JUDGMENT OF THE COURT
12 July 1988 *

In Case 326/87

Commission of the European Communities, represented by G. Berardis, a member of its Legal Department, acting as Agent, with an address for service in Luxembourg at the office of G. Kremlis, Jean Monnet Building, Kirchberg,

applicant,

v

Italian Republic, represented by Luigi Ferrari Bravo, Head of the Contentious Diplomatic Affairs Department, acting as Agent, assisted by P. G. Ferri, Avvocato dello Stato, with an address for service in Luxembourg at the Italian Embassy,

defendant,

APPLICATION for a declaration that by failing to give notice of the laws, regulations and administrative provisions by which it considers that it has satisfied its obligations under Commission Directive 84/414/EEC of 18 July 1984 adapting to technical progress Directive 76/764/EEC on the approximation of the laws of the Member States relating to clinical mercury-in-glass maximum-reading thermometers (Official Journal 1984, L 228, p. 25), or by failing to adopt the measures needed to comply with that directive, the Italian Republic has failed to fulfil its obligations under the EEC Treaty,

THE COURT

composed of: Lord Mackenzie Stuart, President, G. Bosco and O. Due (Presidents of Chambers), T. Koopmans, K. Bahlmann, C. Kakouris, R. Joliet, T. F. O'Higgins and F. Schockweiler, Judges,

Advocate General: J. L. Cruz Vilaça
Registrar: D. Louterman, Administrator

* Language of the Case: Italian.

having regard to the Report for the Hearing and further to the hearing on 25 May 1988,

after hearing the Opinion of the Advocate General delivered at the sitting on 25 May 1988,

gives the following

Judgment

1 By an application received at the Court Registry on 16 October 1987, the Commission of the European Communities brought an action under Article 169 of the EEC Treaty for a declaration that by failing to give notice of the laws, regulations and administrative provisions by which it considers that it has satisfied its obligations under Commission Directive 84/414/EEC of 18 July 1984 adapting to technical progress Directive 76/764/EEC on the approximation of the laws of the Member States relating to clinical mercury-in-glass maximum-reading thermometers (Official Journal 1984, L 228, p. 25), or by failing to adopt the measures needed to comply with that directive, the Italian Republic has failed to fulfil its obligations under the EEC Treaty.

2 Article 2 of Directive 84/414/EEC provides that the Member States are to bring into force the necessary laws, regulations and administrative provisions by 1 January 1986 and must inform the Commission of the measures adopted for that purpose.

3 The Commission received no communication from the Italian Republic regarding measures for the transposition of the directive in question, and on 9 July 1986 it sent the Italian Republic a letter formally drawing its attention to that fact and calling upon it to submit its observations. No reply was received to that letter and therefore, on 2 February 1987, the Commission delivered a reasoned opinion, calling on the Italian Republic to take the necessary measures to comply with it within a period of two months. Since there was no response to the reasoned opinion, the Commission brought the present action.

4 Reference is made to the Report for the Hearing for a fuller account of the facts, the procedure and the submissions and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

5 The Italian Republic acknowledges that it has not yet fulfilled its obligation to comply with the directive in question. It states that certain difficulties made it impossible to transpose the directive in due time. It has given an assurance that its Government is making every effort to bring into force the necessary provisions without delay.

6 The Court has consistently held that a Member State may not plead provisions, practices or situations prevailing in its internal legal system in order to justify a failure to comply with the obligations and time-limits laid down by directives.

7 In view of the fact that the Italian Republic does not deny that it has failed to transpose the directive in question into national law, the application has become devoid of purpose with respect to the failure to give notice of measures intended to transpose the directive, since no such measures exist.

8 It must therefore be stated that by failing to adopt within the period prescribed the measures needed to comply with Commission Directive 84/414/EEC of 18 July 1984 adapting to technical progress Directive 76/764/EEC on the approximation of the laws of the Member States relating to clinical mercury-in-glass maximum-reading thermometers, the Italian Republic has failed to fulfil its obligations under the EEC Treaty.

Costs

9 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the defendant has failed in its submissions it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

(1) Declares that by failing to adopt within the period prescribed the measures needed to comply with Commission Directive 84/414/EEC of 18 July 1984 adapting to technical progress Directive 76/764/EEC on the approximation of the laws of the Member States relating to clinical mercury-in-glass maximum-reading thermometers, the Italian Republic has failed to fulfil its obligations under the EEC Treaty;

(2) Orders the Italian Republic to pay the costs.

Mackenzie Stuart Bosco Due Koopmans

Bahlmann Kakouris Joliet O'Higgins Schockweiler

Delivered in open court in Luxembourg on 12 July 1988.

J.-G. Giraud
Registrar

A. J. Mackenzie Stuart
President