JUDGMENT OF THE COURT
23 February 1994 *

In Case C-289/93,

Commission of the European Communities, represented by Vittorio di Bucci, a member of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of Georgios Kremlis, a member of its Legal Service, Wagner Centre, Kirchberg,

applicant,

v

Italian Republic, represented by Luigi Ferrari Bravo, Head of the Diplomatic Legal Service in the Ministry of Foreign Affairs, acting as Agent, assisted by Oscar Fiumara, 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 adopt within the prescribed period the laws, regulations and administrative provisions necessary to comply

* Language of the case: Italian.

with Council Directive 88/599/EEC of 23 November 1988 on standard checking procedures for the implementation of Regulation (EEC) No 3820/85 on the harmonization of certain social legislation relating to road transport and Regulation (EEC) No 3821/85 on recording equipment in road transport (Official Journal 1988 L 325, p. 55) and/or by failing to communicate them to the Commission in accordance with Article 7 of the said directive, the Italian Republic has failed to fulfil its obligations under the EEC Treaty,

THE COURT,

composed of: G. F. Mancini, President of Chambers, acting as President, J. C. Moitinho de Almeida and D. A. O. Edward (Rapporteur), (Presidents of Chambers), R. Joliet, F. A. Schockweiler, G. C. Rodríguez Iglesias, F. Grévisse, M. Zuleeg and J. L. Murray, Judges,

Advocate General: C. O. Lenz,
Registrar: J.-G. Giraud,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 15 December 1993,

gives the following

Judgment

1 By application lodged at the Court Registry on 17 May 1993, the Commission of the European Communities brought an action under Article 169 of the EEC

Treaty for a declaration that, by failing to adopt within the prescribed period the laws, regulations and administrative provisions necessary to comply with Council Directive 85/599/EEC of 23 November 1988 on standard checking procedures for the implementation of Regulation (EEC) No 3820/85 on the harmonization of certain social legislation relating to road transport and Regulation (EEC) No 3821/85 on recording equipment in road transport (Official Journal 1988 L 325, p. 55) and/or by failing to communicate them to the Commission in accordance with Article 7 of the said directive, the Italian Republic had failed to fulfil its obligations under the EEC Treaty.

2 The first subparagraph of Article 7 (1) of the directive states that 'Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this directive on 1 January 1989 at the latest'. Article 7 (2) states that 'Member States shall communicate to the Commission their laws, regulations and administrative provisions concerning the application of [the] directive'.

3 The Commission contends that the Italian Republic failed to fulfil its obligations under the provisions of Article 7 of the directive in conjunction with Article 5 and the third paragraph of Article 189 of the Treaty, by failing to adopt the necessary measures for transposition of the directive in its national legal system.

4 The Italian Government does not dispute that the directive was not transposed within the prescribed period. It points out, however, that the procedure for adoption of the implementing legislation is virtually complete.

5 Since the directive was not transposed within the prescribed period, it must be held that the Italian Republic has failed to fulfil its obligations under the Treaty.

6 On the other hand, as the Advocate General pointed out, and contrary to the Commission's contentions, the Court need not take account of the failure to communicate the laws, regulations and administrative provisions which should have been adopted in order to comply with the directive, since, precisely, the Italian Republic has failed to adopt those measures.

7 Consequently, it must be held that by not adopting within the prescribed period the laws, regulations and administrative provisions necessary to comply with Directive 88/599/EEC, the Italian Republic has failed to fulfil its obligations under the EEC Treaty.

Costs

8 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 been unsuccessful, it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

1) **Declares that, by not adopting within the prescribed period the laws, regulations and administrative provisions necessary to comply with Council Directive 88/599/EEC of 23 November 1988 on standard checking procedures for the implementation of Regulation (EEC) No 3820/85 on the har-**

monization of certain social legislation relating to road transport and Regulation (EEC) No 3821/85 on recording equipment in road transport, the Italian Republic has failed to fulfil its obligations under the EEC Treaty;

2) Orders the Italian Republic to pay the costs.

Mancini Moitinho de Almeida Edward

Joliet Schockweiler Rodríguez Iglesias

Grévisse Zuleeg Murray

Delivered in open court in Luxembourg on 23 February 1994.

R. Grass G. F. Mancini

Registrar President of the Second and Sixth Chambers acting as President