JUDGMENT OF THE COURT
17 DECEMBER 1981 [1]

Commission of the European Communities v Government of the Italian Republic

(Failure to fulfil an obligation — Implementation of harmonization directives)

Joined Cases 30 to 34/81

Member States — Obligations — Implementation of directives — Failure to fulfil obligations — Justification — Not possible
(EEC Treaty, Art. 169)

A Member State may not plead provisions, practices or circumstances existing in its internal legal system in order to justify a failure to comply with obligations resulting from Community directives.

In Joined Cases 30 to 34/81

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by G. P. Alessi, a member of its Legal Department, acting as Agent, with an address for service in Luxembourg at the office of O. Montalto, a member of its Legal Department, Jean Monnet Building, Kirchberg,

applicant,

v

GOVERNMENT OF THE ITALIAN REPUBLIC, in the person of its Agent, A. Squillante, Head of the Department of Diplomatic Legal Affairs, Treaties and Legislative Matters, represented and assisted by P. G. Ferri, Avvocato dello Stato, with an address for service in Luxembourg at the Italian Embassy,

defendant,

1 — Language of the Case: Italian

APPLICATION for declarations that the Italian Republic has failed to fulfil its obligations under the EEC Treaty by failing to implement within the prescribed period five directives concerning the environment programme,

THE COURT

composed of: J. Mertens de Wilmars, President, G. Bosco and O. Due, (Presidents of Chambers), A. O'Keeffe, T. Koopmans, A. Chloros and F. Grévisse, Judges,

Advocate General: S. Rozès
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the conclusions, submissions and arguments of the parties may be summarized as follows:

I — Facts and procedure

The following five directives are at issue:

(a) Council Directive 75/439/EEC of 16 June 1975 on the disposal of waste oils (Official Journal L 194, p. 31);

(b) Council Directive 75/440/EEC of 16 June 1975 concerning the quality required of surface water intended for the abstraction of drinking water in the Member States (Official Journal L 194, p. 34);

(c) Council Directive 75/442/EEC of 15 July 1975 on waste (Official Journal L 194, p. 47);

(d) Council Directive 76/160/EEC of 8 December 1975 concerning the quality of bathing water (Official Journal L 31, p. 1);

(e) Council Directive 76/403/EEC of 6 April 1976 on the disposal of polychlorinated biphenyls and polychlorinated terphenyls (Official Journal L 108, p. 41).

Those directives constitute a series of Community measures based on Articles 100 and 235 of the Treaty. They have been adopted as the part of Community policy on environmental protection and

are aimed first at abolishing certain differences between the laws of the Member States capable of having a direct effect on the operation of the common market by creating, in particular, an imbalance in the conditions of competition and, secondly, at achieving, by means of Community legislation which is wider in scope, certain objectives concerning environmental and health protection.

All five directives accord the Member States a two-year period within which to comply with the Community rules. That period expired, in the case of the first two directives (75/439/EEC and 75/440/EEC), on 18 June 1977 and, in the case of the others (75/442/EEC, 76/160/EEC and 76/403/EEC), on 18 July 1977, 11 December 1977 and 9 April 1978 respectively.

Since the Italian Republic failed to adopt the implementing measures within the prescribed period, the Commission decided to initiate against it the procedure, provided for in Article 169 of the Treaty, for a declaration that it had failed to fulfil its obligations. By letters of 9 January 1979 and 3 July 1979 respectively, the Commission requested the Italian Government to submit its observations, in accordance with the first paragraph of Article 169.

Three of those letters failed to evoke any response. Taking the view that the answers to the other two letters were inadequate and after finding that the national provisions for giving effect to the directives in question had still not been adopted, the Commission delivered on 19 May and 23 July 1980 five reasoned opinions in which it stated that by failing to bring into force the laws, regulations and administrative provisions needed to comply with the directives, Italy had failed to fulfil its obligations thereunder.

Since identical answers relating to legislative difficulties were given in response to the reasoned opinions and the national provisions needed to give effect to the directives had still not been adopted, the Commission brought the matter before the Court by means of the present applications which were received at the Registry on 16 and 17 February 1981.

The defendant has not submitted a rejoinder.

On hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided, by order of 30 September 1981, to join the five cases for the purposes of the oral procedure and of the judgment and to open the oral procedure without any preparatory inquiry.

II — Conclusions of the parties

The applicant claims that the Court should:

1. Declare that by failing to bring into force, within the prescribed period, the measures needed to comply with the following directives:

   (a) Council Directive 75/439/EEC of 16 June 1975 on the disposal of waste oils (Official Journal L 194, p. 31);

   (b) Council Directive 75/440/EEC of 16 June 1975 concerning the quality required of surface water intended for the abstraction of drinking water in the Member

States (Official Journal L 194, p. 34);

(c) Council Directive 75/442/EEC of 15 July 1975 on waste (Official Journal L 194, p. 47);

(d) Council Directive 76/160/EEC of 8 December 1975 concerning the quality of bathing water (Official Journal L 31, p. 1);

(e) Council Directive 76/403/EEC of 6 April 1976 on the disposal of polychlorinated biphenyls and polychlorinated terphenyls (Official Journal L 108, p. 41);

the Italian Republic has failed to fulfil its obligations under the EEC Treaty;

2. Order the defendant to pay the costs.

The defendant has not submitted any formal conclusions.

III — Submissions and arguments of the parties

The *applicant* contends that the Court has confirmed, in a consistent line of decisions, that the binding force of directives imposes an obligation on the Member States to comply with the time-limits prescribed by such directives for bringing into force the provisions amending national law.

A Member State commits a breach of the Treaty regardless of the institution of the State whose acts or omissions have resulted in non-implementation. Non-implementation may not be justified by national rules or practices, or even by special factual circumstances at national level.

The *defendant* states that it is aware of the importance, for the achievement of Community objectives, of the prompt incorporation of directives in national legal systems. However, the particularly rapid pace of harmonization imposes on the Member States an impressive series of obligations to amend national legal systems, often requiring recourse to the adoption of legislation, a procedure the duration of which is determined by the requirements and events of the parliamentary process.

In order to shorten the period needed for adaptation, the Italian Government asked Parliament for a delegation of legislative power which has already been granted by the Senate and is at present before the Chamber of Deputies.

That step confirms the Italian Government's firm intention of honouring, in the most effective manner, its Community commitments in the matter of directives.

In its reply, the *applicant* takes formal note of the Italian Government's declarations but maintains its conclusions.

IV — Implementation of directives in the Member States

The Commission has provided the following information:

Greece has implemented none of the five directives but at present a comprehensive solution is being examined. In the case of the other Member States, the situation is as follows:

(a) Directive 75/439/EEC on the disposal of waste oils has been implemented in seven Member States. The Commission has instituted proceedings against Belgium for failure to fulfil its obligations.

(b) Directive 75/440/EEC concerning the quality required of surface water intended for the abstraction of drinking water in the Member States has been implemented by five Member States. Belgium and the

Netherlands have implemented it in part and proceedings have been initiated against them for failure to fulfil their obligations. Luxembourg is in the process of implementing the directive.

(c) Directive 75/442/EEC on waste has been implemented by seven Member States. Belgium has implemented it in part and proceedings have been instituted against it for failure to fulfil its obligations.

(d) Directive 76/160/EEC of 8 December 1975 concerning the quality of bathing water has been implemented by six Member States. Belgium and the Netherlands have implemented it in part and proceedings have been instituted against them for failure to fulfil their obligations.

(e) Directive 76/403/EEC on the disposal of polychlorinated biphenyls and polychlorinated terphenyls has been implemented in seven Member States. Belgium has implemented it only in part and the Commission has commenced proceedings against it for failure to fulfil its obligations.

V — Oral procedure

At the sitting on 11 November 1981, oral argument was presented by the following: P. G. Ferri, Avvocato dello Stato, acting as Agent for the Italian Government and G. P. Alessi, a member of the Commission's Legal Department, acting as Agent, for the Commission.

The Advocate General delivered his opinion on 2 December 1981.

Decision

1 By applications lodged at the Court Registry on 16 and 17 February and on 24 April 1981, the Commission brought before the Court, pursuant to Article 169 of the EEC Treaty, five actions for a declaration that the Italian Republic had failed to fulfil its obligations under the Treaty by failing to adopt, within the prescribed periods, the provisions needed in order to comply with the following directives:

(a) Council Directive 75/439/EEC of 16 June 1975 on the disposal of waste oils (Official Journal L 194, p. 31);

(b) Council Directive 75/440/EEC of 16 June 1975 concerning the quality required of surface water intended for the abstraction of drinking water in the Member States (Official Journal L 194, p. 34);

(c) Council Directive 75/442/EEC of 15 July 1975 on waste (Official Journal L 194, p. 47);

(d) Council Directive 76/160/EEC of 8 December 1975 concerning the quality of bathing water (Official Journal L 31, p. 1);

(e) Council Directive 76/403/EEC of 6 April 1976 on the disposal of polychlorinated biphenyls and polychlorinated terphenyls (Official Journal L 108, p. 41).

2 Each directive laid down that the Member States were to bring into force the measures needed in order to comply with it within a period of two years. The period expired, in the case of the first two directives (75/439/EEC and 75/440/EEC), on 18 June 1977 and, in the case of the others (75/442/EEC, 76/160/EEC and 76/403/EEC), on 18 July 1977, 11 December 1977 and 9 April 1978 respectively.

3 The Italian Government does not dispute that it has failed to fulfil that obligation. It states that the delay in implementing the directives stems from the need to have recourse to the adoption of legislation in order to implement the said directives, a procedure which entails the observance of certain time-limits determined by the requirements and events inherent in the parliamentary process. Faces with those difficulties, the Italian Government has asked Parliament for a delegation of legislative powers. Although the delegation has already been approved by the Senate it is still being examined by the Chamber of Deputies.

4 Those circumstances do not expunge the failure to fulfil its obligations with which the Italian Republic is charged. According to well-established case-law, a Member State may not 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 Community directives.

5 Therefore it must be held that by failing to adopt, within the prescribed period, the provisions needed in order to comply with Council Directives 75/439/EEC and 75/440/EEC of 16 June 1975, 75/442/EEC of 15 July

1975, 76/160/EEC of 8 December 1975 and 76/403/EEC of 6 April 1976, the Italian Republic has failed to fulfil its obligations under the Treaty.

Costs

6 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs.

7 Since the defendant has failed in its submissions it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

1. **Declares that by failing to adopt within the prescribed period the provisions needed in order to comply with the following directives:**

   (a) **Council Directive 75/439/EEC of 16 June 1975 on the disposal of waste oils;**

   (b) **Council Directive 75/440/EEC of 16 June 1975 concerning the quality required of surface water intended for the abstraction of drinking water in the Member States;**

   (c) **Council Directive 75/442/EEC of 15 July 1975 on waste;**

   (d) **Council Directive 76/160/EEC of 8 December 1975 concerning the quality of bathing water;**

(e) Council Directive 76/403/EEC of 6 April 1976 on the disposal of polychlorinated biphenyls and polychlorinated terphenyls;

the Italian Republic has failed to fulfil its obligations under the Treaty;

2. Orders the defendant to pay the costs.

Mertens de Wilmars Bosco Due

O'Keeffe Koopmans Chloros Grévisse

Delivered in open court in Luxembourg on 17 December 1981.

A. Van Houtte
Registrar

J. Mertens de Wilmars
President

OPINION OF MRS ADVOCATE GENERAL ROZÈS DELIVERED ON 2 DECEMBER 1981 [1]

Mr President,
Members of the Court,

The Commission of the European Communities has brought before this Court five actions against the Italian Republic for failure to fulfil its obligations on the ground that it had failed to adopt, within the prescribed period of two years, the provisions needed in order to comply with five directives concerning the programme for the protection of the environment.

By your order of 30 September 1981, those five cases were joined for the purposes of the oral procedure and the judgment.

The directives in question are based on Articles 100 and 235 of the EEC Treaty and are designed either to eliminate substances which are poisonous (waste oils, waste) and cannot be broken down (polychlorinated biphenyls and polychlorinated terphenyls) or to protect the quality of surface water intended for the abstraction of drinking water in the Member States and the quality of bathing water. Their purpose is therefore to afford the same degree of protection within the Community to the health of individuals and to the environment and, moreover, to abolish certain differences between the laws of the Member States

1 — Translated from the French.