Case C-270/91

Commission of the European Communities
v
Italian Republic

(Failure to fulfil obligations — EEC directives — Failure to transpose within the prescribed periods)

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Summary of the Judgment

Member States — Obligations — Implementation of directives — Failure to fulfil obligations not contested
(EEC Treaty, Art. 169)

REPORT OF THE JUDGE-RAPPORTEUR
in Case C-270/91 *

Facts and pre-litigation procedure

1. Article 2 of Commission Directive 89/321/EEC of 27 April 1989 amending for the second time the Annexes to Council Directive 77/96/EEC on the examination for Trichinae (Trichinella spiralis) upon importation from third countries of fresh meat derived from domestic swine (OJ 1989 L 133, p. 33) provides that Member States must bring into force the laws, regulations and administrative provisions necessary to comply with that directive not later than 1 September 1989, and must inform the Commission thereof forthwith.

* Language of the case: Italian.

2. Article 2 of Council Directive 89/360/EEC of 30 May 1989 amending Directive 64/432/EEC as regards administrative areas and a cessation of serological testing for brucellosis in certain types of swine (OJ 1989 L 153, p. 29) requires Member States to bring into force the laws, regulations and administrative provisions necessary to comply with that directive not later than 1 October 1989, and to inform the Commission thereof forthwith.

3. In its application to the Court the Commission explains that the Italian Republic had not given the requisite notification, within the prescribed period, of the implementation in national law of the two directives mentioned above; accordingly, by letter of 26 June 1990, the Commission called upon the Italian Government pursuant to Article 169 of the EEC Treaty to submit its observations and to send it a full and detailed table setting out the various national provisions said to bring into force each of the provisions contained in the directive, within two months of receipt of that letter.

4. That letter of formal notice remained unanswered.

5. On 18 March 1991 the Commission sent the Italian Republic a reasoned opinion in which it noted that the Italian Republic had not sent any communication indicating that the obligations imposed by the two directives in question had been fulfilled, and called upon the Italian Government to adopt the necessary measures to comply with the reasoned opinion within two months of its notification.

6. The Italian Government did not reply to the reasoned opinion.

7. The Commission therefore brought the present proceedings against Italy for failure to fulfil its obligations.

Written procedure and forms of order sought by the parties

8. The application of the Commission was lodged at the Court Registry on 15 October 1991.

9. The written procedure followed the normal course. Upon 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.

10. The *Commission*, the applicant, claims that the Court should:

— declare that, by failing to notify the laws, regulations and administrative provisions necessary in order to fulfil the obligations imposed on it by Directives 89/321/EEC and 89/360/EEC or by failing to adopt the measures necessary to comply with those directives within the prescribed periods, the Italian Republic has failed to fulfil its obligations under the EEC Treaty;

— order the Italian Republic to pay the costs.

11. The *Italian Republic*, the defendant, has not sought any particular form of order.

Pleas in law and arguments of the parties

12. The *Commission* points out that under Article 189 of the EEC Treaty directives are binding, as to the result to be achieved, upon each Member State to which they are addressed, but leave to the national authorities the choice of form and methods. The mandatory character of directives means that a Member State is obliged to observe the periods prescribed therein for compliance, without being permitted to 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 those directives. That rule is apparent from the judgments in Cases 91/79 and 92/79 (*Commission* v *Italy* [1980] ECR 1099 and 1115). The Commission further submits that a Member State cannot be considered to have fulfilled all its obligations under a directive until all the provisions contained therein are expressly embodied in its legislation.

13. The *Italian Government* admits that the directives in question have not been fully implemented in the national legal system. However, it states that certain decrees in the process of adoption might remedy that failure.

C. N. Kakouris
Judge-Rapporteur