JUDGMENT OF THE COURT (Sixth Chamber)
16 December 1997 *

In Case C-316/96,

Commission of the European Communities, represented by Paolo Ziotti, of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

applicant,

v

Italian Republic, represented by Professor Umberto Leanza, Head of the Legal Department in the Ministry of Foreign Affairs, acting as Agent, assisted by Oscar Fiumara, Avvocato dello Stato, with an address for service in Luxembourg at the Italian Embassy, 5 Rue Marie-Adélaïde,

defendant,

APPLICATION for a declaration that, by failing to bring into force within the prescribed periods the laws, regulations and administrative provisions necessary to comply with Council Directive 93/53/EEC of 24 June 1993 introducing minimum Community measures for the control of certain fish diseases (OJ 1993 L 175, p. 23), Council Directive 93/54/EEC of 24 June 1993 amending Directive 91/67/EEC concerning the animal health conditions governing the placing on the market of aquaculture animals and products (OJ 1993 L 175, p. 34), Council Directive 93/113/EC of 14 December 1993 concerning the use and marketing of enzymes, micro-organisms and their preparations in animal nutrition (OJ 1993

* Language of the case: Italian.

L 334, p. 17) and Council Directive 93/114/EC of 14 December 1993 amending Directive 70/524/EEC concerning additives in feedingstuffs (OJ 1993 L 334, p. 24), the Italian Republic has failed to fulfil its obligations under those directives and the EC Treaty,

THE COURT (Sixth Chamber),

composed of: H. Ragnemalm (Rapporteur), President of the Chamber, R. Schintgen, G. F. Mancini, P. J. G. Kapteyn and G. Hirsch, Judges,

Advocate General: N. Fennelly,
Registrar: L. Hewlett, Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 16 September 1997,

after hearing the Opinion of the Advocate General at the sitting on 23 October 1997,

gives the following

Judgment

1 By application lodged at the Court Registry on 26 September 1996, the Commission of the European Communities brought an action under Article 169 of the EC Treaty for a declaration that, by failing to bring into force within the prescribed periods the laws, regulations and administrative provisions necessary to comply with:

— Council Directive 93/53/EEC of 24 June 1993 introducing minimum Community measures for the control of certain fish diseases (OJ 1993 L 175, p. 23),

— Council Directive 93/54/EEC of 24 June 1993 amending Directive 91/67/EEC concerning the animal health conditions governing the placing on the market of aquaculture animals and products (OJ 1993 L 175, p. 34),

— Council Directive 93/113/EC of 14 December 1993 concerning the use and marketing of enzymes, micro-organisms and their preparations in animal nutrition (OJ 1993 L 334, p. 17), and

— Council Directive 93/114/EC of 14 December 1993 amending Directive 70/524/EEC concerning additives in feedingstuffs (OJ 1993 L 334, p. 24),

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

2 According to the first subparagraph of Article 20(1) of Directive 93/53, the first subparagraph of Article 2(1) of Directive 93/54 and the first subparagraph of Article 2(1) of Directive 93/114, the Member States were to bring into force the measures necessary to comply with those directives before 1 July 1994, in respect of Directives 93/53 and 93/54, and at the latest by 1 October 1994, in respect of Directive 93/114. According to the first subparagraph of Article 8(1) of

Directive 93/113, the Member States were to bring into force the measures necessary to comply with Article 7 by 1 January 1995 at the latest and with the other provisions by 1 October 1994 at the latest.

3 In the absence of any communication concerning the transposition of those directives into Italian law, the Commission initiated the procedure provided for by Article 169 of the Treaty by sending a letter of formal notice on 20 January 1995.

4 By letter of 27 February 1995 the Italian Government informed the Commission that the directives had been included in the draft law entitled 'Provisions for the Fulfilment of the Obligations resulting from Italy's Membership of the European Communities — Community law 1994' and that, pending adoption of that law, the Italian authorities had drawn up provisions for its implementation.

5 In the absence of any further notification by the Italian authorities, the Commission sent a reasoned opinion to the Italian Republic on 22 January 1996 requesting it to adopt the measures necessary to comply with its obligations under the directives at issue within two months of notification of that opinion.

6 By letter of 15 March 1996 the Italian Government replied that the measure implementing Directive 93/53 was about to be sent to the Presidency of the Council of Ministers for preliminary examination, that the measure implementing Directive 93/54 would shortly be sent to the Minister for signature and, finally, that the Ministry of Health had transmitted the sole implementing provision for Directives

93/113 and 93/114 to the department of the Presidency of the Council of Ministers responsible for European Union policies for the requisite examination.

7 Having received no further information concerning the transposition of the four directives, the Commission brought the present proceedings. However, by a document lodged on 14 August 1997, it discontinued those proceedings in so far as they concerned Directive 93/54.

8 As regards the three other directives, the Italian Republic submits in its defence that implementation is either complete or at an advanced stage.

9 First, Directive 93/53 was transposed by Presidential Decree No 263 of 3 July 1997 (GURI No 184 of 8 August 1997).

10 Second, in conformity with Article 2 of Directive 93/113, the Italian authorities have temporarily allowed the use and marketing on their territory of the enzymes, micro-organisms and their preparations in animal nutrition included on the list submitted to the Commission on 20 December 1994 in accordance with Article 3 of that directive. Furthermore, by a ministerial circular of 26 July 1995, that list was notified to all the regional health representative offices ('assessorati regionali della Sanità') and professional associations and organizations, in order that they should circulate it as widely as possible amongst the persons concerned. That list has since been replaced by a list drawn up by the Commission pursuant to Article 4 of Directive 93/113, pending the definitive inclusion by that institution of the enzymes and micro-organisms on the lists annexed to Council Directive

70/524/EEC of 23 November 1970 concerning additives in feedingstuffs (OJ, English Special Edition 1970 (III), p. 840), pursuant to Article 5 of Directive 93/113.

11 As regards the labelling requirement imposed by Article 7 of Directive 93/113, the Italian Government points out that Presidential Decree No 228 of 1 March 1992 (GURI No 66 of 19 March 1992, Ordinary Supplement), which implements the various directives concerning additives in animal feedingstuffs, lays down specific requirements concerning the labelling of additives. The other information contained in Article 7 of Directive 93/113 was, moreover, dealt with by requirements contained in the circular of 26 July 1995, cited above, which was sent to the relevant departments and bodies.

12 Thirdly, the regulation implementing Directive 93/114 is about to be adopted.

13 As regards Directive 93/113, the Commission submits that the adoption of the Ministerial Circular of 26 July 1995 and its transmission to the relevant authorities does not amount to proper transposition of Article 2 thereof. Furthermore, neither that circular nor Presidential Decree No 228 of 1 March 1992 adequately transposes the labelling requirements contained in Article 7. In particular, that article introduces new requirements and criteria in respect of products which are not covered by the Decree.

14 As regards Directive 93/53, it should be pointed out that 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 Case C-60/96 *Commission* v *France* [1997] ECR I-3827, paragraph 15).

15 In the present case the Presidential Decree No 263 relied upon by the Italian Government was adopted on 3 July 1997 whilst the time-limit imposed by the Commission in the reasoned opinion expired on 22 March 1996. Even if that decree does constitute proper transposition of Directive 93/53, it can therefore not be taken into account in the present proceedings.

16 As regards the transposition of Articles 2 and 7 of Directive 93/113, it has consistently been held that mere administrative practices, which by their nature are alterable at will by the administration and are not given the appropriate publicity, cannot be regarded as constituting the proper fulfilment of obligations under the Treaty (Case C-311/95 *Commission* v *Greece* [1996] ECR I-2433, paragraph 7).

17 Furthermore, by adopting the circular of 26 July 1995 and circulating it to the relevant authorities, the Italian Republic cannot be regarded as having complied with its obligations under Directive 93/113.

18 Furthermore, the Italian Government does not deny that Presidential Decree No 228 of 1 March 1992 covers different enzymes and imposes different requirements from those governed by Article 7 of Directive 93/113.

19 Finally, the Italian Republic does not deny that Directive 93/114 was not transposed within the prescribed period.

20 It must accordingly be held that, by failing to bring into force within the prescribed periods the laws, regulations and administrative provisions necessary to comply with Directives 93/53, 93/113 and 93/114, the Italian Republic has failed to fulfil its obligations under the first subparagraph of Article 20(1) of Directive 93/53, the first subparagraph of Article 8(1) of Directive 93/113 and the first subparagraph of Article 2(1) of Directive 93/114.

Costs

21 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Furthermore, the first subparagraph of paragraph 5 of that article provides that a party who discontinues is to be ordered to pay the costs. However, upon application by the party who discontinues, the costs are to be borne by the other party if this appears justified by the conduct of that party.

22 In the present case the Italian Republic has been unsuccessful as regards Directives 93/53, 93/113 and 93/114; in addition, the claim concerning Directive 93/54 and the subsequent discontinuance resulted from the conduct of that Member State, which did not notify the measures adopted to comply with its obligations until after the action had been brought.

23 The Italian Republic must therefore be ordered to pay the costs.

On those grounds,

THE COURT (Sixth Chamber)

hereby:

1. **Declares that, by failing to bring into force within the prescribed periods the laws, regulations and administrative provisions necessary to comply with Council Directive 93/53/EEC of 24 June 1993 introducing minimum Community measures for the control of certain fish diseases, Council Directive 93/113/EC of 14 December 1993 concerning the use and marketing of enzymes, micro-organisms and their preparations in animal nutrition and Council Directive 93/114/EC of 14 December 1993 amending Directive 70/524/EEC concerning additives in feedingstuffs, the Italian Republic has failed to fulfil its obligations under the first subparagraph of Article 20(1) of Directive 93/53, the first subparagraph of Article 8(1) of Directive 93/113 and the first subparagraph of Article 2(1) of Directive 93/114;**

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

Ragnemalm Schintgen Mancini

Kapteyn Hirsch

Delivered in open court in Luxembourg on 16 December 1997.

R. Grass H. Ragnemalm

Registrar President of the Sixth Chamber