REPORT FOR THE HEARING
delivered in Case 326/87 *

I — Legislation, facts and procedure

1. Since the manufacture of clinical thermometers and the methods for checking them are governed by mandatory provisions which differ from one Member State to another and hence hinder trade in those instruments, Council Directive 76/764/EEC of 27 July 1976 on the approximation of the laws of the Member States relating to clinical mercury-in-glass maximum-reading thermometers (Official Journal 1976, L 262, p. 139) made provision for the harmonization of those provisions. Since the adoption of Directive 76/764/EEC, new techniques have been developed in that field which have made it necessary to conduct additional tests in order to establish the quality of the glass used. For that reason, it became necessary to adapt Directive 76/764/EEC to technical progress.

Article 2 of Directive 84/414/EEC provides that the Member States are to bring into force the laws, regulations and administrative provisions necessary to comply with the directive on 1 January 1986 at the latest and that they are to inform the Commission thereof forthwith.

2. As the Italian Republic failed to inform the Commission of the provisions which it had adopted to comply with the directive, the Commission requested the Italian Government, by letter of 9 July 1986 and in accordance with the procedure laid down in Article 169 of the Treaty, to submit its observations on the matter within two months.

3. There was no response to that letter, and the Commission therefore issued a reasoned opinion on 2 February 1987 requesting the Italian Republic to adopt the measures needed to comply with the terms of the opinion within two months from the date of its notification. There was no reply from the Italian authorities.

Consequently, the Commission brought this action before the Court on account of Italy's failure to fulfil its obligations.

4. The Commission's application was lodged at the Court Registry on 16 October 1987.

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 *Commission* claims that the Court should:

Declare 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

* Language of the Case: Italian.

76/764/EEC on the approximation of the laws of the Member States relating to clinical mercury-in-glass maximum-reading thermometers, 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;

Order the Italian Republic to pay the costs.

The *Italian Republic* does not deny the alleged infringement.

III — Submissions and arguments of the parties

The Commission contends that under the third paragraph of Article 189 of the EEC Treaty a directive is binding, as to the result to be achieved, upon each Member State to which it is addressed. According to the first paragraph of Article 5 of the Treaty, Member States are to take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of the Treaty or resulting from action taken by the institutions of the Community. Moreover, the Court has consistently held that those provisions of the EEC Treaty impose on the Member States to which directives are addressed the obligation to bring their legislation into line with those directives within the periods prescribed therein and that a Member State may not plead provisions, practices or circumstances in its internal legal system to justify its failure to comply with obligations and time-limits resulting from Community directives.

The Italian Republic acknowledges that it has had to contend with a number of difficulties which prevented the transposition of the contested directive into national law in due time.

Since the competent minister has taken the measures necessary for the swift adoption of the implementing provisions, the Government of the Italian Republic intends to make every effort to ensure that those provisions enter into force as soon as possible.

K. Bahlmann
Judge-Rapporteur