commission discontinued, after the closure of the written procedure, that part of its action concerning the failure to transpose Directives 97/41 and 97/76. On the other hand, it continued that part of its action concerning the failure to transpose Directive 98/51.

## Findings of the Court

7 So far as the transposition of Directive 98/51 is concerned, it is appropriate to point out that, according to settled case-law, the question whether a Member State has failed to fulfil its obligations must be determined by reference to the situation prevailing in the Member State at the end of the period laid down in the reasoned opinion and that the Court cannot take account of any subsequent changes (see, in particular, Case C-147/00 *Commission* v *France* [2001] ECR I-2387, paragraph 26).

8 It is not disputed that Directive 98/51 was not transposed within the period prescribed by the reasoned opinion. In those circumstances, the action brought by the Commission appears to be well founded.

9 Consequently, it must be held that, by not bringing into force, within the prescribed period, the laws, regulations and administrative provisions necessary to comply with Directive 98/51, 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 applied for an order for costs and the Italian Republic has been unsuccessful, the latter must be ordered to pay the costs of the proceedings in so far as they relate to Directive 98/51.

11 Pursuant to the first subparagraph of Article 69(5) of the Rules of Procedure, upon application by a party who discontinues the proceedings, the costs are to be borne by the other party if this appears justified by the conduct of that party. Having regard to the conduct of the Italian Republic, which adopted the measures necessary for transposing Directives 97/41 and 97/76 only after the commencement of the action, it should be ordered to pay the costs of the proceedings in so far as they relate to those two directives.

On those grounds,

THE COURT (Fourth Chamber)

hereby:

1. **Declares that, by not bringing into force, within the prescribed period, the laws, regulations and administrative provisions necessary to comply with Commission Directive 98/51/EC of 9 July 1998 laying down certain measures for implementing Council Directive 95/69/EC laying down the conditions and arrangements for approving and registering certain establishments and intermediaries operating in the animal feed sector, the Italian Republic has failed to fulfil its obligations under that directive;**

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

von Bahr La Pergola Timmermans

Delivered in open court in Luxembourg on 6 December 2001.

R. Grass

Registrar

S. von Bahr

President of the Fourth Chamber