JUDGMENT OF THE COURT
13 December 1991 *

In Case C-69/90,

Commission of the European Communities, represented by Ricardo Gosalbo Bono and Enrico Vesco, members of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Roberto Hayder, a representative of its Legal Service, Wagner Centre, Kirchberg,

applicant,

v

Italian Republic, represented by Professor Luigi Ferrari Bravo, Head of the Department for Contentious Diplomatic Affairs, in the Ministry of Foreign Affairs, acting as Agent, assisted by Ivo M. Braguglia, 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 communicate the laws, regulations and administrative provisions by which it claims to have fulfilled its obligations under Council Directive 87/53/EEC of 15 December 1986 amending Directive 83/643/EEC on the facilitation of physical inspections and administrative formalities in respect of the carriage of goods between Member States (Official Journal 1987 L 24, p. 33) or by failing to take the measures needed to comply therewith, the Italian Republic has failed to fulfil its obligations under that directive and the EEC Treaty,

* Language of the case: Italian.

THE COURT,

composed of: O Due, President, Sir Gordon Slynn, R. Joliet, F. A. Schockweiler, P. J. G. Kapteyn (Presidents of Chambers), G. F. Mancini, C. N. Kakouris, G. C. Rodríguez Iglesias and M. Díez de Velasco, Judges,

Advocate General: W. Van Gerven,
Registrar: H. A. Rühl, Principal Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 9 July 1991,

after hearing the Opinion of the Advocate General at the sitting on 19 September 1991,

gives the following

Judgment

By application lodged at the Court Registry on 16 March 1990, the Commission of the European Communities brought an action under Article 169 of the EEC Treaty for a declaration that, by failing to communicate the laws, regulations and administrative provisions by which it claims to have fulfilled its obligations under Council Directive 87/53/EEC of 15 December 1986 amending Directive 83/643/EEC on the facilitation of physical inspections and administrative formalities in respect of the carriage of goods between Member States (Official Journal 1987 L 24, p. 33) or by failing to take the measures needed to comply therewith, the Italian Republic has failed to fulfil its obligations under that directive and the Treaty.

Directive 87/53 added two paragraphs to Article 2 of Council Directive 83/643 of 1 December 1983 (Official Journal 1983 L 359, p. 8), replaced Articles 4, 5, 6, 7 and 8 and added new Articles 6a, 7a and 8a.

3 Article 2 of Directive 87/53 requires Member States, after consulting the Commission, to bring into force by 1 July 1987 at the latest, the laws, regulations and administrative provisions necessary for them to comply with the directive and to communicate to the Commission the texts of the provisions they adopt in order to implement the directive.

4 Since the Italian Government did not send the Commission any communication relating to the measures implementing Directive 87/53, the Commission initiated against the Italian Republic the procedure provided for in Article 169 of the Treaty.

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

6 The Italian Government admits that it failed to implement Article 7a, which was added to Directive 83/643 by Directive 87/53, within the prescribed period.

7 It must therefore be held that the Italian Republic has failed to fulfil its obligations under Directive 87/53 in so far as it failed to take the measures needed in order to comply with Article 7a, which was added to Directive 83/643 by Directive 87/53.

8 However, as far as the other provisions of Directive 87/53 are concerned, the Italian Government considers that the action brought by the Commission is unfounded.

9 In support of this argument, it contends that although those provisions impose a number of obligations on the Member States, compliance with those obligations does not necessitate the adoption in their national legislation of specific implementing measures. According to the Italian Government, the provisions of Directive 87/53, with the exception of the provision adding Article 7a to Directive 83/643, merely require 'substantive conduct' which the authorities of the Member States must adopt in order to facilitate inspections and formalities in respect of the carriage of goods within the Community. However, compliance with such conduct could be verified by the Commission only in specific situations.

10 That defence put forward by the Italian Government cannot be upheld.

11 It is unnecessary to consider whether the implementation of Directive 87/53 required the Italian Government to adopt specific national measures for all the provisions of the directive, other than that adding Article 7a to Directive 83/643; it is sufficient to note that the Italian Republic failed to send the Commission any communication whatsoever concerning the implementation of those provisions of Directive 87/53.

12 That obligation of communication is incumbent on every Member State under Article 2 of Directive 87/53.

13 That article requires the Member States to provide the Commission, by the specified date, with full information on the measures they have adopted to comply with Directive 87/53 or, as the case may be, on the existing provisions in their national legal system which already ensure full application of the directive.

14 That obligation of communication also means that, if a Member State considers that certain provisions of Directive 87/53 do not necessitate the adoption by it of measures to implement it domestically, that State must inform the Commission of the reasons for this before the expiry of the period laid down for transposing the directive into national law, so as to enable the Commission to make its views known in that regard.

15 Under Article 5 of the Treaty, Member States are required to take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising from Community law and to facilitate the achievement of the Community's tasks. To that end, the Member States have an obligation to cooperate loyally with the Commission to enable it to ensure, pursuant to Article 155 of the Treaty, that Community law is applied.

16 Under those circumstances, it must be held that the Italian Republic has also failed to fulfil its obligations under Directive 87/53 in so far as it failed to send the Commission any communication concerning the implementation of the provisions, other than Article 7a, added to Directive 83/643 by Directive 87/53.

Costs

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

On those grounds,

THE COURT

hereby:

1. **Declares that the Italian Republic has failed to fulfil its obligations under Council Directive 87/53/EEC of 15 December 1986 amending Directive 83/643/EEC on the facilitation of physical inspections and administrative formalities in respect of the carriage of goods between Member States**

   a) **by failing to adopt the measures needed to comply with Article 7a of Council Directive 83/643/EEC of 1 December 1983, as amended by Directive 87/53/EEC, and**

   b) **by failing to send the Commission any communication concerning the implementation of the other provisions added to Directive 83/643/EEC by Directive 87/53/EEC.**

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

Due Slynn Joliet Schockweiler

Kapteyn Mancini Kakouris Rodríguez Iglesias Díez de Velasco

Delivered in open court in Luxembourg on 13 December 1991.

J.-G. Giraud
Registrar

O. Due
President