REPORT FOR THE HEARING
delivered in Case 124/86 *

I — Facts and procedure

The purpose of Council Directive 83/181/EEC of 28 March 1983 on tax exemptions applicable to permanent imports from a Member State of the personal property of individuals is to enact further measures for the benefit of private individuals in order to create conditions in the Community similar to those in a domestic market. Since tax obstacles to the importation by private individuals of personal property into one Member State from another Member State are likely to hinder the free movement of persons within the Community, the directive is intended to eliminate them as far as possible by the introduction of tax exemptions.

Article 12 of the directive provides that Member States are to bring into force the laws, regulations and administrative provisions necessary to comply therewith by 1 January 1984 at the latest, and that they are to inform the Commission thereof forthwith.

Not having received within the prescribed period any communication from the Italian Government concerning the implementing measures and having no information suggesting that the Italian Republic had fulfilled its obligation to bring the necessary provisions into force, the Commission recorded the infringement in a letter of 21 December 1984 and allowed the Italian Government a period of two months in which to submit its observations on the matter.

By a telex message dated 24 May 1985 the Italian Permanent Representative informed the Commission that the Ministry of Finance had prepared a draft law designed to implement the directive in Italian law.

Since, following that telex message, the Commission did not receive any communication indicating that the requisite measures for the implementation of the directive had been adopted, it delivered, on 18 July 1985, a reasoned opinion pursuant to the first paragraph of Article 169 of the EEC Treaty, allowing the Italian Government a period of one month from its notification to comply with that opinion.

By a telex message dated 25 July 1985 the Italian Government requested an extension of 30 days. By a telex message of 4 September 1985 the Italian Government requested a further extension of two months, on the ground that the draft law amending the national provisions so as to bring them into conformity with Community law was to be discussed at the next session of the Chambers.

Having received no further communication from the Italian Government, the Commission brought the present action before the Court for a failure to fulfil obligations.

The Commission's application was lodged at the Court Registry on 26 May 1986.

The Government of the Italian Republic submitted a defence, but the Commission, taking the view that the infringement had been proved, waived its right to lodge a reply.

* Language of the Case: Italian.

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.

II — Conclusions of the parties

The Commission claims that the Court should:

Declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Council Directive 83/183/EEC of 28 March 1983 on the tax exemptions applicable to permanent imports from a Member State of the personal property of individuals, the Italian Republic has failed to fulfil its obligations under that directive;

Order the Italian Republic to bear the costs.

The Italian Government has not denied the infringement of which it is accused.

III — Submissions and arguments of the parties

The Commission points out that, according to the third paragraph of Article 189 of the EEC Treaty, directives are binding upon each Member State as to the result to be achieved, and that the first paragraph of Article 5 of the Treaty requires Member States 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.

The Italian Government does not deny the infringement of which it is accused. It observes, however, that tax exemptions for personal property imported into Italy on a change of residence are already granted — albeit subject to rules and time-limits which differ from those laid down by the directive — pursuant to Article 14 (6) of the preliminary provisions attached to the tariff for customs duties on imports, which were approved by Presidential Decree No 723 of 26 June 1965 (*Gazzetta Ufficiale*, general supplement No 160 of 1 July 1965).

J. C. Moitinho de Almeida
Judge-Rapporteur